

**Public Session of the Joint Committee on Social Protection,
Community and Rural Development and the Islands**

5th October 2022

**Discussion on the General Scheme of the Charities (Amendment)
Bill 2022**

Opening Statement



The Charities Regulator welcomes the opportunity provided by this Joint Committee to provide submissions to it on the General Scheme of the Charities (Amendment) Bill 2022 published by the Minister for Rural and Community Development.

We welcome the publication of the General Scheme, which seeks to enhance and strengthen the existing framework for regulating charities in Ireland. Since our establishment in October 2014, we have gained extensive experience of implementing the Charities Acts. Through our work, we have identified a number of areas where statutory amendments would enable the Charities Regulator to carry out its functions more effectively. The amendments proposed within the Scheme will facilitate greater accountability and transparency, which are vital for public trust and confidence in the charity sector. They will also further support the proportionate approach to regulation that the Charities Regulator continuously strives to achieve, by expanding what is currently a relatively limited range of regulatory tools. This will ensure there are appropriate alternatives to the more extreme enforcement measures such as criminal prosecution which, in some cases, is the only enforcement option available to the Regulator under the Charities Acts.

Ireland's charity sector of almost 11,500 registered charities plays a pivotal role across every facet of society. The public and the State rely on registered charities and the tireless work of hundreds of thousands of volunteers across Ireland, over 75,000 of whom take on considerable legal responsibilities as charity trustees. As the independent statutory body responsible for the regulation of charities in Ireland, we are committed to working at all times to increase public trust and confidence in the sector which are the lifeblood of charities.

The Charities Regulator is a relatively young organisation, employing over 40 people. Our thirteen person board and our executive management team have extensive knowledge and experience in regulation, governance and the charity sector and this guides our work.

A key statutory function under the 2009 Act is to increase public trust and confidence in the management and administration of charitable organisations. This is supported by our other statutory functions which include:

- maintaining a public register of charities;
- promoting compliance by charity trustees with their duties;
- promoting the effective use of the property of charities;
- ensuring the accountability of charities to donors, beneficiaries and the public, and
- encouraging and facilitating better administration and management of charities by publishing guidelines, codes and model documents.

We are cognisant of the profile of the sector we regulate and its importance in communities. As our [2021 Annual Report](#) highlights, the sector comprises a diverse range of organisations – from the simple to the complex, from those with little income and limited

operations to those with substantial resources and extensive operations. Four in ten charities registered in Ireland (44%), for example, have no employees. Nearly one third (32%) have less than ten. Almost half had an annual income in 2020 of less than €100,000 while one in seven reported income in excess of €1 million. We are also conscious that some charities may be overseen by other regulators or government departments and therefore the Charities Regulator may be one of a number of State bodies with whom a charity may be required to engage.

The majority of charities and charity trustees work hard towards achieving their charitable purpose in compliance with the Charities Act 2009. Our regulatory approach reflects this and is balanced and proportionate. This is evidenced by the fact that a substantial part of our work is focused on promoting compliance and supporting charities in achieving it. We do this by providing extensive guidance and template materials as well as hosting seminars on a range of topics each year.

We engage extensively with individual applicants for registration to guide them through the registration process. We also engage directly with individual charities to ensure they understand the various statutory reporting requirements and standards of governance. A particular focus of the Charities Regulator in recent years has been to support the clear efforts being made across the sector to enhance standards of governance since we launched the Charities Governance Code in November 2018.

While the public are the single biggest source of the concerns we receive regarding charities, only a very small proportion of the engagement we undertake with charities and charity trustees is visible to the wider public due to the small number of cases where we have had to appoint inspectors or take other formal action.

The majority of our compliance engagement is directed towards assisting individual charities to come into compliance and meet their regulatory obligations. It is only when we are not assured by that engagement that, for example, inspectors are appointed. This is despite the fact that many breaches of the Act are designated as criminal offences. For example, it is a criminal offence under the Act when a charity fails to submit its annual report on its finances and activities for the previous year to the Charities Regulator on time. It is also a basis for removing a charity from the Register. However, neither of these powers have been invoked by the Regulator to date. Instead we have engaged proactively with registered charities, applicants for registration and the public to develop a clear understanding of the regulatory framework governing charities in Ireland.

In addition to our functions under the Charities Act 2009, the Charities Regulator also carries out functions under the Charities Acts 1961 and 1973. These functions were transferred to

it under the 2009 Act when the body known as the Commissioners for Charitable Donations and Bequests for Ireland was dissolved.

The Charities Regulator has been seeking amendments to these Acts for a number of years to address certain fundamental and practical issues regarding the application of those Acts.

There are a few key provisions in the General Scheme we would like to highlight today.

Fairness is essential for effective regulation. We are seeking amendments that are intended to ensure all registered charities regardless of their legal form are subject to the same regulatory framework, particularly in relation to the preparation and filing of financial statements in accordance with a format appropriate to charities. When published on the Register of Charities, these will provide interested parties and members of the public more generally with much needed transparency on the finances and activities of registered charities.

Given our experience to date in the area of compliance and the work we continue to carry out to support and encourage better governance standards in the sector overall, we view the proposed amendment clarifying the fundamental responsibilities of charity trustees as essential in terms of enabling us to fulfil our statutory function to promote compliance by charity trustees with their duties in the control and management of charitable organisations. As previous witnesses have acknowledged, there is nothing new here. The proposed definition of the duties of charities trustees in the General Scheme merely codifies what is already there in common law, in the same way that the duties of directors of companies are now set out in the Companies Act 2014.

While we are committed to a balanced and proportionate regulatory approach, we are limited by the type of powers currently provided for under the 2009 Act. Sometimes the only option open to us is more far-reaching and heavy-handed than a breach merits. Therefore we are also seeking the expansion of the circumstances in which the Regulator can impose intermediate sanctions as an alternative to prosecution. This is not an extension of powers *per se* but more a modification of the range of powers already available to us under the Act.

Again, this underpins the Regulator's balanced and proportionate approach to regulation. It also recognises the significant resources and costs that can be associated with prosecutions and court hearings both for the Regulator and the charity or person involved.

It is important here to highlight the significant role of the independent Charity Appeals Tribunal, the statutory body established under the 2009 Act to hear and adjudicate on appeals against certain decisions of the Charities Regulator. A charity's right to natural

justice including the right to appeal a decision of the Charities Regulator should be fully respected in the proposed amendments.

We would also like to highlight the proposed amendment set out in Head 5(a) which has been referenced by previous witnesses. The amendment is intended to clarify that where a suspected offence under the Charities Act is subject to investigation and potential prosecution by the Charities Regulator, we are not obliged to notify those offences to other investigative authorities. But let there be no doubt, notwithstanding this amendment, we will still be required to notify appropriate authorities when we suspect that an offence under their legislation has been committed. For example, where we suspect an offence of fraud we must notify the Garda Síochána as the appropriate authority to investigate.

Finally, there are amendments intended to address practical difficulties encountered in day-to-day operations. These amendments relate particularly to the withdrawal of applications for registration and the statutory function of maintaining the Register of Charities, including an obligation on charities to notify the Charities Regulator if they are seeking to amend key provisions in their governing document, such as their main object and income and property clauses. This provides an important safeguard for charities themselves. It ensures that changes are not made to their governing documents that could unintentionally negatively impact their status as registered charities.

Ensuring that key information crucial to an organisation's charitable status is known to the Regulator and is kept up-to-date on the Register of Charities is also vital to safeguarding public trust and confidence in the charity sector. The public need to know that when they donate money, goods or time to a charity those valuable resources will only be used for their intended purpose. Charity property must be used for the charitable purpose(s) set out in a charity's governing document. For example, a charity set up to advance education in Africa cannot use funds for the advancement of conflict resolution.

All charities exist to advance specific charitable purposes for the public benefit. A key part of our role as regulator of the sector is to ensure that registered charities understand this fundamental requirement. The proposed amendments are therefore intended to strengthen accountability for the benefit of registered charities and the wider public.

In conclusion, our core function is to work to increase public trust and confidence which are the bedrock of the charity sector. We are committed to achieving this, working with all of our stakeholders. The amendments we are seeking are designed to assist with this work, and further strengthen and enhance our ability to deliver a balanced and proportionate approach to the regulation of Ireland's charity sector.