



SEANAD ÉIREANN

**AN BILLE CARTHANAS 2007
CHARITIES BILL 2007**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE CARTHANAS 2007 —AN COISTE

CHARITIES BILL 2007 —COMMITTEE STAGE

Leasuithe Amendments

**Government Amendments are distinguished by an asterisk.*

SECTION 2

* **1.** In page 8, subsection (1), between lines 3 and 4, to insert the following:

“ “Act of 1998” means the Education Act 1998;”.

* **2.** In page 8, subsection (1), to delete line 7 and substitute the following:

“ “body” includes, in relation to a trust in respect of which there is only one trustee, that trustee;”.

* **3.** In page 8, subsection (1), to delete lines 24 to 28 and substitute the following:

“(iii) none of the property of which is payable to the members of the body;”.

* **4.** In page 8, subsection (1), to delete lines 31 and 32 and substitute the following:

“ “charitable trust” means a trust—

(a) established for a charitable purpose only,

(b) established under a deed of trust that requires the trustees of the trust to apply all of the property (both real and personal) of the trust in furtherance of that purpose except for moneys expended in the management of the trust, and

(c) none of the property of which is payable to the trustees of the trust;”.

* **5.** In page 9, subsection (1), between lines 22 and 23, to insert the following:

“ “education body” means—

(a) a vocational education committee established by section 7 of the Vocational Education Act 1930,

(b) a recognised school within the meaning of the Act of 1998,

(c) a management committee established for the purposes of section 37 of the Act of 1998,

(d) a parents’ association established in accordance with section 26 of the Act of 1998,

[SECTION 2]

(e) a student council established in accordance with section 27 of the Act of 1998,

(f) an institution of higher education within the meaning of the Higher Education Authority Act 1971 (amended by section 52 of the Institutes of Technology Act 2006);”.

6. In page 9, to delete lines 38 and 39.

—*Senators Jerry Buttimer, Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly, Rónán Mullen.*

7. In page 10, line 4, after “activities” to insert “whether in the State or elsewhere”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly.*

8. In page 10, after line 40, to insert the following subsection:

“(2) This Act applies to humanism or any other philosophical life-stance as it applies to religion.”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly.*

SECTION 3

9. In page 11, subsection (1), between lines 30 and 31, to insert the following:

“(b) the promotion and protection of human rights;”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly.*

10. In page 11, subsection (1), between lines 32 and 33, to insert the following:

“(d) the advancement of sport;”.

—*Senators Jerry Buttimer, Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly, Rónán Mullen.*

11. In page 11, subsection (1), line 33, to delete paragraph (d) and substitute the following:

“(d) the advancement of human rights;

(e) the advancement or promotion of equality and social justice;

(f) any other purpose that is of benefit to the community.”.

—*Senator Joe O’Toole.*

* 12. In page 11, subsection (2), lines 34 and 35, to delete “for the purposes of this Act”.

13. In page 12, subsection (6), line 9, after “concerned” to insert the following:

“, provided that for the purposes of this section, “religion” shall not include any organisation or cult which in the opinion of the Authority is primarily economic in nature or employs oppressive psychological manipulation of its adherents”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly.*

[SECTION 3]

14. In page 12, subsection (10), line 36, to delete paragraph (e) and substitute the following:

“(e) the advancement of human rights, conflict resolution or reconciliation.”

—*Senator Ivana Bacik.*

15. In page 12, subsection (10)(e), line 36, after “reconciliation” to insert the following:

“, the promotion and protection of human rights as one of the purposes beneficial to the community”.

—*Senator David Norris.*

16. In page 13, subsection (10), between lines 4 and 5, to insert the following:

“(m) the advancement or promotion of human rights”.

—*Senator Jerry Buttimer.*

SECTION 7

- * 17. In page 13, between lines 31 and 32, to insert the following subsection:

“(2) The Revenue Commissioners shall not be bound by a determination of the Authority as to whether a purpose is of public benefit or not in the performance by them of any function under or in connection with—

(a) section 207, 208 or 609 of the Taxes Consolidation Act 1997,

(b) section 17 or 76 of the Capital Acquisitions Tax Consolidation Act 2003,
or

(c) section 82 of the Stamp Duties Consolidation Act 1999.”.

SECTION 8

- * 18. In page 13, paragraph (b), lines 37 to 39, to delete all words from and including “or” in line 37 down to and including “months.” in line 39 and substitute the following:

“(c) dividends paid in respect of such shares, being dividends that are not retained as part of the property of the trust for more than 12 months, or

(d) any other distribution of cash or assets made in respect of such shares, being cash or assets that are not retained as part of the property of the trust for more than 12 months.”.

SECTION 10

19. In page 14, lines 22 to 29, to delete subsection (2) and substitute the following:

“(2) Any default in the relationship/agreement between the Charity and the State Agency/Public body whereby the Charity would be at a loss, would not be counted as such where the Charity has little or no option but to comply with standards/practices set out by the particular body. In such a case, the individual trustees/Directors of the Charity cannot be held liable.”.

—*Senator David Norris.*

[SECTION 10]

20. In page 14, between lines 37 and 38, to insert the following subsection:

“(5) Any default in the relationship/agreement between the Charity and the State Agency/Public body whereby the Charity would be at a loss, would not be counted as such where the Charity has little or no option but to comply with standards/practices set out by the particular body. In such a case, the individual trustees/Directors of the Charity cannot be held liable.”.

—*Senator Joe O’Toole.*

SECTION 15

* **21.** In page 16, between lines 7 and 8, to insert the following subsection:

“(2) The Minister may, in relation to the performance by the Authority of its functions under *section 39*, give a direction in writing to the Authority requiring it to comply with such matters specified in the direction relating to—

- (a) the maintenance of the register,
- (b) the collection and collation of information for the purpose of maintaining the register, or
- (c) the entry into agreements with persons, other than charitable organisations, for the purpose of obtaining such information.”.

SECTION 32

* **22.** In page 22, subsection (2)(c), line 42, to delete “statute” and substitute “enactment”.

* **23.** In page 22, subsection (2)(c)(i), lines 43 and 44, to delete “statute” and substitute “enactment”.

SECTION 39

* **24.** In page 27, subsection (5), line 26, to delete “An application” and substitute “Subject to *subsection (6)#*, an application”.

[#Note: This is the appropriate reference if amendment number 25 is accepted.]

* **25.** In page 29, between lines 13 and 14, to insert the following subsection:

“(6) Where, in relation to an application for registration under this section, the Authority is of the opinion that to require the applicant concerned to comply with certain of the requirements of *subsection (5)* would be unduly onerous, the Authority may, with the consent of the Minister, exempt that applicant from having to comply with those requirements when making the application.”.

SECTION 40

* **26.** In page 31, subsection (1)(a), line 7, to delete “1997,” and substitute “1997, and”.

* **27.** In page 31, lines 14 to 18, to delete subsection (2) and substitute the following:

[SECTION 40]

“(2) The Authority may request the Revenue Commissioners to provide it with all such information in the possession or procurement of the Revenue Commissioners, relating to a charitable organisation to which *subsection (1)* applies, as the charitable organisation would be required to provide to the Authority were it making an application under *section 39*.”

(3) Notwithstanding any enactment or rule of law, the Revenue Commissioners shall comply with a request under *subsection (2)*.”.

SECTION 42

28. In page 32, before section 42, to insert the following new section:

“42.—It shall be an offence for a person or body to act or purport to act in furtherance of charitable purposes as defined in this Act, whether or not the word “charity” or any derivation of same is used in connection with such person or body, without such charitable purposes having been registered under this Act, where the Authority is satisfied, on the balance of probabilities, that the person or body so acting or purporting to act is not acting in furtherance of any such charitable purposes.”.

—*Senator Rónán Mullen.*

29. In page 34, between lines 6 and 7, to insert the following subsection:

“(6) (a) An organisation that is not a registered charitable organisation, being an organisation that promotes charitable purposes, but that does not apply all of its property in furtherance of those purposes, shall, in all public documents and such other publications relating to those purposes as may be prescribed state, in clearly legible characters, that it is not a registered charitable organisation.

(b) Any person or body which contravenes paragraph (a) shall be guilty of an offence.

—*Senator Jerry Buttimer.*

SECTION 47

* **30.** In page 40, lines 48 and 49, to delete subsection (11) and substitute the following:

“(11) This section does not apply—

(a) to a charitable organisation that is a company,

(b) to an education body, or

(c) in relation to a centre for education designated by the Minister under section 10(4) of the Act of 1998.”.

31. In page 40, between lines 49 and 50, to insert the following subsection:

“(12) Where the liability of any charitable trustees of a charitable organisation falls to be considered in respect of any non-compliance with a requirement imposed by a statutory authority, due regard shall be had to whether the resources of the charity as appearing on its books of account under this section were such as to enable the charity to comply with that requirement.”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan,*

SECTION 48

* 32. In page 41, lines 34 and 35, to delete subsection (6) and substitute the following:

“(6) This section does not apply—

- (a) to a charitable organisation that is a company,
- (b) to an education body,
- (c) to a charitable organisation in respect of a financial year in which its gross income or total expenditure is less than—
 - (i) €10,000, or
 - (ii) such greater amount, not exceeding €50,000, as may be prescribed,
- or
- (d) in relation to a centre for education designated by the Minister under section 10(4) of the Act of 1998.”.

SECTION 50

* 33. In page 43, lines 17 and 18, to delete subsection (13) and substitute the following:

“(13) This section does not apply—

- (a) to a charitable organisation that is a company,
- (b) to an education body,
- (c) to a charitable organisation in respect of a financial year in which its gross income or total expenditure is less than—
 - (i) €10,000, or
 - (ii) such greater amount, not exceeding €50,000, as may be prescribed,
- or
- (d) in relation to a centre for education designated by the Minister under section 10(4) of the Act of 1998.”.

SECTION 54

* 34. In page 45, subsection (1), line 15, to delete “any rule of law” and substitute “any enactment or rule of law”.

SECTION 64

35. In page 50, between lines 39 and 40, to insert the following subsection:

[SECTION 64]

“(2) Any default in the relationship/agreement between the Charity and the State Agency/Public body whereby the Charity would be at a loss, would not be counted as such where the Charity has little or no option but to comply with standards/practices set out by the particular body. In such a case, the individual trustees/Directors of the Charity cannot be held liable.”.

—*Senator David Norris.*

SECTION 70

* **36.** In page 55, subsection (1)(b), lines 15 and 16, to delete “Minister for Enterprise, Trade and Employment” and substitute “Director of Corporate Enforcement”.

SECTION 74

* **37.** In page 57, subsection (4), to delete lines 24 and 25.

—*Senator Joe O’Toole.*

SECTION 75

38. In page 58, before section 75, but in Part 4, to insert the following new section:

“Protection of Trustees.

75.—Nothing in *sections 73 and 74* shall be construed as imposing liability on a charity trustee in circumstances where there has been full compliance by that person with the requirements, directions or practices which have been imposed by a Department of State or any public body.”.

—*Senator Rónán Mullen.*

SECTION 76

* **39.** In page 59, before section 76, to insert the following new section:

“Secretariat and premises of Tribunal.

76.—(1) The Minister shall, with the consent of the Minister for Finance provide the Tribunal with such and so many staff as he or she considers appropriate to perform the functions of a secretariat to the Tribunal including staff who while assigned to perform those functions are also assigned to perform similar functions on behalf of one or more other bodies (other than the Authority) established by or under an Act of the Oireachtas.

(2) The Minister shall, with the consent of the Minister for Finance provide the Tribunal with premises in which to perform its functions and, if the Minister and the Minister for Finance consider appropriate, such premises may be premises that are occupied by one or more other bodies (other than the Authority) established by or under an Act of the Oireachtas.”.

SECTION 77

40. In page 60, lines 26 to 29, to delete subsection (2) and substitute the following:

“(2) The Tribunal may, where it considers that in the particular circumstances of a case it is appropriate to so do;

(i) conduct part or all of its proceedings in private;

[SECTION 77]

- (ii) make an order directing that the identities of all or one or more of the parties to an appeal shall not be disclosed.”.

—*Senator Joe O’Toole.*

SECTION 88

- 41.** In page 64, before section 88, but in Part 7, to insert the following new section:

“Amendment of Taxes Consolidation Act 1997. 88.—Section 847A of the Taxes Consolidation Act 1997 (as inserted by Finance Act 2002 s.41) is amended—

- (i) in subsection (1) by amending the definition of “relevant donation” by inserting—

“(in respect of capital projects) or subsection (5A) (in respect of non-capital projects)” after the reference to “subsection (5)”;

- (ii) by inserting a new subsection after subsection (5):

“(5A) A donation shall satisfy the requirements of this subsection if

-
- (a) it is made to the approved sports body for the sole purpose of funding non-capital expenditure which is directed at the advancement of sport,
- (b) it is or will be applied by the approved sports body for that purpose,
- (c) apart from this section, it is neither deductible in computing for the purposes of tax the profits or gains of a trade or profession nor an expense of management deductible in computing the total profits of a company,
- (d) it is not a relevant donation to which section 848A applies,
- (e) it is not subject to a condition as to repayment,
- (f) neither the donor nor any person connected with the donor receives, either directly or indirectly, a benefit in consequence of making the donation, including, in particular, a right to membership of the approved sports body or a right to use the facilities of that body,
- (g) it is not conditional on or associated with, or part of an arrangement involving, the acquisition of property by the approved sports body, otherwise than by way of gift, from the donor or a person connected with the donor, and
- (h) in the case of a donation made by an individual, the individual—
 - (i) is resident in the State for the relevant year of assessment,

[SECTION 88]

(ii) has (except in the case of an individual referred to in subsection (9)) given an appropriate certificate in relation to the donation to the approved sports body, and

(iii) has (except in the case of an individual referred to in subsection (9)) paid the tax referred to in such appropriate certificate and is not entitled to claim a repayment of that tax or any part of that tax.”.”

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly, Rónán Mullen.*

SECTION 90

* 42. In page 65, before section 90, to insert the following new section:

“Dissolution of charitable organisation.

90.—Where a charitable organisation is dissolved, the property, or proceeds of the sale of the property, of the charitable organisation shall not be paid to any of the members of the charitable organisation without the consent of the Authority, notwithstanding any provision to the contrary contained in the constitution of the charitable organisation.”.

43. In page 68, line 7, to delete “shall” and substitute “may”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly.*

44. In page 68, between lines 10 and 11, to insert the following subsection:

“(2) The Chief Superintendent concerned may refuse an Application, or revoke a non-cash collection permit where he is of the opinion that collectors on behalf of the Applicant have previously, or are likely to, so conduct themselves, whether by way of harassment, intimidation, or assertive collecting as to be likely to give rise to complaints from members of the public.”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly.*

SECTION 91

* 45. In page 70, to delete lines 5 to 10 and substitute the following:

“(a) a collection box into which money is placed shall bear the number assigned in respect of the collection and specified in the collection permit concerned and shall, unless the Authority otherwise directs as respects the collection concerned, be sealed in such manner as will prevent access to money placed in the box while the seal remains in place;”.

46. In page 70, line 10, after “place” to insert the following:

“, provided that where the collection is carried out in conjunction with the sale or supply of an item at a specified price, the collection box may be opened for the purposes of giving change to facilitate such sale or supply”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly.*

* 47. In page 70, to delete lines 19 to 24 and substitute the following:

[SECTION 91]

“(d) a collection box shall bear the name and registered number of the charitable organisation on behalf of which the collection is being made in a prominent and clearly legible manner.”.

48. In page 70, between lines 24 and 25, to insert the following:

“(e) a permit may be issued, subject to conditions, by the Charities Regulatory Authority, allowing for the sale of a badge, emblem or other token and which permits the collector to unseal the collection box from time to time during the collection, for the sole purpose of giving change to the donor.”.

—*Senator Joe O’Toole.*

49. In page 70, between lines 24 and 25, to insert the following:

“(e) the collection shall be subject to such guidelines as may be issued by the Authority in particular regarding the management of Charity Days by individual charities when it is necessary to unseal collection boxes for the purposes of carrying out a cash transaction.”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly.*

* 50. In page 70, to delete lines 32 to 40 and substitute the following:

“(i) in the case of a non-cash collection on behalf of a charitable organisation, bears the name and registered number of the charitable organisation in a prominent and clearly legible manner, and”.

51. In page 71, between lines 39 and 40, to insert the following:

“(1B) (a) Subsection (1A) shall not apply to a collection which has been prescribed by the Minister, following consultation with the Authority, as warranting collection by a means other than by a sealed box.

(b) In prescribing a collection under paragraph (a), the Minister may have regard to the purpose of the collection, the requirement for collectors to have access to the collection proceeds and the organisation and security of the collection effort.”.

—*Senators Jerry Buttimer, Rónán Mullen.*

SECTION 94

52. In page 72, subsection (1), line 43, to delete “may” and substitute “shall”.

—*Senators Dominic Hannigan, Alex White, Michael McCarthy, Brendan Ryan, Phil Prendergast, Alan Kelly.*