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An Comhchoiste um Dhlí agus Ceart, Cosaint agus Comhionannas

Tuarascáil maidir leis an Athbhreithniú ar an Acht Carthanas, 2009

Samhain 2015

Houses of the Oireachtas

Joint **Committee** on Justice, Defence and Equality

Report on the Review of the Charities Act 2009

November 2015

31/JDAE/036



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Preface

The Joint **Committee** considered a proposal for the establishment of a sub-**Committee** to examine how issues, themes and proposals take account of human rights provisions.

This resulted in the establishment of the sub-**Committee** on Human Rights relative to Justice and Equality matters and in addition to myself, as Chairman; Anne Ferris TD; Finian McGrath TD; Senator Ivana Bacik and Senator Katherine Zappone were appointed as members.

Senator Katherine Zappone agreed, in addition to being a member of the sub-**Committee**, to undertake the role of Rapporteur.

The sub-**Committee** agreed that as the Charities Act had been in operation for five years, it was timely to undertake a review the effectiveness of its provisions.

On 24th March 2015, the sub-**Committee** held a public hearing and had presentations from Dr Oonagh Breen, who specialises in the area of comparative charity regulation and non-profit-state collaboration in public policy formation and development. Also presenting to the sub-**Committee** was Mr Ivan Cooper from the Wheel, which represents over 1,000 charities nationwide and who has advocated strongly for inclusion in the Act of the advancement of human rights as a charitable purpose.

This **report**, adopted by the Joint **Committee**, is a result of the sub-**Committee's** consideration of this matter and I wish to compliment Senator Zappone for her commitment to this undertaking and my colleagues on the sub-**Committee** for their engagement during the review.

I also wish to thank Dr Breen and Mr Cooper for giving of their time and expertise in relation to this matter.



A handwritten signature in black ink, appearing to read 'D Stanton', written over a horizontal line.

David Stanton, T.D.
Chairman
November 2015

Rapporteur's Preface

The Charities Act 2009 provided much needed reform of the charities sector in Ireland through better regulation of charitable organisations. Its primary rationale includes the reform of charities in Ireland to ensure greater accountability and transparency, and to protect against abuse of charitable status and fraud. It was believed that any scandals within the sector due to poor regulation could undermine public confidence and have a detrimental impact upon the success of charitable organisations in general. Therefore the robust regulation of the sector enabled by the 2009 Act is of great importance.

The sub-committee on Human Rights relative to Justice and Equality Matters (the sub-Committee) is concerned, however, that the Act omitted the 'advancement of human rights' as a definition of charitable purpose, thereby excluding most human rights organisations from what is legally recognised as the charitable sector.

Consequently, the sub-Committee undertook an examination of this omission and have concluded that now is the time to amend the Charities Act 2009, so that human rights organisations have the opportunity to be recognised as part of the charitable sector, to apply for charitable status, and thereby be supported to ensure proper regulation of their governance, structure and work.

As the first report of the sub-committee this is an important example of parliamentary oversight of human rights issues.

The sub-Committee believes its recommendations reflect and are compatible with an emerging new era of human rights and equality in Ireland, as exemplified in the statutory establishment of the independent Irish Human Rights and Equality Commission.

The sub-Committee also put forward that an acceptance of its recommendations by Government would be a sign of its commitment to continue to build an effective and robust infrastructure to support the promotion and protection of human rights in Ireland.

Now is the time for the State to demonstrate in a constructive way that it is ready to engage with organisations that challenge the status quo with regard to human rights. A single amendment to the Charities Act 2009 holds the power to signify that the State is ready, and willing.



Senator Katherine Zappone
Rapporteur

RECOMMENDATIONS

The sub-Committee on Human Rights relative to Justice and Equality matters makes the following recommendations:

1. To Amend the Charities Act 2009 to include “the advancement of human rights” in its list of charitable purpose as noted in Section 3 of the Act;
2. That the Charities Regulatory Authority provides guidance on the kinds of charitable work that promote public benefit;
3. That the Charities Regulatory Authority works with the Revenue Commissioners (by way of a Memorandum of Understanding) to ensure as far as possible, consistency between decisions made by the Charities Regulatory Authority and the Revenue Commissioners with regard to treatment of charitable organisations.

Overview and Analysis of Charities Act 2009

Rationale for Charities Act 2009

The Charities Act 2009 provided much needed legislation to deal with the regulation of the charities sector in Ireland. It was the first piece of charities legislation that had been enacted in over 30 years and works in conjunction with the Charities Act 1961. Prior to the 2009 Act, charities in Ireland were largely unregulated. No specific body existed to supervise the charity sector or had the statutory powers to maintain a register of charitable organisations. The concept of ‘registered charities’ did not exist in Ireland and there was no official list of charities or any compliance/standards regime.

Before the Act, charities were required to apply directly to the Revenue Commissioners in order to be exempt from tax. Under the relevant scheme there was no way to distinguish charities from the many other types of approved bodies that are not charities but which can be described as not-for-profit organisations, non-governmental organisations and community and voluntary groups. This meant that charities in Ireland were difficult to identify and consequently led to a dearth of useful information concerning the charitable organisations in operation here.

The Charities Act 2009 was introduced to redress this issue. The Act aims to ensure that there is a reliable list of charitable organisations in Ireland, what finances they have and how their funds are spent. Under Part 2 of the Act, the Charities Regulatory Authority (CRA) was established. The role of the CRA is to maintain a register of charities; to obtain annual reports from charities; to provide charity services; and the investigation/enforcement of compliance standards. Therefore the CRA helps to keep track of charities and collects important information about them. The CRA is also intended to encourage improvements in the administration of charities.

Omission of ‘Advancement of Human Rights’ as a Charitable Purpose

The Charities Act 2009 put forward a new statutory test for charitable status that comprises two elements. An organisation’s objectives must align with the charitable purposes set out in section 3 (1) of the Act and the organisation must also provide public benefit, as provided in s. 3 (2). In order to qualify for charitable status, an organisation must fulfil both of these requirements.

The sub-Committee is concerned that the Act deliberately excludes reference to ‘the advancement of human rights’ as a charitable purpose. This list of charitable purposes found in s.3 (1) and s.3 (11) does not include the promotion of or the advancement of human rights.¹

Evidence provided to the sub-committee indicates that this omission was intentional. Following the publication of the 2004 Report on Submissions to the Consultation on a Modern Framework for Charities, the draft Charities Bill 2006 expressly included the advancement of human rights as a charitable purpose. However, the subsequent Charities Bill 2007 and the Charities Act 2009 omitted all reference to human rights.

Policymakers and lawmakers were aware that many protested the exclusion of reference to human rights in the Act. The Wheelⁱⁱ contributed significantly to the shaping of the Charities Act 2009 and its network of organisations recommended the inclusion of the advancement of human rights as a charitable purpose. As indicated by evidence provided to the sub-committee by Mr. Ivan Cooper, following the 2007 Bill, representatives of The Wheel advocated that section 3 should be amended to include the advancement of human rights, in line with that which was proposed in the Heads of Bill.

The apparent rationale for the exclusion of the advancement of human rights as a charitable purpose was based on Revenue Commissioners' practice. The Charities Act 2009 was drafted to include only purposes that have always been recognised as charitable by the Revenue Commissioners. The Revenue Commissioners do not grant charitable tax exemption to organisations that profess to have the advancement of human rights as their objective. There is little published Revenue Guidance on its approach. This issue is complicated by the fact that Revenue practice is often very hard to determine because Revenue matters are private.

In his speech on the Charities (Amendment) Bill 2014, the Minister for Justice, Equality and Defence at the time, Deputy Alan Shatter, noted:

The Government does not support the amendment to include the advancement of human rights in the list of purposes. This is not due to any lack of recognition of the vital role of human rights organisations in our communities. Rather it is in light of the importance of ensuring that the new system of regulation of charities is appropriately aligned with the system of charitable tax exemption that has long been operated by the Revenue Commissioners.

Inadequate Rationale for Omission of Human Rights as a charitable purpose

Based on evidence provided, the sub-committee considers that there is inadequate rationale to exclude 'the advancement of human rights' as a charitable purpose, in the Charities Act 2009.

Dr. Oonagh Breen, senior lecturer in Law at UCD, submitted to the sub-committee that the basis for the Revenue Commissioners' refusal to grant charitable status to human rights organisations stems from principles set out by the English High Court in the 1981 case of *McGovern v. Attorney General*.ⁱⁱⁱ This case is cited in the 2001 Revenue Charities Manual as an authority for the proposition that "the promotion of human rights equates with promotion of political activities, and therefore is not charitable".

In several publications on the matter, Dr. Breen has argued that, contrary to the Revenue Commissioners' understanding of the case, the English High Court in *McGovern v. Attorney General* did not say that it is uncharitable to promote human rights. Mr. Justice Slade stated that, under the English Preamble to the Statute on Charitable Uses 1601, the promotion of human rights and anything that gives relief of distress of one's fellow man constitutes a "good and compassionate purpose" and can therefore be a charitable purpose in its own right. Therefore, it was acknowledged in this case that there is nothing intrinsically uncharitable about the promotion of human rights.

In addition to this, under English common law, the 'mental and moral improvement of man' is considered to be a charitable purpose and many commentators have noted that the advancement of human rights could easily fall under this category. Following the *McGovern* decision, the Charity Commission for England and Wales used this reasoning to justify the inclusion of the advancement of human rights as a charitable purpose in the English Charities Act 2006. Consequently, the rationale for the exclusion of human rights as a charitable purpose in the 2009 Act seems unfounded.

It is also important to note that having a charitable purpose does not give an organisation charitable status; the organisation must also provide a public benefit. This explains why the *McGovern* case was lost. At the time, the court was not satisfied that Amnesty International's objectives in 1981 provided public benefit. Advocating for changes in law was not charitable because it lacked public benefit. The court had two reasons for making this judgment:

- The court did not have sufficient means of judging as a matter of evidence whether the proposed change would or would not be for public benefit (The Judicial Neutrality Argument).
- Even if the change proved to be for the better, the court is obligated to abide by the law being right as it was and to not usurp the function of legislature (The Separation of Powers Argument).

Dr. Breen pointed out that these arguments are weak, particularly in light of how our treatment of human rights has progressed since 1981. The Judicial Neutrality Argument does not stand because judges are clearly best qualified to make decisions based on evidence before the court as to whether a change in the law would be for public benefit or not. Furthermore, the public benefit nature of human rights has become increasingly accepted through its incorporation into national legal norms; for example, the adoption by both Ireland and the UK of the European Commission of Human Rights.

The Separation of Powers argument is also undermined by the fact that the Irish courts often depart from old precedents. The notion of parliamentary sovereignty is more nuanced in Ireland than in England due to the courts' constitutional role in ensuring that only compatible laws are enforced. The concept of 'political' also evolves over time. It was once thought that the promotion of race relations was 'political', but as this ceased to be the case, the courts have

recognised the evolution of law. Similarly, today's perception of human rights is very different to what it was 30 years ago. Therefore the arguments used in the McGovern case do not seem to hold today in the case of the Charities Act 2009, and fail to sufficiently explain why policymakers excluded the advancement of human rights.

Moreover, charitable organisations arguing for change of law is not uncommon and is an important part of the work that many organisations do in order to realise their objectives. During the Joint **Committee's** meeting on June 24th, 2015, Deputy Anne Ferris noted the following:

Organisations with charitable status have made presentations seeking to have laws changed, for example, organisations like Women's Aid and other different organisations. These organisations need laws changed so as to be able to help women who are suffering. They are involved in the protection of human rights of these women.

At this same meeting, Mr. Ivan Cooper, director of advocacy with The Wheel, pointed out that: *Many charitable organisations understand they are involved in some way or another in meeting people's unmet needs and in vindicating their unfulfilled rights. Not to be able to make such a public statement without fear for their charitable status prevents a charity from doing full justice to the scope and intent of its work. It can also be reasonably argued that it has the effect of delegitimising the work of human rights promoting organisations, characterising their efforts as political and contestatory in nature, reducing such organisations to the status of just another pressure group when such organisations are simply seeking to ensure the State implements policy to which it is committed in international human rights conventions and agreements.*

Therefore the exclusion of reference to human rights can have a negative practical impact on many existing human rights organisations. This is despite the fact that promotion of human rights seems a natural part of many charities' work.

In addition to this, the Charities Act 2009 does not compromise in any way the autonomy of the Revenue Commissioners on tax-related matters. Therefore amending the Act to include the advancement of human rights would not bind the Revenue Commissioners in its tax decisions (according to section 7 of the Act).

Rationale for Recommendations

Recommendation 1. To Amend the Charities Act 2009 to include “the advancement of human rights” in its list of charitable purpose as noted in Section 3 of the Act.

The sub-committee bases this recommendation on evidence provided by Dr. Breen, which can be summarised as follows:

1. At present, because we exclude the advancement of human rights from our statutory definition, human rights organisations are forced into disguising their objectives. If they wish to register as charities, human rights organisations must bury their human rights objectives in their memorandum and articles of association, or set up legally separate subsidiaries to carry out the ‘non-charitable’ human rights work. This creates more work for these organisations that they should be able to put directly into one single entity.
2. The inclusion of ‘advancement of human rights’ as a charitable purpose would bring Irish charity law into line with our common law neighbours. The Charities Acts of Northern Ireland, Scotland, England and Wales all expressly recognise the advancement of human rights as a charitable purpose. Furthermore, many of Ireland’s common law neighbours have adopted more progressive views on the role of charities and the extent to which charities may engage in advocacy without endangering their charitable status. The CC9 document published by the Charity Commission of England and Wales provides guidance on the kinds of political activity that can be legitimately engaged in by charities.^{iv} United States case law holds that public participation in law reform and government processes is in the public benefit. Recent Australian case law has also taken a more modern interpretation, holding that charities advocating in the direction in which the law is tending to go can be charitable.
3. In her 2013 report, the United Nations Special Rapporteur on the situation of human rights defenders in Ireland specifically drew attention to her concern over the failure to implement the advancement of human rights in Ireland’s Charities Act.
4. From a regulatory perspective, we cannot regulate the organisations if they are not allowed to register. It is contrary to the aim of setting up a charities registration system in the first place if organisations cannot be called to account because they are not allowed to register under the system. Including the promotion of human rights as a charitable purpose would enable these organisations to be transparent and accountable.

Furthermore, the sub-committee notes that it is important to have consistency in policy. If the Department of Foreign Affairs and Trade is working with the United Nations Human Rights Council and sponsoring motions that create and preserve civic space, it makes sense to afford the same right to domestic organisations.

Recommendation 2. That the Charities Regulatory Authority provides guidance on the kinds of charitable work that promote public benefit.

The Sub-Committee also recommends that the Charities Regulatory Authority provide guidance on the kinds of charitable work that promotes public benefit. As already noted, organisations defined to have a charitable purpose, must be able to demonstrate that this purpose is of public benefit (Section 3(2)). Therefore, this would fit with the CRA's function in section 14(1)(e) which aims to 'promote understanding of the requirement that charitable purpose can confer a public benefit'^v.

The Charity Commission for England and Wales issued a document called the CC9, which may serve as a useful model. The CC9, which was revised in 2008, is aimed at all charities and explains what they can do in the political sphere without losing their charitable status. It outlines what type of campaigning and political activity is permitted by organisations that are recognised legally as charities. As this is particularly relevant to human rights organisations, the document draws on examples from such organisations.

The guidance provided allows that charities can engage in campaigning. Campaigning is defined as awareness raising, public persuasion which is related to ensuring enforcement of existing law, and advocating in a way that ensures that the law that currently exists is upheld and maintained.

Campaigning is importantly distinct from political activity. The Charity Commission for England and Wales defines political activity as seeking a change in law or policy of a country. Importantly, political activity is not entirely prohibited under this guidance. According to the CC9:

Political campaigning, or political activity, as defined in this guidance, must be undertaken by a charity only in the context of supporting the delivery of its charitable purposes. Unlike other forms of campaigning, it must not be the continuing and sole activity of the charity.^{vi}

Therefore charities can engage in political activity for a particular period to bring about a certain end that is in line with their charitable purpose. This allows them to direct all of their resources towards this to achieve a goal, but it cannot be their ongoing, permanent, sole, primary goal. However, in the course of carrying out their larger charitable objective, there are times when a charity may partake in political activity.

The CC9 continues to stress the limited political nature of charities:

A charity cannot exist for a political purpose, which is any purpose directed at furthering the interests of any political party, or securing or opposing a change in the law, policy or decisions either in this country or abroad.

However, the flexibility offered by the CC9 with regards to political activity seems to offer an appropriately modern outlook on the role played by charities. Dr. Breen pointed out that that prohibiting charities from engaging in political activity altogether is near impossible to justify and essentially amounts to silencing them/marginalising dissent.^{vii} This is something that no doubt negatively affects the charities sector but also civil society as a whole. It is important to recognise the place of participatory democracy in modern society and the role that charities have to play in this. Therefore it seems beneficial that the CRA look to the CC9 as an example when providing guidance on the kinds of charitable work that promotes public benefit.

Recommendation 3. That the Charities Regulatory Authority works with the Revenue Commissioners (by way of a Memorandum of Understanding) to ensure as far as possible, consistency between decisions made by the Charities Regulatory Authority and the Revenue Commissioners with regard to treatment of charitable organisations.

Section 7 of the Charities Act 2009 states that nothing in the 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.^{viii} Moreover, s.7 (2) provides that the Revenue Commissioners is not bound by a determination by the CRA with regards to whether a purpose is for public benefit or not.

Therefore it is possible for an organisation seeking charitable status under the Charities Act from the CRA, and seeking charitable tax-exempt status from the Revenue Commissioners, to find favour with one regulator but not with the other. While this may apply to any organisation applying to both the CRA and the Revenue Commissioners, it is clearly of particular concern in the area of human rights, given the Revenue Commissioners' stated approach to human rights organisations. This problem would remain even if the advancement of human rights were to be included in the list of charitable purposes in s.3 (11) of the Act.

Establishing a Memorandum of Understanding (MOU) between the CRA and the Revenue Commissioners would be in line with the CRA's function according to s. 33 (1) of the Act and would aim to ensure that s. 33 (1) (c) is satisfied.^{ix} The benefits of an effective MOU of this nature would extend not only to human rights organisations seeking registration but to all other prospective charities that have occasion to deal simultaneously with both the CRA and the Revenue Commissioners.

In this case, the MOU that exists between the Scottish Charity Regulator (OSCR) and Her Majesty's Revenue and Customs (HMRC) can serve as a useful parallel for the Irish situation.^x As in Ireland, the Scottish test for charity under the Charities and Trustee Investment Act 2009 differs from the test applied by HMRC for tax purposes under the English Charities Act 2011. Consequently the OSCR and HMRC entered into a MOU in order to support joint working between the two.

Paragraph 6.1 of this MOU provides:

Where appropriate (and in the case of HMRC only, where necessary subject to Ministerial agreement) when developing policies which may affect the definition of charity, or charity trustees' duties, or the role and function of the other department, OSCR and HMRC will inform and discuss the same with the other.^{xi}

The principles listed in this document can easily be applied in a similar fashion when devising a MOU between the CRA and the Revenue Commissioners.

CONCLUSION

Amending the Charities Act 2009 to include the advancement of human rights as a charitable purpose would reflect the general approach that Ireland now takes towards human rights. Acknowledging the importance of and being inclusive of human rights is compatible with international law and convention that Ireland already accedes to, and listing it as a charitable purpose in our Charities Act would bring us into line with common law neighbours who have already taken this step. The rationale for its initial exclusion has been examined and it has become clear that there exists no legal reason to continue to exclude it any longer. Including the advancement of human rights as a charitable purpose would be another move towards demonstrating the State's commitment to the infrastructure of human rights.

Making this amendment can have only positive outcomes for the charitable organisations that are currently prevented from airing their human rights objectives and will enable the Charities Act 2009 to fulfil more effectively each of its aims with regard to these organisations. The recommendation that the CRA offer guidance on the kind of work that confers public benefit will reduce confusion regarding the sort of activity that charities are allowed to engage in and will consequently foster more open relations between the CRA and the charitable organisations that it aims to regulate. Furthermore, the CRA entering into a Memorandum of Understanding with the Revenue Commissioners would open lines of communication between the two, thereby increasing the effectiveness of the regulatory system introduced by the Act.

ⁱ 3. (1) For the purposes of this Act each of following shall, subject so subsection (2), be 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.
- (2) A purpose shall not be a charitable purpose unless it is of public benefit.

ⁱⁱ The Wheel is Ireland's membership-based support and representative organization for community, voluntary and charitable organisations.

ⁱⁱⁱ In *McGovern v. Attorney General* [1982] Ch 321, Amnesty International was refused charitable status. Amnesty had, amongst its objectives, the objective to secure the release of prisoners of conscience by influencing law or government policy. This was considered to be political in nature, thus making the organization non-charitable.

^{iv} The Charity Commission for England and Wales, "Speaking out: guidance on campaigning and political activity by charities" (CC9, March 2008) CC9 document.

^v 14. (1) The general functions of the Authority shall be to –

...

- (e) promote understanding of the requirement that charitable purposes confer a public benefit

^{vi} https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/434427/CC9_LowInk.pdf

^{vii} 'Too Political to be Charitable?: The Charities Act 2009 and the Future of Human Rights Organisations in Ireland' by Dr. Oonagh B. Breen (2012) 2 *Public Law*, 268-287

^{viii} 7. (1) Nothing in this Act shall operate to affect the law in relation to the levying or collection of any tax or the determination of eligibility for exemption from liability to pay any tax.

(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

^{ix} Section 33(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 purpose of:

(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.

(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.

^x <http://www.oscr.org.uk/media/1892/hmrc-mou-web.pdf>

^{xi} <http://www.oscr.org.uk/media/1892/hmrc-mou-web.pdf>

APPENDIX 1

JOINT COMMITTEE ON JUSTICE, DEFENCE AND EQUALITY 31st DAIL

List of Members

Deputies: Niall Collins (FF)⁶
Alan Farrell (FG)¹
Anne Ferris (LAB)² [*Vice-Chairman*]
Seán Kenny (LAB)
Pádraig Mac Lochlainn (SF)⁷
Gabrielle McFadden (FG)¹⁰
Finian McGrath (IND)
Fergus O'Dowd (FG)¹¹
David Stanton (FG) [*Chairman*]

Senators: Ivana Bacik (LAB)
Martin Conway (FG)
Tony Mulcahy (FG)⁹
Rónán Mullen (IND)
Denis O'Donovan (FF)⁵
Katherine Zappone (IND)³

1 Deputy Alan Farrell replaced Deputy Billy Timmins by Order of the Dáil on 29 November 2011

2 Deputy Anne Ferris replaced Deputy Joanna Tuffy by Order of the Dáil on 26 January 2012

3 Senator Katherine Zappone replaced Senator Denis O'Donovan by Order of Seanad Éireann on 10 May 2012

4 Deputy John Paul Phelan replaced Deputy Tom Hayes by Order of the Dáil on 14 June 2012

5 Senator Denis O'Donovan was reappointed to the Committee on 14 June 2012

6 Deputy Niall Collins replaced Deputy Dara Calleary by Order of the Dáil on 19 July 2012

7 Deputy Pádraig Mac Lochlainn replaced Deputy Jonathan O'Brien by Order of the Dáil on 25 September 2012

8 Deputy Marcella Corcoran Kennedy replaced Deputy Michael Creed by Order of the Dáil on 7 November 2012

9 Senator Tony Mulcahy replaced Senator Paul Bradford by Order of Seanad Éireann on 19 July 2013

10 Deputy Gabrielle McFadden replaced Deputy Marcella Corcoran Kennedy by Order of the Dáil on 2 December 2014

11 Deputy Fergus O'Dowd replaced Deputy John Paul Phelan by Order of the Dáil on 9 December 2014

APPENDIX 2

ORDERS OF REFERENCE

a. Functions of the Committee – derived from Standing Orders [DSO 82A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of the relevant Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee may be joined with a Select Committee appointed by Seanad Éireann to form a Joint Committee for the purposes of the functions set out below, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 164,
 - (c) Estimates for Public Services, and
 - (d) other matters as shall be referred to the Select Committee by the Dáil, and
 - (e) Annual Output Statements, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies, and report thereon to both Houses of the Oireachtas:
 - (a) matters of policy for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy in respect of bodies under the aegis of the Department,
 - (e) policy issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill published by the Minister,
 - (g) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (h) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

- (i) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in paragraph (4)(d) and (e) and the overall operational results, statements of strategy and corporate plans of such bodies, and
 - (j) such other matters as may be referred to it by the Dáil and/or Seanad from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint Committee shall consider, in respect of the relevant Department or Departments—
- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 105, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- * (6) A sub-Committee stands established in respect of each Department within the remit of the Select Committee to consider the matters outlined in paragraph (3), and the following arrangements apply to such sub-Committees:
- (a) the matters outlined in paragraph (3) which require referral to the Select Committee by the Dáil may be referred directly to such sub-Committees, and
 - (b) each such sub-Committee has the powers defined in Standing Order 83(1) and (2) and may report directly to the Dáil, including by way of Message under Standing Order 87.
- (7) The Chairman of the Joint Committee, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee and of any sub-Committee or Committees standing established in respect of the Select Committee.
- (8) The following may attend meetings of the Select or Joint Committee, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.

* By Order of the Dáil of 8th June 2011, paragraph (6) does not apply to the Committee on Justice, Defence and Equality.

b. Scope and Context of Activities of Committees (as derived from Standing Orders [DSO 82; SSO 70])

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 26. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.
- (4) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Dáil Standing Order 163 and/or the Comptroller and Auditor General (Amendment) Act 1993.
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceannt Comhairle / Cathaoirleach whose decision shall be final.