
In Giving, We Receive - CHARITY LAW UPDATE



On 16th October 2014, the majority of the Charities Act 2009 (“Charities Act”) was commenced and an independent agency established to increase public trust and confidence in the charity sector. The Charities Regulator’s powers have recently been increased and establishment of the Charities Appeals Tribunal is imminent. Katie Cadden provides an overview of recent developments in Charity Law

The New Charity Landscape

In 2014, the Charities Regulator assumed responsibility for the registration and regulation of charities operating in the State including community groups, schools, universities, churches, healthcare providers and others providing public benefit as specified in the Charities Act. The following came under the ambit of the Charities Regulator upon establishment:

- Some 8,034 charities in existence on 16th October 2014 with charitable tax exemption from the Revenue Commissioners;
- Any existing charities on 16th October 2014 without charitable tax exemption from the Revenue Commissioners; and
- Any new charities formed on or after establishment date intending to operate or carry on activities in the State.

A phased programme to support the statutory functions of the Charities Regulator commenced in 2014 with:

- (i) The continuance of the provision of services to charities formerly provided by the Commissioners of Charitable Donations and Bequests for Ireland through a dedicated Charity Services Committee;
- (ii) The establishment and maintenance of a public Register of Charities; and
- (iii) The establishment and maintenance of a reporting framework for charities.

Phase two recently commenced with:

- (iv) The proactive monitoring of the compliance of charities with their legal obligations and investigation of any perceived breaches of these.

New Investigative and Protective Powers

On 05th September 2016, Part 4 of the Charities Act was formally commenced. The range and scope the widely drawn provisions includes:

Power of Investigation

The Charities Regulator now has the significant power to “investigate the affairs” of charities and appoint inspectors where deemed appropriate. There is no requirement that the Charities Regulator have a particular concern in order to exercise this power.

Power to compel production, attendance and assistance

An appointed inspector can direct a charity trustee as defined in the Charities Act or agent of a charity to:

- Produce books, documents and other records relating to the charity;
- Attend before the inspector; and
- Give to the inspector all assistance in connection with the investigation which they are reasonable capable of giving.

An “agent” in this instance would include a banker, solicitor or auditor to the charity in question. These powers further extend to any person who it appears to the inspector is in possession of information concerning the affairs of the charity.

An inspector may examine on oath any charity trustee, member of staff or agent of the charity regarding the charity’s affairs. Failure to cooperate with an inspector is a criminal offence.

Enter and Search

Pursuant to Part 4, the Charities Regulator or its inspectors may apply to the District Court for an order to enter and search the premises of a charity and take possession of documents, if satisfied that there are reasonable grounds for believing that there has been a failure to comply with a direction of the Charities Regulator to produce.

Reports

An appointed inspector shall, if so directed by the Charities Regulator, make interim reports and make a final report to the Charities Regulator on conclusion of the investigation. The Charities Regulator, may, if it considers it appropriate, furnish the report to:

- The charity concerned;
- To charity trustees, officers and auditors of the charity;



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- To any persons whose conduct is referred to in the report, or any other person (including a member of staff) whose financial interests appear to the Charities Regulator to be affected by the matters dealt with in the report whether as a creditor of the charity or charitable trust or otherwise; and
- The Central Bank, the Revenue Commissioners and the DPP.

Intermediate Sanctions

Where certain obligations of charity trustees as defined in the Charities Act are contravened, the Charities Regulator is not obliged to bring proceedings and can, if it considers it reasonable and proportionate in the circumstances not to bring proceedings, impose intermediate sanctions. In these circumstances, the charity must provide the Charities Regulator with an undertaking regarding:

- The rectification of the breach or taking such steps as directed by the Charities Regulator; and
- Acceptance of the imposition of the intermediate sanction.

There are two forms of intermediate sanction:

- Temporary deregistration; and
- Publication of particulars of the contravention on the Charities Regulator's website.

Protection of Charities

The Charities Act grants express extensive powers to the High Court to protect charities. The Charities Regulator may make an *ex parte* application to the High Court to suspend or remove charity trustees or staff members and prohibit the removal or sale of charity property amongst a range of other orders. The High Court may grant these protection orders where it is satisfied that:

- An offence has been or is being committed in relation to a charity;
- Any provision of the Charities Act has not or is not being complied with in relation to a charity;
- Any property of the charity is being misapplied or is being dealt with or managed in a manner than

endangers the property; or

- There has been any other misconduct or mismanagement on the part of any charity trustee or member of staff regarding the affairs of the charity.

Charity Appeals Tribunal

Part 5 of the Charities Act provides for the establishment of a Charity Appeals Tribunal ("CAT") to determine appeals of decisions of the Charities Regulator as provided for in the Charities Act. In August 2016, the Minister for Justice and Equality appointed the requisite 5 members to the CAT which will be entirely independent of the Charities Regulator with its own separate executive.

The CAT is intended to provide a speedy and inexpensive mechanism for appealing decisions of the Charities Regulator. The CAT will hear appeals of decisions made by the Charities Regulator to refuse to register a body applying for registration or a decision to remove a charity from the Register of Charities. There is no appeal to the CAT on a decision of the Charities Regulator to impose intermediate sanctions.

Once formally established, hearings will be conducted in public but with the caveat that the CAT may direct that the identities of one or more parties to the appeal may not be disclosed. All CAT appeals must be brought within 21 days from the date of the decision that is being appealed.

The CAT is empowered to affirm the Charities Regulator's decision in each case or to reverse those decisions. The Charities Regulator will be bound by the decision of the CAT. There is an onwards appeal from the CAT to the High Court on a point of law and leave to appeal must be granted.

Conclusion

The Charities Regulator has been afforded enhanced and wide-ranging powers designed to ensure that charities are protected and well managed. At this important and challenging time for charities, the commencement of Part 4 of the Charities Act and the imminent establishment of the CAT are positive and welcome developments for charity regulation. ☐



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