



ICCL Opening Statement: October 5th, 2022

Joint Committee on Social Protection, Community and Rural Development and the Islands: General Scheme of the Charities (Amendment) Bill 2022: Discussion

Thank you to the Committee for the invitation to attend today and to discuss this important piece of legislation. ICCL welcomes the publication of the general scheme of the Bill and the reforms contained therein for the most part.

Our comments today will focus on the proposals to include the advancement of human rights as a charitable purpose as contained in the general scheme of the bill. We will also highlight a potential issue with respect to the ability of organizations to operationalize this new provision owing to updated advice from the Charities Regulator.

The proposal contained in the draft Bill which concerns the amendment of Section 3 of the Charities Act (2009) and inserts 'the advancement of human rights' into the Act as a new valid charitable purpose for organisations is strongly welcomed by ICCL. This amendment will address an anomaly which has existed in the original Act since its commencement and will provide for greater oversight and transparency in the sector which we have long called for.

While "the advancement of human rights" was listed as a charitable purpose in the original Heads of the Bill in 2006 it was omitted from the Charities' Act (2009). In neighbouring common law jurisdictions, the Charities Trustee and Investment (Scotland) Act (2005), the English Charities' Act (2006), in effect in England and Wales, and the Charities' Act (2008) of Northern Ireland expressly provide for the advancement of human rights as a charitable purpose. Consequently, Irish charity law is out of step with common law norms. As the advancement of human rights is a recognised charitable objective in the UK, including Northern Ireland, the 2009 Act undermines the principle of equivalence in the Good Friday Agreement.

The rationale used and maintained by Government Ministers for the exclusion of human rights from the list of valid charitable purposes is that this is not a category that has been recognised by the Revenue Commissioners. However, as the Charities' Act (2009) is the primary statutory instrument governing charitable status, it should remain the source of and reference point for legislative authority on the statutory understanding of what constitutes a "charitable purpose" under Irish law and not the Revenue Commissioners.

It is the view of ICCL that it would be prudent for the Charities' Regulator and the Revenue Commissioners to draft a memorandum of understanding under s. 33 of the Charities' Act (2009), as recommended by The Joint Oireachtas Committee in 2015;

"to ensure, as far as possible, consistency between decisions made by the Charities Regulatory Authority and the Revenue Commissioners with regards to treatment of charitable organisations".

An issue which ICCL has recently drawn to the attention of the Charities Regulator concerns the future operationalisation of the designation of human rights as a valid charitable purpose and a potential obstacle to same.

A document entitled "Guidance on Charities and the Promotion of Political Causes" was published by the Charities Regulator in December 2021. We note that the language on the nature of political engagement deemed to be permissible under the Charities Act (2009) has changed from an earlier guidance document issued by the regulator.

In the guidance document issued in February 2018, the advice set out that organisations established "**exclusively** to promote a political cause" would be considered ineligible for charitable status. In the updated document, issued in December 2021, this had evolved into organisations "set up **primarily** to promote a political cause".

It is difficult to envision how, under the amended legislation, that human rights could be advanced without falling foul of the updated guidance from the regulator given the prominent and vital role that political advocacy and campaigning play in our day-to-day work.

It is our recommendation that in order for the addition of the advancement of human rights to have a meaningful impact in real terms, it will be necessary for the Charities Regulator to revert to the original 2018 wording on political advocacy or clarify its advice. This would mean that organisations established to **exclusively** promote a political cause cannot be considered charities, as is correct, but organisations would be allowed to conduct legitimate political advocacy work in pursuit of their charitable aims and retain and obtain charitable status.