



SEANAD ÉIREANN

**AN BILLE CARTHANAS 2007
CHARITIES BILL 2007**

**LEASUITHE TUARASCÁLA
REPORT AMENDMENTS**

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AN BILLE CARTHANAS 2007 —AN TUARASCÁIL

CHARITIES BILL 2007 —REPORT

Leasuithe Amendments

**Government Amendments are distinguished by an asterisk.*

- * 1. In page 1 of the list of amendments made in Committee, to delete the text inserted by amendment no. 3, and to substitute the following:

“(iii) none of the property of which is payable to the members of the body other than in accordance with *section 88*,”.

- * 2. In page 1 of the list of amendments made in Committee, to delete the text inserted by amendment no. 4 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 other than in accordance with *section 88*,”.

- * 3. In page 1 of the list of amendments made in Committee, to delete the text inserted by amendment no. 5 and substitute 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,
- (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), or

(g) a body established solely for the purpose of funding not more than one such institution of higher education;”.

* 4. In page 9, between lines 39 and 40, to insert the following:#

“(c) an approved body of persons within the meaning of section 235 of the Taxes Consolidation Act 1997;”.

[#Note: This amendment reinserts text taken out in Committee by amendment number 6 of the list of amendments made in Committee.]

* 5. In page 10, line 4, to delete “activities, or” and substitute the following:

“activities, whether in the State or outside the State, or”.

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

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

“(2) This Act applies to humanism as it applies to religion.”.

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

* 7. In page 11, line 29, to delete “regarded as being”.

8. In page 11, between lines 30 and 31, to insert the following:

“(b) the promotion of human rights;”.

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

9. In page 11, between lines 32 and 33, to insert the following:

“(d) the advancement of sport;”.

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

* 10. In page 11, to delete lines 34 and 35 and substitute the following:

“(2) A purpose shall not be a charitable purpose unless it is of public benefit.”.

* 11. In page 11, to delete lines 36 and 37 and substitute the following:

“(3) Subject to *subsection (4)*, a gift shall not be of public benefit unless—”.

12. In page 12, 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.*

* 13. In page 12, between lines 25 and 26, to insert the following:

“(10) For the purposes of this section, a gift is not a gift for the advancement of religion if it is made to or for the benefit of an organisation or cult—

(a) the principal object of which is the making of profit, or

(b) that employs oppressive psychological manipulation—

(i) of its followers, or

(ii) for the purpose of gaining new followers.”

14. In page 12, line 36, after “advancement of” to insert “human rights,”

—*Ivana Bacik, David Norris.*

15. In page 12, line 36, after “reconciliation” to insert the following:

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

—*David Norris, Ivana Bacik.*

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

“the advancement or promotion of human rights”.

—*Jerry Buttimer, Frances Fitzgerald.*

17. In page 14, to delete lines 22 to 29 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.”.

—*David Norris, Ivana Bacik.*

* 18. In page 26, line 16, to delete “established” and substitute “established pursuant to a direction”.

* 19. In page 26, line 27, to delete “under *subsection (1)*” and substitute the following:

“pursuant to a direction under *subsection (1)*”.

* 20. In page 27, line 17, to delete “Subject to *section 40*, a charitable organisation” and substitute the following:

“A charitable organisation (other than a charitable organisation to which *section 40* applies)”.

* 21. In page 3 of the list of amendments made in Committee, to delete the text inserted by amendment no. 14 and substitute the following:

“(6) The Authority may exempt an applicant for registration under this section from such of the requirements of *subsection (5)* as it considers appropriate where it is of the opinion that compliance by the applicant with those requirements would be unduly onerous having regard to his or her circumstances.”.

* 22. In page 29, line 14, to delete “*section 40*” and substitute “*section 43(10)*”.

* 23. In page 30, to delete line 13 and substitute the following:

“(b) the entitlement under *section 45(1)* to appeal the decision.”.

* 24. In page 31, to delete lines 28 to 30 and substitute the following:

“(5) The Authority shall, as soon as practicable after receiving information pursuant to a request under *subsection (2)* or a requirement under *subsection (3)* in respect of a charitable organisation, enter in the register—”.

* 25. In page 32, line 14, to delete “registered” and substitute “registered or deemed to be registered”.

* 26. In page 32, line 17, to delete “registered” and substitute “registered or deemed to be registered”.

* 27. In page 32, line 20, to delete “registered” and substitute “registered or deemed to be registered”.

* 28. In page 32, line 23, to delete “registered” and substitute “registered or deemed to be registered”.

29. In page 32, between lines 41 and 42, to insert the following:

“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.”.

—*Rónán Mullen, Feargal Quinn.*

* 30. In page 34, to delete lines 7 to 48 and in page 35, to delete lines 1 to 23 and substitute the following:

“Removal of charitable organisation from register.

43.—(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—

- (a) unlawful,
- (b) contrary to public morality,
- (c) contrary to public policy,
- (d) in support of terrorism or terrorist activities, or
- (e) 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.

(2) Where the name of a charitable organisation is changed in contravention of *section 42(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.

(3) If a registered charitable organisation that is a body corporate is convicted on indictment of an offence, the Authority may remove from the register all of the information entered in relation to that organisation, and that organisation shall, thereupon, cease to be registered.

(4) Where, in relation to a charitable organisation, the Authority is satisfied that there has been a contravention of—

(a) *section 47, 48, 50 or 52*, or

(b) a direction under *section 50 or 51*,

the Authority may remove from the register all of the information entered in relation to that organisation, and that organisation shall, thereupon, cease to be registered.

(5) If a registered charitable organisation fails to comply with a direction of the Authority under *section 53*, the Authority may remove from the register all of the information entered in relation to that organisation, and that organisation shall, thereupon, cease to be registered.

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

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

(8) If a charity trustee of a registered charitable organisation ceases to be qualified for the position of charity trustee by virtue of *section 55*, the Authority may apply to the High Court for an order authorising the Authority 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.

(9) If the High Court makes an order under *subsection (8)*, 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.

(10) A body that, in accordance with this section, has ceased to be registered for the purposes of *section 39* 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 39(6)*.

(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.”.

* **31.** In page 36, line 15, to delete “cease to be” and substitute “cease to be deemed to be”.

* **32.** In page 36, to delete lines 24 to 40 and substitute the following:

“(9) If a charity trustee of a body that is deemed to be registered in the register by virtue of *section 40* ceases to be qualified for the position of charity trustee by virtue of *section 55*, the Authority may apply to the High Court for an order authorising the Authority to inform the body by notice in writing that the body is no longer deemed to so registered, and, upon such an application, the High Court may make such an order if it considers it appropriate in all of the circumstances.

(10) Upon the service of a notice under *subsection (9)*, the body to which the notice applies shall cease to be deemed to be registered in the register.

(11) A body that, in accordance with this section, has ceased to be deemed to be registered in the register 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 39(6)*.”.

* 33. In page 37, line 7, to delete “*subsection (1), (2), (10) or (11) of section 43*” and substitute “*section 43 (other than subsections (7) and (9))*”.

* 34. In page 37, lines 12 and 13, to delete “*subsection (1) or (2) of section 44*” and substitute “*section 44 (other than subsections (8) and (10))*”.

* 35. In page 37, to delete lines 17 to 21.

* 36. In page 37, line 36, to delete “subject to such conditions” and substitute “and impose such conditions on the appellant”.

* 37. In page 37, to delete lines 42 and 43 and substitute the following:

“(b) revoke the notice under *section 44* and impose such conditions on the appellant as the Tribunal may specify, or”.

* 38. In page 38, line 29, to delete “(3)” and substitute “(2)”.

* 39. In page 39, line 29, to delete “have been” and substitute “are”.

* 40. In page 3 of the list of amendments made in Committee, to delete the text inserted by amendment no. 17 and substitute the following:

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

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

“(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, Phil Prendergast, Alan Kelly.*

* 42. In page 42, line 17, to delete “Notwithstanding *subsection (3)*, the” and substitute “The”.

* 43. In page 42, line 19, to delete “that subsection” and substitute “*subsection (3)*”.

* 44. In page 42, line 27, to delete “(2)” and substitute “(3)”.

* 45. In page 42, lines 34 and 35, to delete all words from and including “or” in line 34 down to and including “*subsection (4)*” in line 35.

* 46. In page 43, lines 8 and 9, to delete all words from and including “, or” in line 8 down to and including “*subsection (4)*,” in line 9.

* 47. In page 43, to delete lines 23 to 29 and substitute the following:

“(b) in relation to a charitable organisation that—

(i) is established in an EEA state, and

(ii) does not have a principal place of business in the State,

a person who is qualified under the law of that EEA state to perform functions the same as or similar to those performable in the State by a person referred to in *paragraph (a)*.”.

- * **48.** In page 44, lines 16 to 18, to delete all words from and including “year” in line 16 down to and including “regulations.” in line 18 and substitute “year.”.
- * **49.** In page 44, to delete lines 19 to 26 and substitute the following:
- “(2) The Minister may make regulations for the purposes of *subsection (1)*.
- (3) Without prejudice to the generality of *subsection (2)*, regulations under that subsection may—
- (a) contain different provisions in relation to different classes of information and different classes of charitable organisation,
- (b) require that an annual report contain such information (other than information required to be provided in an annual report under *subsection (1)*) as may be specified in the regulations, and
- (c) provide that a report referred to in that subsection shall be prepared in such manner as is specified in the regulations.
- (4) Subject to *section 48(6)* and *50(13)*, the following shall be attached to an annual report submitted by a charitable organisation in accordance with this section.”.
- * **50.** In page 45, line 25, to delete “(2)” and substitute “(3)”.
- * **51.** In page 45, line 37, to delete “2002” and substitute “2008”.
- * **52.** In page 46, line 45, to delete “If a charity trustee” and substitute “A charity trustee”.
- * **53.** In page 46, line 46, to delete “organisation complies” and substitute “organisation who complies”.
- * **54.** In page 47, lines 5 and 6, to delete all words from and including “the” in line 5, where it firstly occurs, down to and including “be,” in line 6.
- * **55.** In page 49, line 1, to delete “2001” and substitute “2007”.
- 56.** In page 50, between lines 39 and 40, to insert 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.”.
- David Norris, Ivana Bacik.
- * **57.** In page 53, line 8, to delete “The Authority may, subject to *subsection (2)*” and substitute “Subject to *subsection (2)*, the Authority may”.
- * **58.** In page 53, to delete lines 13 and 14 and substitute the following:
- “(2) A direction under *subsection (1)* shall not be given unless the Authority is of opinion that—”.

* 59. In page 53, line 28, to delete “charitable organisation” and substitute “charitable organisation or charity trustee”.

* 60. In page 56, line 8, to delete “*section 47, 48, 50, 51 or 52*” and substitute the following:

“*section 47, 48, 50 or 52 or a direction under section 51(2)*”.

61. In page 64, between lines 8 and 9, to insert the following:

“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,

(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, Feargal Quinn.*

* **62.** In page 65, between lines 31 and 32, to insert the following:

“Power of court to grant relief from liability for breach of trust.

89.—If, in any proceedings brought against a charity trustee for breach of trust, it appears to the court hearing the case that the charity trustee is or may be liable in respect of the breach of trust but that he or she acted honestly and reasonably and that having regard to all of the circumstances of the case he or she ought fairly to be excused for the breach of trust, the court may relieve him or her in whole or in part from his or her liability on such terms as the court deems appropriate.”.

* **63.** In page 66, lines 14 and 15, to delete “exempt or unlawful activity” and substitute “exempt activity, begging or receiving alms”.

* **64.** In page 66, line 24, to delete “or unlawful”.

* **65.** In page 66, lines 26 to 31, to delete all words from and including “1926,” in line 26 down to and including “alms;” in line 31 and substitute the following:

“1926, or

(b) collecting money for a lottery (including a sweepstake) declared by the Gaming and Lotteries Act 1956 not to be unlawful;”.

* **66.** In page 67, lines 4 and 5, to delete “a collection or exempt or unlawful activity” and substitute the following:

“collection, exempt activity, begging or receiving alms”.

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

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

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

“(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.*

* **69.** In page 71, line 45, to delete “91” and substitute “91(1)(a)”.

70. In page 72, line 43, to delete “may” and substitute “shall”.

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

* **71.** In page 73, between lines 23 and 24, to insert the following:

“Sale of Mass cards. 96.—(1) A person who sells a Mass card other than pursuant to an arrangement with a recognised person shall be guilty of an offence.

(2) In proceedings for an offence under this section it shall be presumed, until the contrary is proved on the balance of probabilities, that the sale of the Mass card to which the alleged offence relates was not done pursuant to an arrangement with a recognised person.

(3) In this section—

“Church” means the Holy Catholic Apostolic and Roman Church;

“Mass card” means a card or other printed material that indicates, or purports to indicate, that the Holy Sacrifice of the Mass (howsoever described) will be offered for—

(a) the intentions specified therein, or

(b) such intentions as will include the intentions specified therein;

“priest” means a priest ordained according to the rites of the Church;

“recognised person” means—

(a) a bishop of the Church, or

(b) a provincial of an order of priests established under the authority of, and recognised by, the Church;

“sell” includes, in relation to a Mass card, offer or expose the card for sale or invite the making by a person of an offer to purchase the card.”

* 72. In page 74, line 2, to delete “15” and substitute “20”.

* 73. In page 76, line 45, to delete “Parliament,” and substitute “Parliament, or”.

* 74. In page 77, lines 3 and 4, to delete the following:

“or

(d) becomes a member of a local authority,”

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

* 75. In page 77, line 10, to delete “Parliament,” and substitute “Parliament, or”.

* 76. In page 77, lines 12 and 13, to delete the following:

“or

(d) becomes a member of a local authority,”

* 77. In page 77, lines 17 and 18, to delete “or his or her membership of the local authority”.

* 78. In page 77, line 21, to delete “or a member of the local authority concerned”.

* 79. In page 77, lines 24 and 25, to delete “or a member of a local authority”.

* 80. In page 77, line 26, to delete “or member”.