

Commissioners of Charitable Donations and Bequests for Ireland

Strategy Statement 2011-2014

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1. Introduction and Mission Statement

Our Mission Statement is:-

“To perform our statutory duties as set out in the Charities Acts, and to assist Trustees in the performance of their duties. The Commissioners regard the carrying out of the donor’s or testator/testatrix’s intentions as of primary importance.”

The Office of The Commissioners of Charitable Donations and Bequests for Ireland (hereinafter called “the Commissioners”) was established in 1844 under An Act for the more effectual Application of Charitable Donations and Bequests in Ireland. Today the Commissioners derive their powers from the Charities Acts 1961 and 1973.

Statutory mandate of the Commissioners

The Commissioners are mandated under the Charities Acts 1961 and 1973 to:

- provide services to trustees of charities; and
- assist where possible in ensuring that the intentions of persons making donations and bequests to charities are carried out.

Unlike their counterparts in England and Wales, the Commissioners have no power to maintain a register of charities nor have they any statutory powers of investigation, although they can seek documents relating to a charity.

The Commissioners provide various services for charities without charge. Many of the services are of a judicial nature. For example, the Commissioners can:

- act as trustees of some Charitable Trusts and hold funds on behalf of others
- invest, and authorise charity trustees to invest in securities outside the ordinary range of trustee securities

Other functions of the Commissioners include:

- the appointment of new trustees, thereby avoiding the expense of a Court application;
- the authorisation of various property transactions carried out by charities such as sales, leases, surrender of leases, mortgages and exchanges of trust property;
- amendment of educational endowments under the Educational Endowments (Ireland) Act 1885;
- the provision of their Opinion or Advice under Seal to trustees;
- the amendment of a charitable trust;
- the settlement of Cy-Pres Schemes (That is to settle a new scheme where the existing scheme is incapable of being carried out according to its terms).

2. OVERALL CONTEXT

The Commissioners have framed this Statement in the context of Government Policy and priorities as set out in the Programme for Government 2011 – 2016.

Commitment to Modernisation of the Public Service

The vision underpinning the Programme for Government can only be realised through significant improvements in the efficiency and effectiveness of public service delivery. A key determinant of national well-being, competitiveness and social-inclusion will be the further development of a public service which:-

- Is quality, performance and results driven;
- Achieves value for money;
- Is focused on the needs of its customers;
- Is accountable;
- Responds rapidly to change in a flexible manner; and
- Promotes equal opportunities.

Significant progress has been achieved over recent years in modernising the public service. The *Strategic Management Initiative* in the Civil Service and similar frameworks in other sectors have led to better services for the public and an improved workplace environment for public service staff.

Over the period of this Strategy Statement decreases in the budget of the Office are likely meaning that the capacity of the Office to meet the challenge of increasing demand for high quality service depends on an acceleration of the pace of modernisation and change across the sector.

The Office therefore commits to the further development and further acceleration of the modernisation framework in order to ensure the flexibility required to achieve the highest international standards.

Key Priorities for Reform

The Strategic Management Initiative

The Strategic Management Initiative entitled “A Programme of change for the Irish Civil Service” was introduced in 1994 and subsequently the report “Delivering Better Government” was published by the Government in 1996. The purpose of the process is to achieve an excellent service for the Government and for the public as customers and clients at all levels, building on the good service that is provided at all levels. The process was evaluated in 2002 and the conclusion was that the process needed to be re-energized and re-positioned and to this end a new Vision Statement, Strategy and Action Plan for the Civil Service up to 2007 was developed to build on the initiatives already underway in the following areas:-

- Strategic Planning Process
- Human Resource Management
- Financial Management
- Quality Customer Service

In addition, the commitment to excellent customer service has received support from the Social Partners in successive Social Partnership Agreements including the most recent agreement entitled “Towards 2016, the 10 year framework Social Partnership Agreement 2006 – 2015”.

This Agreement includes key actions in relation to the voluntary, community and charity sector as follows:-

- To support the Community and Voluntary sector. This Department will develop and support policies on fostering volunteering arising from the package of measures initiated by the Government in 2005, in addition to measures already underway under the White Paper Support for Voluntary Activity. These approaches will be informed by the report of the Task Force on Active Citizenship;
- To promote philanthropy in Ireland and continuing to explore ways to facilitate philanthropic work, to strengthen and deepen a culture of philanthropy in Ireland, and maximise the contribution of philanthropy to the common good;
- To introduce legislation to regulate the charities sector, including governance standards to protect against abuse of charitable status or fraud and the provision of support for the sector in that regard;

The Office is committed to providing appropriate input into the ongoing implementation of the various strategies introduced by the relevant Government Department in relation to the Regulation and Management of the Charity and Community Sector.

2. STRATEGIC ANALYSIS & PLANNING

3.1 MANDATE OF THE COMMISSIONERS

The Commissioners are mandated under the Charities Acts 1961 and 1973 to provide services to trustees of charities and to carry out the intentions of persons making donations and bequests to charity.

The Commissioners provide various services for charities without charge. Many of the services are of a judicial nature and must be exercised according to the strict rules of law which affect charities. The more important of these services are mentioned in the following paragraphs:-

The Appointment of New Trustees

The Commissioners have power to appoint new trustees of a Charity either in substitution for, or in addition to, an existing trustee or trustees, or where there are no trustees. Many charitable trusts have been in existence for a considerable period of time and the original trustees may no longer be alive or in a position to carry out their duties under the trust. On application to the Commissioners by appropriate persons (for example, in the case of Diocesan lands the Bishop of the Diocese or his nominee) they may appoint new trustees. The Acts prescribe certain procedures which must be followed by the Commissioners. They must give statutory notice both of the proposal to make the order and, again, once the order is made. There is a right of appeal against the appointment and the statutory notice must be published in a public manner suitable to the circumstances to afford any interested party the opportunity to appeal to the Commissioners.

Authorising Sales

Charity trustees who very often have no power of sale in their trust document avail of Sections 34 and 40 of the Charities Act 1961, which gives them a power of sale in respect of sales authorised by the Commissioners. Section 40 provides that a sale authorised by the Commissioners will have the like effect and validity as if they had been authorised by the express terms of the trust instrument governing the charity. An application to the Commissioners under Sections 34 and 40 of the Act avoids the need for Court proceedings.

In dealing with an application for the sale of land, the Commissioners are primarily concerned to see that such sale is affected at the market value. Accordingly, every application must be accompanied by a report from an independent auctioneer certifying that the price reflects the true market value. This is not required where the property is sold by public auction. The Commissioners must also satisfy themselves that the intended use of the proceeds of the sale is in accordance with the trust instrument affecting the charity.

In the case of a sale at an undervalue, usually to another charity, the Commissioners must satisfy themselves that the proposed disposition is for the benefit of a specified charitable purpose other than the purpose of the charity of which the applicants are trustees and that the disposition would operate for the benefit of the public.

The Framing of Cy-Prés Schemes

For a variety of reasons the trusts of a Charity may need alteration. The trusts may no longer be appropriate or expedient. A Scheme may be settled by the Commissioners which alters the purpose of the trust. This is called a Cy-Prés Scheme. However much the Commissioners may wish to help trustees by making a Cy-Prés Scheme,

they cannot do so unless circumstances exist in which such a Scheme can be framed. These circumstances are set out in Section 47 of the Charities Act, 1961. It should be noted that before the doctrine can be invoked a general charitable intention must be shown in the Instrument under which the trust was created. Until 2002 the jurisdiction of the Commissioners was limited to assets to a value of £250,000. In 2002 this limit was removed.

The Giving of Opinion or Advice to Protect Trustees

If Trustees experience any difficulty in the administration of a charitable trust, or executors in administering a devise or bequest under their control, they may ask the Commissioners for their opinion or advice. Trustees or executors acting in accordance with the Commissioners' sealed opinion or advice will be deemed to have acted in accordance with the trust.

The Compromise of Claims on Behalf of or Against a Charity

The Trustees of a Charity or any person with the consent of the Trustees may submit to the Commissioners a statement and proposal for a compromise of a claim. Where it is advantageous to the charity or where it appears to the Trustees that a claim in special circumstances could be compromised the Commissioners can sanction a settlement of such a claim without the necessity of resorting to Court proceedings.

Investment Powers

The Commissioners are permitted to invest charity funds under their control in securities not authorised by law, or not authorised by the Trust Instrument, and the Charities Acts enable other charity trustees to do likewise.

In practise the Commissioners maintain a Form of Authorisation for Investment of

Charity Funds. This form has been revised and amended from time to time. In March 2005 the Commissioners issued a new list authorising investments to be made by Charities in accordance with the Trustee (Authorised Investments), Order 1998 as amended by the Trustee (Authorised Investments), Order 2002. Trustees may avail themselves of it without application to the Commissioners.

Charity Commissioners Official Investment Fund

This fund, currently managed by AIB Investment Managers, was established in 1985 to independently invest the funds under the control of the Commissioners. Participation in the fund by any charity can be effected by applying to the Commissioners. This fund is in addition to the other commercially available funds in which charities may invest. Advantages for Charities are that this fund is independently audited by a firm of accountants and by the Local Government auditor and is monitored by the Commissioners.

Wills Containing Charitable Bequests

A system was set up in July 1993 to enable the Charity Commissioners to exercise their statutory functions in relation to the protection of charitable bequests. Solicitors applying for a Grant of Probate of any Will containing a charitable legacy are asked to lodge a simple summary form with the Probate Office supplying details of all charitable bequests. These forms are transmitted to the Office of the Charity Commissioners every month.

Under Section 52 of the Charities Act 1961 as amended by Section 16 of the Charities Act, 1973 the Commissioners may require the Executor of any estate containing a charitable bequest to provide evidence that the bequest has been paid in accordance with the directions in the Will. Where an Executor fails to comply with this requirement the Board may direct publication of the bequest.

3. STRATEGIC ANALYSIS & PLANNING

4.1 REFORM OF CHARITY LAW

The Charities Bill 2007 was enacted on 28 February 2009. The Act does not come into force automatically on enactment however. It is to be commenced in stages over time by Ministerial order. Details of commencement of provisions will be available at www.justice.ie.

The purpose of the Charities Act 2009 is to enact a reform of the law relating to charities in order to ensure accountability and to protect against abuse of charitable status and fraud. It will also enhance public trust and confidence in charities and increase transparency in the sector. The Charities Act 2009, together with the Charities Acts 1961 and 1973, and the Street and House to House Collections Act 1962, will provide for a composite regulatory framework for charities through a combination of new legislative provisions and retention of existing charities legislation, with updating, where appropriate.

The Act provides for the dissolution of the Commissioners of Charitable Donations and Bequests for Ireland (CCDB) upon establishment of the new Authority, and the transfer at that stage of its functions to the Authority. The Office is committed to the process and will offer every assistance in the transfer of its functions.