

# CHARITY LAW REFORM IN IRELAND

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## A. Introduction

Charity law in Ireland is rooted in the common law and anchored on both the Statute of Pious Uses 1634<sup>2</sup> and its English predecessor the Statute of Charitable Uses 1601.<sup>3</sup> It has developed to become more facilitative than interventionist in nature and remains dependent upon a 40 year old regulatory framework consisting of the Charities Acts of 1961 and 1973, as amended by the Social Welfare (Miscellaneous Provisions) Act 2002, which are closely modelled on the provisions of the English Charities Act 1960. Aspects of fund-raising by charities are addressed by the Street and House to House Collections Act 1962 and the Casual Trading Act 1995. The law has long been given effect through a range of government bodies and legal structures which have quite traditional legal functions. This, however, is all about to change.

Many of the world's largest, most modern and powerful democracies including the USA, and Commonwealth countries such as Australia, Canada and New Zealand - alongside some of the smallest and most undeveloped such as the Seychelle Islands and the island kingdom of Tonga - all share the same legacy of institutional infrastructure, laws and legal principles inherited from Great Britain. In particular they share the same charity law heritage. For four hundred years they and some 60 other members of the Commonwealth, together with other post-empire nations such as Ireland, all found it equally unnecessary to introduce formative legislation to define 'charity' and broaden its purposes to meet contemporary patterns of

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<sup>2</sup> 10 Car. 1, Sess. 3, Cap. 1.

<sup>3</sup> 43 Eliz. 1, Cap. 4.

need.<sup>4</sup> Suddenly, at the turn of the century, law reform became politically desirable and a protracted period of charity law review broke out - in Canada,<sup>5</sup> Australia,<sup>6</sup> New Zealand,<sup>7</sup> the US<sup>8</sup> and in the UK<sup>9</sup> - across the common law world.

Ireland caught the charity law reform infection at an early stage<sup>10</sup> but has taken somewhat longer than other nations to gain control, perhaps because it had spread deep into its regulatory framework. This article examines the review process and outcomes in Ireland. It begins by considering the incentive for reform and the launching of that process. It identifies the main distinctive characteristics of charity law in Ireland and the government policy for targeting change. It concludes by evaluating the outcome of the reform process. In many ways charity law reform in Ireland provides a case study which is fairly representative of that undertaken in other common law countries.

## **B. Towards Reform**

In the early 1990s, after a long period of decline relative to the rest of northwest Europe, Ireland began to enjoy an unprecedented and relatively continuous economic boom. In the year 2000 this resulted in the highest rate of GDP growth ever recorded in an OECD member country and despite some slowing down in the

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<sup>4</sup> With the notable exception of Barbados, which introduced a detailed statutory definition of charitable purposes in the Charities Act 1979, Cap. 243.

<sup>5</sup> See Ontario Law Reform Commission, *Report on the Law of Charities*, Ontario, 1996.

<sup>6</sup> See the Charity Law Reform Committee report *Inquiry into the Definition of Charities and Related Organisations*, Canberra, June 2001.

<sup>7</sup> See the Working Party on Charities and Sporting Bodies, *Report on the Accountability of Charities & Sporting Bodies*, 1997.

<sup>8</sup> See Panel on the Nonprofit Sector, *Strengthening Transparency, Governance, Accountability of Charitable Organisations*, final report to Congress and the Nonprofit Sector, Washington, 2005.

<sup>9</sup> See, for England and Wales: the National Council for Voluntary Organisations, *For the Public Benefit? A Consultation Document on Charity Law Reform*, London, 2001 and *Private Action, Public Benefit, a Review of Charities and the Wider Not-For-Profit Sector*, London, September 2002. See, for Scotland: the Scottish Charity Law Review Commission report, *Charity Scotland*, Edinburgh, 2001. See, for Northern Ireland: the Charities Branch, Voluntary & Community Unit, Department for Social Development *Consultation on the Review of Charities Administration and Legislation in Northern Ireland*, Belfast, 2005.

<sup>10</sup> See the Department of Equality and Law Reform *Report of the Advisory Group on Charities/Fundraising Legislation*, November 1996.

rate of economic growth the upward trend has since been sustained. During this period it has also undergone considerable socio-demographic changes. The rural/urban balance in population distribution was reversed from its previous 60/40 ratio and was accompanied by a corresponding switch in emphasis from an agricultural based economy to one that is now much more service based, is host to a large number of multinational manufacturing companies and has a well educated workforce concentrated in the high tech sector. The population increased significantly due partially to substantial and sustained non-Irish immigration from the mid-1990s onwards including, from the late 1990s, a rise in the number of 'asylum seekers'. It changed also from being a homogenous mono-cultural society, coalesced around the Catholic Church and with the highest level of regular church attendance in Europe, to a much more multi-cultural and multi-faith society.

These changes were largely due to the ending of Ireland's isolationist policy with its focus on nurturing a newly found political identity and fostering the growth of an indigenous Irish Catholic culture. Instead Ireland embraced membership of the European Economic Community (EEC), now the European Union (EU), which it joined in 1973. This was followed in 1979 by the breaking of the fixed link between the Irish pound and sterling when Ireland joined the European monetary system (EMS) and in 2002 it distanced itself further from sterling when it abandoned its native currency for the euro. Ireland also became a member of the UN, the OECD and the Council of Europe. The economy and Irish society as a whole benefited greatly from Ireland's enthusiastic commitment to the EC.

### **The need for reform**

The pace of socio-economic change left relatively untouched a range of long standing social problems and failed to prevent the emergence of many new ones. Poverty related difficulties still affected a large proportion of the population,<sup>11</sup> particularly those in rural areas, while family breakdown, homelessness and drug abuse had increased considerably. The 'travelling community' remained alienated and marginalised, the gap between rich and poor had grown and free access to a full programme of health and social care services continued to be problematic for those on low incomes. Immigration had introduced not just a larger workforce and a more multi-cultural society but also the 'asylum seekers' phenomenon,<sup>12</sup> racism,

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<sup>11</sup> See, for example, two studies carried out by the independent Economic and Social Research Institute for the Department of Social Welfare and the Combat Poverty Agency, *Poverty in the 1990s - Evidence from the Living in Ireland Survey* and *A Review of the Commission on Social Welfare's Minimum Adequate Income*, both published in December 1996. These studies provide a wide variety of very useful information on poverty levels in Ireland.

<sup>12</sup> Since 1995, asylum-seekers have probably constituted no more than 10% of all foreign immigrants to Ireland but have presented a considerable challenge to Irish social inclusion policies.

and new variants of inequity. The overspill of civil strife from the adjoining jurisdiction had, after 30 years, created an awareness of deep-seated problems of social inclusion in Ireland. Religion, or more specifically the role broadly played by the Roman Catholic Church in Irish society and in shaping the use of charity, had diminished as social mores and institutions of governance became more secularised. Charity, as traditionally defined, was no longer fit for purpose in terms of addressing the many pressing social issues in contemporary Ireland.

## Getting started

The fact that the charity law framework needed reform had been noted repeatedly in the closing years of the 20th century. In the 1990s the calls in both the Costello report<sup>13</sup> and the Advisory Group<sup>14</sup> for the reform of the law relating to the administration and regulation of charities had been reinforced by some well publicised scandals.<sup>15</sup> The government responded with a 'green paper',<sup>16</sup> a 'white paper',<sup>17</sup> and then silence. Subsequently a report from the Law Society<sup>18</sup> followed by the Arthur Cox-led Review<sup>19</sup> triggered a new government resolve and it declared in the *Agreed Programme for Government* (2002) its commitment to reform the law relating to charity:<sup>20</sup>

*“a comprehensive reform of the law relating to charities will be enacted to ensure accountability and to protect against abuse of charitable status and fraud”.*

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- 13 See the *Report of the Committee on Fundraising Activities for Charitable and Other Purposes*, Stationery Office, Dublin, 1990, (also known as the Costello Report).
  - 14 See Report of the Advisory Group on Charities/Fundraising Legislation, Department of Equality and Law Reform, November 1996.
  - 15 Notably the long running media exposure of improper practice in the Irish Society for the Prevention of Cruelty to Children.
  - 16 See *Supporting Voluntary Activity: a Green Paper on the Community Voluntary Sector and its Relationship with the State*, Department of Social Welfare, Dublin, Stationery Office, 1997.
  - 17 See *Supporting Voluntary Activity: a White Paper for Supporting Voluntary Activity and for Developing the Relationship between the State and the Community and Voluntary Sector*, Department of Social Welfare, Dublin, Stationery Office, 2001.
  - 18 See *Charity Law: the case for reform*, the Law Society's Law Reform Committee, Dublin, July 2002.
  - 19 See *Charity Law Review*, Arthur Cox and the Centre for Voluntary Action Studies, Dublin, March 2002.
  - 20 *Agreed Programme of Government*, Dublin, June 2002.

The formal charity review process then launched was conducted in partnership with the voluntary and community sector.<sup>21</sup>

The delay in getting the review process underway was partially due to uncertainty as to which government department bore responsibility for charities. Prior to 1998 responsibility for charity law matters rested with the Department of Justice, it then passed to the reconstituted Department of Justice, Equality and Law Reform before being transferred in 2001 to the Department of Social, Community and Family Affairs and in 2003 it passed to the Department of Community, Rural and Gaeltacht Affairs. Although the latter department thereafter carried lead responsibility for the review some aspects of charity law remained outside its remit, in particular responsibility for fundraising legislation continued to rest with the Department of Justice.

### The reform policy

The government identified certain issues as central to its charity law reform policy. Firstly the fact that the charity sector in Ireland remained essentially unregulated was seen as important because it meant that there was no body which had: the specific aim of supervising the sector; nor the statutory powers to either maintain a register of charities or to subject the sector to regulatory scrutiny. Secondly, there was no such thing as a registered charity: no statutory definition of a 'charity'; and no reliable information on the number of active charities, their financial worth and how they spend their funds. The declared intention was that new legislation would provide an integrated system of mandatory registration and proportionate regulation, allowing effective charity sector supervision for the first time in Ireland. For the first time, too, there would be a statutory definition of 'charity'. This approach recognised that:<sup>22</sup>

*“it is important to underpin civil society: charities deserve a statutory framework in keeping with the modern world at the start of the twenty-first century; regulatory requirements should be proportionate; in parallel with the statutory framework, self-regulatory initiatives such as agreed codes of conduct should be encouraged.”*

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<sup>21</sup> See Ministry for Social, Community and Family Affairs, *Supporting Voluntary Activity: A White Paper on a Framework for Supporting Voluntary Activity and for Developing the Relationship between the State and the Community and Voluntary Sector*, Department of Social Welfare, Dublin, Stationery Office, 2000.

<sup>22</sup> See Noel Ahern, T.D., Minister of State, public announcement at the Department of Community, Rural and Gaeltacht Affairs, on securing government approval on 7 March 2006 for the General Scheme for the Charities Regulation Bill 2006.

## C. Scope for Reform

Charity law reform in Ireland, as in other common law nations and in furtherance of the above policy, has focused on clarifying matters of definition, broadening the availability of appropriate legal structures for charity and more generally upon improving the regulatory framework.

### Definitional matters

In Ireland, the fact that the contemporary legislative framework failed to provide a definition of 'charity', failed to identify where responsibility rests for determining charitable status and failed also to specify whether the test to be applied to determine such status is to be applied objectively or subjectively, ensured that definitional matters would be a legislative priority. To some degree these gaps have been bridged by the *Pemsel* classification of charitable purposes<sup>23</sup> together with the 'spirit and intendment' rule<sup>24</sup> both of which have been subject to much the same judicial interpretation and development as in England & Wales.

### Definitional matters: the common law characteristics of a 'charity'

The essential elements of a 'charity' as understood within the common law are well established and its characteristics may be briefly summarised as being an entity founded with a charitable intent, exclusively charitable in scope, for the public benefit, independent, non-governmental, non-profit distributing and non-political. In Ireland, while these definitional characteristics are broadly the same as in England & Wales, they differ from the law of that jurisdiction in one or two significant respects.

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<sup>23</sup> See *Income Tax Special Purposes Commissioners v. Pemsel* [1891] AC 531 where Lord Macnaghten first classified charitable purposes as follows:

"Charity in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community not falling under any of the preceding heads".

<sup>24</sup> This rule holds that even if a purpose cannot be defined as coming under one of the established heads of charity, it will nonetheless be construed as charitable if it can be interpreted as falling within the 'spirit or intendment' of the Preamble to the Statute of Charitable Uses 1601 (43 Eliz. 1, c.4). Basically, if it can be shown that the new purpose is sufficiently approximate to an established charitable purpose, so that it can be viewed as an extension of it or as analogous to it, then the court will hold the new purpose to be charitable on the grounds that it lies within the broad intention of the initial legislation.

### ***Charitable intent***

In Ireland the judiciary adopts a subjective test in determining whether or not a gift satisfies the public benefit test.<sup>25</sup> The courts will pose the question ‘Did the donor believe that the purpose to which he or she was directing a gift was of a charitable nature?’ As explained by Keane J in *Re the Worth Library*:<sup>26</sup>

*“In every case, the intention of the testator is of paramount importance. If he intended to advance a charitable object recognised as such by the law, his gift will be a charitable gift.”*

This is quite different from the more restrictive approach of the UK judiciary in similar circumstances where the focus is firmly on deducing the nature of the gift from an objective appraisal of the facts.

### ***Public benefit***

The public benefit test, differentiating between private and charitable trusts, has long been recognised by statute in England & Wales<sup>27</sup> but except in relation to religion has never received statutory recognition in Ireland. Indeed, in common with other jurisdictions, the burden of proof in relation to the ‘benefit’ requirement varies across the four *Pemsell* heads, but in Ireland it is statutorily exempted from having any application to trusts for the advancement of religion.

### ***Exclusively charitable***

In Ireland, the judiciary always applied the rule requiring exclusiveness in charitable purposes with some equivocation<sup>28</sup> until statute law placed the matter beyond doubt. The Charities Act 1961, s. 49 now provides that:

*Where any of the purposes of a gift includes or could be deemed to include both charitable and non-charitable objects, its terms shall be so construed*

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<sup>25</sup> The leading Irish case in this context is *In re Cranston, Webb v. Oldfield* [1898] 1 IR 431.

<sup>26</sup> [1994] 1 ILRM 161.

<sup>27</sup> See, for example, s. 1(1) of the Recreational Charities Act 1958 ‘...the principle that a trust or institution to be charitable must be for the public benefit’. There is no Irish equivalent to this legislation. More recently in England & Wales, the Charities Act 2006 (not yet in force) has removed the common law presumption of public benefit that applied to a purpose within the first three traditional heads of charity

<sup>28</sup> See *Jackson v. Attorney General* (1917) 1 IR 332 and *Moore v. The Pope* (1919) 1 IR 316.

*and given effect as to exclude the non-charitable objects and the purpose shall, accordingly, be treated as charitable.*

However, while the Revenue Commissioners are guided by this provision when determining eligibility for charitable exemption from tax, the rule continues to be applied by the Valuation Office when determining charitable exemption from rates.

### ***Non-governmental***

In Ireland there are many long established, large semi-State bodies and other State controlled companies that have acquired tax exempt charitable status from the Revenue Commissioners. However, when providing public benefit services such bodies are constrained in their capacity to do so by their political masters; they cannot act independently in marshalling resources to satisfy user identified need. Such bodies are compromised as charities. They are clearly vulnerable to pressure to become government agents in the delivery of a government agenda.

### **Definitional matters: charitable purposes**

These conform to the *Pemsel* classification and have evolved similarly, though with some significant differences, to those of England & Wales, and suffer from the same constraints in terms of capacity to flexibly address the range of contemporary issues meriting charitable activity. The binding effect of the doctrine of precedence coupled with the lack of ready access to a judicial or other forum capable of adjusting the law to meet emerging forms social need has constrained the development of charity law in this jurisdiction.

### ***Relief of poverty***

The existence of a difference in the relative legal standing statutorily assigned to 'poverty' in the Statute of Pious Uses (Ireland) 1634 and the Statute of Charitable Uses 1601 has long been recognised. The relevant wording used in the Irish statute refers to the relief and maintenance of 'poor, succourless, distressed or impotent persons' whereas the corresponding English provision referred to 'aged, impotent and poor people'. The clearly distinct categorisation of potential recipients of charity in the former spared the courts in Ireland from the debate in England which has lingered around the issue of whether they should be construed in a disjunctive manner. As a consequence, there has never been any challenge to the presumption that each named category can be considered independently (the 'poor' for example, are not also required to be 'impotent'). As in England & Wales, "the requirement



of public benefit has all but disappeared in the context of trusts for the relief of poverty”.<sup>29</sup>

### *The advancement of education*

In Ireland religion and education have always been closely linked. The history of charity law, as it relates to trusts for the advancement of education, is tied closely to the history of religious organisations, more specifically to that of the Roman Catholic Church. Unlike the position in England & Wales, a large part of the educational infrastructure in this jurisdiction has been and continues to be provided by religious bodies. Elsewhere in these islands, the importance of this branch of charity law has faded as the role of voluntary organisations in education has been displaced by State provision. In Ireland, as many of the buildings and teachers comprising the educational system are provided by religious bodies or to a lesser extent by other independent organisations, trusts for the advancement of education continue to have a real significance.

- *The public benefit test: the ‘public’ requirement*

Determining the minimum number of possible beneficiaries necessary to meet an acceptable definition of ‘public’ has proved difficult. In *Re Worth Library*,<sup>30</sup> Keane J was certain that three named persons was insufficient but could only suggest that to satisfy a definition of ‘public’ the number should not be ‘negligible’.

In Ireland the rule governing membership of a class remains as stated prior to the ruling of the House of Lords in *In re Baden’s Deed Trusts*<sup>31</sup> when it was generally accepted that the objects of a trust must be certain: the language employed must be certain; and the trustees must at any time be able to ascertain definitively the persons who would have a vested interest in the capital and income of the trust property. On the other hand where the trustees were not bound by a trust but merely had a power or discretion to confer or withhold a benefit then the requirement of certainty was recognised as being far less stringent.<sup>32</sup> In this jurisdiction the judicial view is that the House of Lords decision *In re Baden’s Deed Trust* is not to be preferred to the previously established case law. Both Budd

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<sup>29</sup> Delany, *Equity and the Law of Trusts in Ireland*, Round Hall Sweet & Maxwell, Dublin, 1996 at p 252.

<sup>30</sup> [1994] 1 ILRM 161.

<sup>31</sup> Specifically overruling, by a majority of three to two, the decision in *Inland Revenue Commissioners v. Broadway Cottages Trust* [1955] Ch 20.

<sup>32</sup> See *Inland Revenue Commissioners v. Broadway Cottages Trust* [1955] Ch 20; also see, *In re Gulbenkian’s Settlements* [1970] AC 508.

J<sup>33</sup> and Murphy J<sup>34</sup> have declared that they will continue to place greater reliance on the established authorities than on the *ratio decidendi* of *In re Baden's Deed Trusts*.

In Ireland there has been no equivalent to an extension of the 'founder's kin' class in line with the ruling in *Re Koettgen's Will Trusts*.<sup>35</sup> Instead the rule remains confined to its original interpretation based on 'blood ties' or personal nexus.

The Irish judiciary has also taken a different approach to their English counterparts in relation to the significance of 'dissemination' in the context of trusts for the advancement of education. Keane J in the *Worth* case held that a gift for the advancement of scholarship or academic research, and thus for the advancement of learning, which might reasonably be regarded as for the public benefit, would not be deprived of charitable status merely because such scholarship or research was not combined with teaching or education.<sup>36</sup>

- *The public benefit test: the 'benefit' requirement*

In Ireland the judiciary are unlikely to substitute an objective assessment for the donor's subjective view but, as was apparent in *Re Worth*, they will insist that the public benefit test is satisfied. Keane J, in that case,<sup>37</sup> had cause to examine the requirement for a public benefit component in gifts for the advancement of education. He conceded that the gift of a library which is open to the public would be charitable<sup>38</sup> as would be a gift which was conducive to the attainment of a charitable object such as one for the purchase of books for Trinity College, Oxford<sup>39</sup> where it was held to be for the advancement of education. However, in this instance he expressed his view that the gift of a library, comprising a large and valuable collection of 18th century books, would be unlikely to come within the legal definition of charitable in an education context. The gift would fail the

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<sup>33</sup> See *Kilroy v. Parker* [1966] IR 309.

<sup>34</sup> See *M Davoren decd. Op cit.*

<sup>35</sup> [1954] Ch 252.

<sup>36</sup> See Keane J in *Re Worth Library* [1994] 1 ILRM 161, reference made to: *In re Shaw, Public Trustee v. Day* [1957] 1 WLR 729, 737, dicta of Harman J doubted; *Re Hopkins' Will Trusts, Naish v. Francis Bacon Society Inc* [1965] Ch 669, 680, dicta of Wilberforce J approved.

<sup>37</sup> *Op cit.*

<sup>38</sup> Citing as his authority *Re Scowcroft, Ormrod v. Wilkinson* [1898] 2 Ch 638, 642.

<sup>39</sup> See *Attorney General v. Marchant* (1866) LR 3 Eq 424.

‘public’ branch of the test because access to the library was restricted ‘for the use, benefit and behoof of the physician, chaplain and surgeon for the time being of the said hospital...’ It would also fail the ‘benefit’ branch because as he pointed out:

“...even if it could be said that the bequest was for educational purposes (and, given the insignificant proportion of the library devoted to medicine and surgery, that would involve some straining of the concept of “education” even beyond the liberal limits of the modern decisions), it would be impossible to hold that this was an educational charity for the benefit of the public.”

But, as can be seen below, he then went on to construct a novel interpretation of ‘benefit’ which, under a different heading, he found to be satisfied by the tranquil setting of the library.

### *The advancement of religion*

In Ireland Article 44 of the Constitution makes special reference to the Christian nature of the State<sup>40</sup> while the advancement of religion is further underpinned by s 45 of the Charities Act 1961 which states that “in determining whether or not a gift for the purpose of the advancement of religion is a valid charitable gift it shall be conclusively presumed that the purpose includes and will occasion public benefit.”

- *The public benefit test*

Section 45 of the Charities Act 1961 gives statutory effect to the ruling in *O’Hanlon v. Logue*<sup>41</sup> where Palles CB established that a gift for the saying of masses<sup>42</sup> whether in public or private satisfied the public benefit test and, being affirmed by the subjective judicial approach,<sup>43</sup> was determinative of a donor’s charitable intent. Gifts of this nature have long been a distinctive characteristic of Irish charitable activity, traditionally distinguishing it in particular from the non-

<sup>40</sup> This was acknowledged by O’Higgins CJ in *Norris v. A-G* [1984] IR 36.

<sup>41</sup> [1906] IR 247. See also: *Arnott v. Arnott (No 2)* [1906] 1 IR 127; and *Rickerby v. Nicholson* [1912] 1 IR 343, 347 where Ross J declared that “according to our law a bequest for a religious purpose is *prima facie* charitable”.

<sup>42</sup> The Statute of Chantries 1547 led to gifts for the saying of masses being deemed illegal in England and Wales but it never applied to Ireland where the validity of such gifts was recognised (See, *Commissioners of Charitable Donations and Bequests v. Walsh* (1828) 7 Ir Eq R 34n and *Read v. Hodgins* (1844) 7 Ir Eq R 17).

<sup>43</sup> In *Gilmour v. Coats* [1949] AC 426 the House of Lords took the view that the subjective approach had no relevance to trusts for religious purposes.

charitable status of such activity in the United Kingdom.<sup>44</sup> This has been evident also in gifts to closed contemplative religious orders, as opposed to those actively engaged in good works in the community.<sup>45</sup> The decision taken by the Irish courts in *Re Howley*<sup>46</sup> stands in direct contrast to that taken in *Gilmour v. Coats*.<sup>47</sup> In Ireland, as a consequence of s 45 of the 1961 Act, the public benefit test has no application to trusts for the advancement of religion.

However, religion no longer holds its traditional very special position in this increasingly secular society; it has diminished considerably since the introduction of the 1961 Act and more so since the Constitution with its Roman Catholic ethos was introduced. Ireland in the 21<sup>st</sup> century is not the homogenous Catholic society it once was. Moreover, religion on this island has become a demonstrably divisive influence, polarising communities and hindering the consolidation of a pluralist civil society. Further, the activities of some religious organisations, particularly those entrusted with providing residential care for children, has highlighted the risks inherent in not subjecting such activities to the 'public benefit' test.

### ***Beneficial to the community and not falling under any of the preceding heads***

This *Pemsel* head has accommodated by far the largest volume of new charities particularly in the field of health and social care.

- ***The public benefit test***

It is in relation to gifts under this *Pemsel* head, as in England & Wales, that the test is applied most rigorously. In Ireland the most distinctive feature of the public benefit test is its subjective nature. It was in relation to gifts under this *Pemsel* head that the subjective approach was first articulated. In *Re Cranston*<sup>48</sup> Fitzgibbon LJ argued that gifts for certain vegetarian societies were charitable and came within the category of gifts for other charitable purposes. This view was endorsed

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<sup>44</sup> See *Re Hetherington* [1989] 2 All ER 129 where it was finally confirmed that such gifts are *prima facie* charitable.

<sup>45</sup> See, for example, *Cocks v. Mannors* (1871) LR 12 Eq 574 where the view of the English courts towards a gift for a closed Dominican convent was expressed by Sir John Wickens V-C at p 585 as follows:  
 “A voluntary association of women for the purpose of working out their own salvation by religious exercises and self-denial seems to me to have none of the requisites of a charitable institution, whether the word “charitable” is used in its popular sense or in its legal sense.”

<sup>46</sup> [1940] IR 109.

<sup>47</sup> *Op cit.*

<sup>48</sup> [1898] 1 IR 431at p 447-7.

by Lord O'Brien LCJ in *Attorney-General v. Becher*,<sup>49</sup> by Barton J in *Shillington v. Portadown UDC*<sup>50</sup> and finally by Keane J in *Re Worth Library* when he set the seal of the Irish judiciary on this issue.

Another singular characteristic relates to the quotient of 'benefit'. The deliberations of Keane J in *Re Worth Library*<sup>51</sup> shed an interesting light on judicial interpretation of when the public benefit element of a gift is sufficient for it to acquire charitable status within this category. Two different approaches were considered. Firstly, Keane J rejected the proposition that such a gift was charitable *per se*.<sup>52</sup> On the facts it failed to satisfy the 'public' requirement because the donor was most explicit that access be restricted to the physician, surgeon and chaplain. It also failed to meet the 'benefit' requirement because the books that comprised the library were on subjects that could only be of marginal interest to the designated beneficiaries. Therefore he determined that in this instance the gift of a library did not *per se* constitute a charitable trust within the fourth category. Secondly, he considered the possibility that the gift might so qualify on the grounds that as it was directed exclusively for the use of hospital staff it could be construed as intended as a gift for the hospital which would normally be charitable.<sup>53</sup> Again, on the facts, he held that in this instance the terms of the gift were so conditional as to debar the gift from vesting in the hospital generally. Having thus ruled out the possibility of the gift acquiring charitable status on either of the two grounds presented, Keane J then advanced a further possibility – that the library itself 'in its beautiful setting would have provided a haven of quiet intellectual relaxation for the beneficiaries'. The necessary 'benefit' quotient was supplied by the intrinsic quality of the library environment, despite the restricted access to it. Keane J held that the requirements of the public benefit test were accordingly satisfied and ruled in favour of the gift's charitable status within this category on the ground that it furthered the capacity of the charity represented by the hospital.

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<sup>49</sup> [1910] 2 IR 251.

<sup>50</sup> [1911] 1 IR 247. See, also, *Re Ni Brudair*, High Court 1976 No 93 Sp (Gannon J) 5th Feb 1979.

<sup>51</sup> *Op cit.*

<sup>52</sup> He referred to *Carne v. Long* (1860) 2 De GF & J 75 and also to *Re Prevost* [1930] 2 Ch 383.

<sup>53</sup> See *Barrington's Hospital v. Commissioner of Valuation* [1957] IR 299; *Re McCarthy* [1958] IR 311; *Gleeson v. Attorney General*, High Court 1972, No 2664 SP (Kenny J) 6th April 1973.

Judicial application of the subjective approach together with the latitude illustrated by the importation by Keane J of 'tranquillity' as an indicator of 'benefit', allows for a much more liberal if not quixotic interpretation of the test than is permissible in England & Wales. In other respects the law and practice under this head has unfolded somewhat similarly in both jurisdictions including the maintenance of restrictions on political activity by charities (see, further, below).

### **Legal structures for charities**

In Ireland charitable activity is housed in much the same range of structures as in England & Wales with the same marked reliance on trusts. It is likely, however, that the proportion of government controlled bodies and religious organisations claiming tax exemption on the grounds of charitable activity is higher in this jurisdiction.

#### ***Types of structure***

In Ireland the range of not-for-profits includes large government bodies and other non-government organisations such as co-operatives, credit unions, trade unions etc while the types of legal vehicle available to further the work of charities are very much the same as in England & Wales. Most charities in Ireland at least commence life as an association, though many subsequently became incorporated, while trusts and the law of trusts have been as dominant as in that jurisdiction.<sup>54</sup> In Ireland, as elsewhere, many charities, as they grow in size and complexity, become incorporated and must then comply with statutory registration requirements and have their names entered in the Registry.<sup>55</sup> Charities may be established under powers available in the Companies Acts, by a special act of the Oireachtas, or by powers available to the Commissioners of Charitable Donations and Bequests under the Charity Acts.

The appropriateness of existing legal structures for charitable activity was recently examined by the Law Reform Commission, an independent body set up to suggest changes in Irish law, at the request of the Department of Community, Rural and Gaeltacht Affairs.<sup>56</sup>

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<sup>54</sup> See the Trustee Act 1893 and the Charity Act 1961.

<sup>55</sup> See the Companies Acts 1963 and 1990.

<sup>56</sup> See *Consultation Paper on Legal Structures for Charities*, the Law Reform Commission, Dublin, January 2006.

## **The regulatory framework**

In Ireland the impetus for change largely came from concerns relating to fundraising. Well-publicised scandals, particularly regarding the propriety of the fundraising methods employed by the Irish Society for the Prevention of Cruelty to Children, triggered an awareness that the law needed to be reformed to provide for systems to register and regulate charities.

### ***Registration***

In Ireland the legislative framework failed to provide either a definition of 'charity' or a means for identifying where responsibility lay for determining charitable status. The fact that no body was vested with statutory powers to maintain a register of charities meant that there was no reliable information as to how many charities existed in Ireland, where they were located, their size, wealth and type nor as to whether they were increasing or otherwise in number. While it had recently become possible, under the Freedom of Information Act 1997, to obtain from the Revenue Commission a list of the some 5,000 organisations recognized by it as entitled to claim charitable exemption from tax, this list could not be construed as a definitive register of 'live' charities. Moreover the information available consisted of little more than the name, address and office contact details.

### ***Regulation***

In Ireland the question of whether the activities of an organisation could be recognised as charitable arose when it sought exemption from liability for taxes or rates on the grounds that of being a charity. Applications for the former were determined by the Revenue Commission<sup>57</sup> and the latter by the Valuation Office,<sup>58</sup> both acting quite separately and independently of each other and unassisted by statutory definitions. As neither body was vested with statutory powers to regulate charities as such, the latter were left subject to the same degree of supervision and inspection administered by the Revenue Commission in respect of all organizations with a tax liability. Although no statutory mechanisms existed for ensuring probity, requiring accountability, setting and monitoring standards nor for ascertaining the effectiveness of charitable activity, in common with other organisations, the activities of many charities came within the scope of statutes such as the Companies Acts of 1963 and 1990, the Tax Consolidation Act 1997 and the Freedom of Information Act 1997. The deficiencies in the regulatory framework in this and other areas was recognized by the government in its White

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<sup>57</sup> Applying the provisions of the Taxes Consolidation Act 1997, as amended.

<sup>58</sup> Applying the provisions of the Valuation (Ireland) Acts 1852 and 1854 (the Poor Relief (Ireland) Act 1838 has, however, been repealed and replaced by the Valuation Act 2001).

Paper *Regulating Better*, 2004, which set out the principles for improving regulation.

Some responsibility for the monitoring and supervision of charities continued to rest with the Commissioners for Charitable Donations and Bequests. This benign statutory body had survived relatively intact since the 19th century, with certain powers as regards the administration of charity law,<sup>59</sup> but the role and powers of Commissioners did not provide for any procedures in relation to complaints or compliance regarding the activities of charities. They had no statutory obligation to maintain a register, nor any duty to note the creation or termination of charities, nor to direct publication of their accounts, and indeed some of the Commissioners statutory powers have never been exercised. It functioned mainly in a supportive role, offering advice to charities and assisting with administration in response to requests.

In Ireland both the Attorney General and the High Court retained their traditional common law functions in relation to charities. Reserved for the courts were matters referred by the Attorney General<sup>60</sup> and/or by the Commissioners where the issues were complex, involved a fine point of law, required interpretation or where a *cy-près* scheme concerning property valued at £250,000<sup>61</sup> or more was needed. In this jurisdiction the High Court generally remained the only body vested with sufficient powers to broaden the interpretation of public benefit and thereby able to adjust the definition of charitable purposes to meet the contemporary pattern of social need. However, as in other common law nations, its capacity to do so had become severely constrained as opportunities for case precedents faded due to the expense, time and negative media exposure that stemmed the flow of litigation. Other bodies such as the Probate Office, the Companies Registry Office and the Garda Síochána also maintained their traditional if somewhat marginal regulatory roles.

#### **D. Outcomes of the Reform Process**

The Consultation Paper<sup>62</sup> published by the Department of Community, Rural and Gaeltacht Affairs, was followed in due course by a report summarising and

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<sup>59</sup> See Part II of the 1961 Act as amended by the 1973 Act.

<sup>60</sup> See *Re Denley's Trust Deed* [1969] 1 Ch 373. Also, see, Byrne R., and McCutcheon J.P., *The Irish Legal System*, (3rd ed.), Butterworths, Dublin, 1996 at paras. 3.54 – 3.60.

<sup>61</sup> This limit was removed by Item 1, Part 2 of the Schedule to the Social Welfare (Miscellaneous Provisions) Act 2002 (No. 8/2002).

<sup>62</sup> See *Establishing a Modern Framework for Charities*, Dublin, 2003.



analysing the results of the consultation exercise.<sup>63</sup> The process of charity law reform, having achieved the key milestone of a published 'Heads of Bill',<sup>64</sup> is now well on the way to legislative completion by May 2007. An introductory note to the Charities Regulation Bill 2006 explains that this is:

*“An Act to provide for the better regulation, support and management of charities in the State, to enhance transparency and accountability in the sector, increase public confidence in it and protect against charitable fraud and, for those purposes, to provide for the establishment of a body to be known as Údaras Rialála Carthanais na hÉireann or in the English language the Irish Regulatory Authority for Charities and to define its functions; to provide for the dissolution of the Board of the Commissioners of Charitable Donations and Bequests for Ireland; to consolidate and update the powers to assist in the administration of charities previously vested in the said Board; to provide for the establishment of a register of charities; to provide for the setting up of the Charity Appeals Board; to provide for a statutory framework governing the fundraising activities by or on behalf of registered charities; to provide for the repeal of certain charity law; and to provide for connected matters.”*

It clearly promises several significant changes to definitional matters, to legal structures for charities and to the existing regulatory framework. The question is – will the new legislative provisions adequately address the deficiencies in the existing regulatory framework as outlined above?

### **Proposed changes to definitional matters**

The Charities Regulation Bill 2006 proposes a new and more comprehensive definition of what constitutes a charity.

#### ***Charitable purpose***

Under Head 3 of the Bill, 'charitable purposes' has been redefined as follows:

3.— (1) “Charitable purposes” for the purposes of this Act are:

- (a) the prevention or relief of poverty, distress or disadvantage;

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<sup>63</sup> See Breen, O., Establishing a Modern Framework for Charities: Report on the Public Consultation for the Department of Community, Rural and Gaeltacht Affairs, Faculty of Law, University College Dublin, Sept 2004.

<sup>64</sup> See Department of Community, Rural and Gaeltacht Affairs, *General Scheme for Charities Regulation Bill 2006*, Dublin, March 2006.

- (b) the advancement of education;
- (c) the advancement of religion;
- (d) other purposes beneficial to the community, which include:
  - i) the advancement of community welfare and social inclusion, including the relief of those in need by reason of youth, age, ill- health, disability, financial hardship or other disadvantage, which relief includes that given by the provision of accommodation or care,
  - ii) the advancement of community development, including rural or urban regeneration,
  - iii) the advancement of citizenship, including the promotion of civic responsibility, volunteering, or the effectiveness or efficiency of charities,
  - iv) the advancement of health, including the prevention or relief of sickness, disease or human suffering,
  - v) the advancement of human rights, social justice, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity,
  - vi) the advancement of the natural environment,
  - vii) the promotion of peace,
  - viii) the promotion of good community relations,
  - ix) the prevention and relief of suffering of animals,
  - x) the advancement of the arts, culture, heritage or science,
  - xi) any purposes that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of the subparagraphs above.

In this context, “advancement” is declared to mean advancement by any lawful means and includes protection, maintenance, support, research, improvement or enhancement.

### **A ‘charity’**

Again, under Head 3 of the Bill, ‘charity’ has been statutorily defined for the first time as “any institution, corporate or not, which:

- (a) promotes charitable purposes only; and
- (b) promotes such purposes for the benefit of the community; and
- (c) save for resources applied to:
  - (i) such approved ancillary activities and other expenditures as may be designated from time to time by order; and
  - (ii) the operation and maintenance of the charity, including remuneration and superannuation of staff; and
  - (iii) in the case of religious organisations, accommodation and care of members of the organisation;

applies, or reserves in accordance with the requirements or guidelines issued by the Regulatory Authority from time to time for future application, all its resources including any annual profit or other surplus assets, to such charitable purposes for the benefit of the community; and

- (d) does not distribute any profit or asset to its owners, members or charity trustees in the normal course of its activities or in the event of dissolution.”

It adds that “an institution which is established with the primary object of advocacy, campaigning or lobbying in order to achieve political ends is not a charity”.

### ***The public benefit***

Under Head 4, is stated that a purpose must be for the public benefit if it is to be a charitable purpose. Except where a gift is for the purpose of the advancement of religion, when determining whether the public benefit test is satisfied the Regulatory Authority must have regard to:

- “(a) the extent to which the gift may relieve or alleviate the condition giving rise to the charitable purpose,
- (b) whether the purpose is directed to the public or an appreciable

section of the public,

- (c) whether any private benefit is ancillary, reasonable and necessary to the furtherance of the purpose.”

The statutory broadening of the range of charitable purposes, the definition of ‘charity’ and the assertion of the ‘public benefit’ test are in line with the type of changes proposed in other common law nations and are to be welcomed.

- *Charitable purposes*

The explicit reference to the ‘prevention’ of poverty is a significant improvement. The fact that certain vulnerable groups are specifically mentioned under the new category ‘advancement of community welfare and social inclusion’ is reassuring for the associated charities and the reference to ‘social inclusion’ should allow for the future recognition of others. Again, the specific endorsement given to ‘community development’ should prove useful to those organisations striving to tackle embedded rural poverty and pockets of chronic unemployment; though much will depend on how this works in practice, particularly as regards the possible involvement of business enterprises. Acknowledging that the promotion of peace should be a distinct charitable purpose, in addition to human rights, social justice etc, is an important step in this social context. The absence of any reference to amateur sport/recreation, while in keeping with the reluctance to introduce an equivalent to the English Recreational Charities Act 1958, is regrettable.

In the case of the advancement of religion, under Head 4 the existing presumption that a gift for such a purpose satisfies the public benefit test is explicitly continued thereby ensuring that the favoured position of religious organisations will be maintained and the public is not to have the added reassurance that mandatory compliance with the public benefit test would bring in relation to their activities. Continued also are the added complications arising from the constitutional preference given to Christianity and indeed to the Catholic Church for ensuring an equitable interpretation of ‘religion’ in this jurisdiction. The promotion of ‘religious or racial harmony or equality and diversity’ is, however, much to be welcomed as it will allow charities to be established for the purpose of assisting the many immigrant minority groups, from eastern Europe and elsewhere which have settled in Ireland, to retain their culture and separate sense of identity.

- *‘Charity’*

The definition of ‘charity’ incorporates existing rules in respect of exclusivity and profit distribution, adds a requirement in relation to community benefit but is itself noncontentious. It is to be presumed that only an organisation complying with this

definition will acquire charitable status and be eligible for registration as such. However, later on in the Bill, under Head 51, there is a reference to “an organisation whether a charity or not shall not be entitled to be registered on the charity of registers if ...”. This is confusing as it implies the possibility of an organisation not meeting the definition but nonetheless being entitled to entry in the register of charities. Further, the reference to political activities would seem to essentially restate the existing common law approach which has proved so problematic. If anything, the traditional restrictions have been reinforced by the injunction under Head 51 which debars from inclusion in the register of charities any ‘institution established for the purpose of attempting to change the law or government policy’. This is unfortunate. It’s a pity the opportunity wasn’t taken to relax this troublesome constraint by limiting it to party politics. The advocacy role of charities is legitimate and should be encouraged.

- *‘Public benefit’*

The application of this test lies at the heart of charity law. The fact that the Bill exempts religious organisations from the full rigours of the test (see above) is itself a considerable weakness but this is compounded by a failure to exclude government bodies from claiming that by virtue of their public benefit activity they are entitled to charitable status. At present and in all common law nations there is considerable difficulty in determining the extent of the test’s application to organisations engaged in public service delivery. In Ireland, where so much of the socio-economic infrastructure is reliant upon semi-State or wholly government funded bodies, the issue of where to draw a line between the public benefit activity of government bodies and charities is particularly fraught. The Bill has failed to clarify this matter thereby leaving the future independence and integrity of charities liable to further undermining.

### **Proposed changes to legal structures**

The Charities Regulation Bill 2006 does not address the issue of appropriate legal structures for charitable activity. In Part VII, however, it updates and codifies previous legislative provisions to ascribe a uniform role, duty of care, range of responsibilities and duties to all trustees/officers/directors of charities regardless of the legal structure or type of governing instrument used.

The suggestion in the Consultation Paper that a new form of incorporation for charities might be appropriate has been passed to the Dept of Enterprise, Trade and Employment. In due course this may take the form of a ‘charitable designated

activity company' (CDAC), created specifically and exclusively, despite its clunky name, for charities; existing charities could opt to convert to this structure.<sup>65</sup>

### **Proposed changes to the regulatory framework**

The Charities Regulation Bill 2006 addresses the main deficiencies noted above: Part II provides for the future regulation of charities; Part III deals with ascertaining charitable status and establishing a register of charities; Part IV outlines requirements for ensuring transparency in relation to the finances of charities; Part V introduces changes to the application of *cy-près* schemes by the new regulatory authority; Part VI deals with charitable fundraising; and Part VII with the responsibilities of trustees.

### ***Primary regulatory body***

Head 12 of the Bill provides for a new independent statutory body to be established as the centerpiece of a modern regulatory framework for charities to be known as *Údarás Rialála Carthanais na hÉireann* or the Irish Regulatory Authority for Charities. Part XI of the Bill deals with the dissolution of the Board of the Commissioners of Charitable Donations and Bequests and the transfer of its powers and duties to the new body. The latter is charged, under Head 13, with 5 general objectives:

- (a) to increase public trust and confidence in charities;
- (b) to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities;
- (c) to promote the effective use of charitable resources;
- (d) to enhance the accountability of charities to donors, beneficiaries and the general public; and
- (e) to promote awareness and understanding of the operation of the public benefit requirement.

Head 14 states that the general functions of this body shall be—

- (a) to determine whether institutions are or are not charities;
- (b) to establish and maintain an accurate and up-to-date register of charities;

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<sup>65</sup> See also the Law Reform Commission, *Consultation Paper on New Legal Structures for Charities*, Dublin, 2005.

- (c) to encourage, facilitate and monitor compliance by charities with this Act, including by taking prosecutions for offences under this Act in appropriate circumstances;
- (d) to identify and investigate, either on its own initiative or in response to a complaint made to it by any person, apparent misconduct or mismanagement in the administration of charities and to take remedial or protective action in connection with such misconduct or mismanagement;
- (e) to encourage and facilitate the better administration and conduct of charities by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidance notes, best practice guidelines, codes of conduct, and model constitutional documents;
- (f) to carry on such activities or to publish such information (including statistical information) concerning charities as it considers appropriate in the public interest; and
- (g) to give information (including statistical information) or advice, or to make proposals, to the Minister on matters relating to the functions of the Regulatory Authority.

The responsibilities of the Regulatory Authority are to be focused primarily on regulating, registering and supporting charities. Regulatory and support functions are not readily accommodated by the same body and will require a careful management structure if they are to be mutually complementary. The proposed legislative provisions are lengthy and complex but the following are particularly important.

- *Registration*

The Regulatory Authority will be responsible for compiling, publishing and maintaining a register of 'Registered Charities' and all charities will be required to register and to file annual returns with it. While it is clear that the continued registration of a charity will be conditional upon satisfying a regular review process, including an 'activities' test, it is not apparent that it will be required to disclose, in its annual returns, the amount of government funding (if any) that it has received. Also, the necessary arrangements will need to be made with the Companies Registration Office to avoid dual filing requirements. More importantly, while the Regulatory Authority carries responsibility for registration and thus conferring charitable status it is crucial to establish whether this body or the Revenue Commissioners will carry lead responsibility for determining whether

an organisation's interpretation of charitable purposes in its objects and activities satisfies the definition of 'charity'. It would have helped to clarify their respective responsibilities if the Regulatory Authority had been explicitly directed to monitor and develop charitable purposes in alignment with emerging aspects of social need within the new statutory definitional framework.

- *Accountability and transparency*

The Bill aims to achieve a light regulatory touch that will not overly burden the sector with additional administrative costs. This necessitates ensuring that a reasonable balance is struck between mandatory reporting requirements and the resource capacity of charities. The Bill recognises this in Head 59 where it refers to "the regulatory principle of proportionality whereby regulation should be as light as possible given the circumstances". However, in the absence of clear provisions regarding an income threshold for triggering full annual reports to the Regulatory Authority and audited accounts and uncertainty as to the circumstances in which dual reporting to it and to the Companies Registration Office will be required, it is hard to see how this aim can be achieved.

- *Fundraising*

Part VI of the Bill deals with charitable fundraising. It modernises and streamlines existing provisions in the 1962 Act and vests in the Regulatory Authority the powers necessary for it to require information from charities regarding their fundraising activities. It also provides for the introduction of a voluntary Code of Conduct as a self-regulatory mechanism for the sector. However, many of the provisions merely restate those of the 1962 Act. There is still a need to consolidate the present sets of regulations governing trading, fundraising (professional and otherwise) and promises of money (telethons etc), and to co-ordinate the related responsibilities of the garda and local authorities, within the same new body of regulations. In practice, much will turn on the compilation of effective voluntary codes of good practice.

- *The Charities Appeal Board*

The legislative intention is that this body will "provide for an extra-judicial mechanism in relation to appeals and applications for review concerning decisions, determinations or orders made by the Regulatory Authority, as an alternative to going to court, with the intention of keeping disputes resolution out of the courts system to the greatest extent possible".<sup>66</sup> While this is to be welcomed in principle, in practice it is not very clear how it will work in relation to the existing



jurisdiction of the High Court, the remit of the Attorney General and the costs of proceedings.

## E. Conclusion

Ireland is an archetypal common law jurisdiction. It has a legal framework for charity accompanied by a range of quite separate institutions that continue to bear all the traditional characteristic features of that legacy. The current legislation is dated, relies on principles and provisions first articulated in the English Charities Act 1960 and is facilitative rather than regulatory in nature. It is encumbered with constraints, inherited from its common law origins and resulting from deficits in contemporary law, that inhibit effective intervention by charities in areas of contemporary social need. The lack of any system of registration and absence of a central regulatory body has encouraged the development of a permissive environment for charities, which makes it difficult to collate the hard data necessary to compile a profile of the sector, and has perhaps allowed abuses to go undetected. In addition, charity law has retained its initial strong association with religion and in this jurisdiction the fusion between the Catholic Church and charity has led to the provision of significant public service infrastructure under the 3<sup>rd</sup> *Pemsel* head. It has other singularly Irish features, such as applying the subjective rule when determining charitable intent and a quixotic interpretation of 'benefit' under the 4th *Pemsel* head. These and other weaknesses in the legal framework prompted the charity law review process which is now drawing to a close.

The Charities Regulation Bill 2006, expected to become law before May 2007, will do much to improve the regulatory framework for charities in Ireland. The introduction of a register and the substitution of a modern Regulatory Authority with supervisory and inspectorial powers for that venerable if archaic institution the Board of the Commissioners of Charitable Donations and Bequests, will provide a new basis for the future development of the charitable sector. The new framework will be enormously important in terms of facilitating and regulating charitable activity, defining those activities not to be construed as charitable and clarifying the differentiation between charities and other NGOs. It will also be of far-reaching significance insofar as it demonstrates the bona fides of the Government's approach to the sector, embeds the principles which both the Government and the sector feel represent and balances their strategic interests, reflects the maturing nature of their evolving relationship and sets the ground rules for addressing future matters of mutual concern.

However, it is clear that many of the traditional common law constraints will carry over into the new legislative era. Moreover, the Regulatory Authority is not going to be an Irish Charity Commission. There is no indication of a political willingness

to equip this body with the additional powers necessary for it to undertake a role equivalent to that of its English counterpart and exercise similar leadership in shaping the future development of charitable purposes. This, by default, will leave the Revenue Commissioners, with whom the final decision rests to grant or withhold charitable tax exemption, to carry lead responsibility for determining the future fit between charitable purposes and emerging areas of social need in Ireland.

To that extent, while charity law reform in Ireland will result in a more effective regulatory framework, it has arguably failed to fulfill its promise to put in place a platform that fully represents the interests of both government and sector and provide the best foundation for future partnership arrangements.