

IRLANDA

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1. LEY DE BENEFICENCIA 2009¹ (*CHARITIES ACT 2009*²)

En la Ley de beneficencia de 2009 se detalla el nuevo régimen jurídico al que han de someterse las entidades, instituciones y demás organizaciones benéficas, considerando que se encuentran comprendidas dentro de las mismas aquellas que persiguen fines caritativos. En virtud de lo establecido en la Sección 3 de esta Ley, hay que entender que estamos en presencia de una organización con fines caritativos, en el caso de que se dedique a alguna de las siguientes actividades:

- La prevención o el alivio de la pobreza o las dificultades económicas.
- El progreso de la educación.
- La promoción de la religión.
- Cualquier otro propósito en beneficio de la comunidad.

¹ Fecha de entrada en vigor 28 de febrero de 2009. En virtud de esta Ley se van a ver modificadas otras disposiciones de la legislación Irlandesa, entre otras, la Ley de Beneficencia de 1961, la Ley de Educación de 1998 y la Ley de Justicia Penal de 2001.

² Act Number 6 of 2009.

No obstante, las donaciones que se efectúen a favor de estas entidades, no podrá considerarse que tienen un fin caritativo a menos que sean destinadas a un beneficio público, entendiéndose que tienen este destino cuando pueden ser disfrutadas por la comunidad, o bien, en el caso de que se otorguen a una persona a título particular, en calidad del miembro de la entidad benéfica, éste lo destine al fomento de una utilidad pública.

Asimismo, la Ley hace mención expresa a las entidades benéficas de carácter religioso y parte de una presunción *iuris tantum* según la cual se presume que las donaciones otorgadas a favor de estas instituciones religiosas son destinadas a un beneficio público, de tal manera que, para que la autoridad competente pueda establecer lo contrario, necesita previo dictamen de la Fiscalía General.

En cualquier caso, las donaciones caritativas efectuadas a favor de una determinada religión, producirán los efectos y deberán ser interpretadas en los términos que establezcan las leyes, cánones, ordenanzas y principios de la religión de que se trate. No obstante, a los efectos de esta Ley, no tendrán la consideración de donaciones a favor de instituciones religiosas caritativas aquellas que se efectúan para la consecución de un fin, por parte de una organización religiosa, en el que concurra alguna de las siguientes circunstancias:

- Que tenga por objeto principal la obtención de beneficios económicos.
- Que emplee técnicas de manipulación psicológica para la consecución de las donaciones.
- Que tenga por finalidad la captación de nuevos adeptos.

En virtud de lo dispuesto en esta Ley, las donaciones con fines benéficos se consideran destinadas a la satisfacción de necesidades de la comunidad, cuando se dediquen a algunas de las siguientes actividades:

1. la promoción del bienestar de la comunidad, incluyendo la ayuda a los necesitados, a la infancia, juventud, así como a enfermos y discapacitados
2. la promoción de desarrollo de la comunidad, incluyendo la regeneración urbana y rural
3. la promoción de la responsabilidad cívica o el trabajo de voluntariado
4. la promoción de la salud, incluida la prevención de enfermedades y el sufrimiento humano
5. el desempeño de funciones de mediación para la resolución de conflictos fomentando la reconciliación
6. la promoción de la convivencia pacífica entre las distintas razas, culturas y religiones, facilitando las relaciones de la comunidad.
7. la protección del medio ambiente natural así como la protección de su sostenibilidad
8. la promoción de la eficacia y buen gobierno de las propiedades de las organizaciones caritativas
9. la prevención o el alivio de sufrimiento en los animales
10. la protección de las artes, la cultura, el patrimonio o las ciencias
11. la integración de los desfavorecidos y su plena participación en la sociedad.

2. LEY DE PROHIBICIÓN DE LA MUTILACIÓN GENITAL FEMENIVA 2009

PROHIBITION OF FEMALE GENITAL MUTILATION BILL 2009³

La finalidad de esta ley es sancionar la mutilación genital femenina⁴, de manera que se tipifican legalmente estos hechos como constitutivos de delito y deben sancionarse con penas de multa y penas privativas de libertad que pueden llegar hasta diez años.

Aborda esta Ley el tema del consentimiento y considera que no puede apreciarse la concurrencia de una eximente de responsabilidad en el hecho de que el consentimiento haya sido prestado por el padre, tutor o responsable de la mujer cuya mutilación se haya practicado, si ésta es menor de 16 años. Por lo tanto, sólo considera válido el consentimiento prestado por la mujer que haya alcanzado esa edad.

Para que el facultativo quede exento de cualquier responsabilidad en el caso de practicar una intervención de este tipo y no incurra en el delito previsto en esta Ley, es necesario acreditar que se trata de un profesional titulado, es decir, que cumple los requisitos exigidos para el ejercicio profesional de la medicina, conforme a la Ley que regula esta materia⁵. Igualmente, debe acreditar que concurren motivos razonables para creer que la intervención quirúrgica era necesaria para

³ Act Number 30 of 2009.

⁴ La mutilación genital femenina se practica, en sus diversas formas, en los países de Oriente Medio, incluido Yémen, Arabia Saudí, Irak, Jordania, Siria y Argelia, así como en África, donde se lleva a cabo en la mayoría del continente, incluido Kenia, Nigeria, Malí, Costa de Marfil, Egipto, Mozambique y Sudán. Aunque este tipo de prácticas es frecuente en países con una población mayoritaria islámica, no es exclusiva de esta religión y es concebida como una circuncisión femenina.

⁵ Vid., Medical Practitioners Act Number 25/2007.

salvaguardar la vida o la salud de la mujer o para corregir una anomalía o malformación genital.

Finalmente, la Ley describe las diversas formas de intervención que deben ser consideradas como mutilación genital femenina, en las que se incluye cualquier procedimiento que pueda causar daño grave a alguna o a todas las funciones normales de los órganos genitales mutilados.

3. LEY DE DIFAMACIÓN DE 2009⁶

DEFAMATION ACT 2009

El Parlamento de la República de Irlanda ha aprobado en julio de 2009 la reforma de la Ley de Difamación de 2006, a través de la cual se ha introducido una nueva regulación sobre la blasfemia. Esta normativa entiende por blasfemia el uso de *"términos abusivos o insultos sobre asuntos considerados sagrados por cualquier religión y que causen ultraje a un número sustancial de seguidores de esa fe"*.

No obstante, la regulación de la blasfemia no es nada nuevo en Irlanda. La Constitución de Irlanda de 1937, actualmente vigente, contempla este tema cuando confirma, en su artículo 40, bajo la rúbrica de los "Derechos Personales", entre otros, el de "expresar libremente las convicciones y opiniones", aunque también acota los límites de este derecho. El problema es que, en virtud de lo establecido en la Carta Magna, en su artículo 40.6⁷, la blasfemia será castigada según la ley, pero ésta (La Ley de Difamación de 1961) definía de una forma tan difusa el concepto

⁶ [09 July, 2009]. Esta Ley ha sido aprobada por el Parlamento y firmada por el Presidente de Irlanda el 23 de julio de 2009. Está pendiente de entrar en vigor cuando se dicte el orden de promulgación correspondiente por parte del Ministro de Justicia.

⁷ El artículo 40.6.I de la Constitución Irlandesa de 1937 se pronuncia en los siguientes términos: "se considerará un delito perseguido de acuerdo con lo dispuesto en la Ley la publicación o expresión de conceptos blasfemos, sediciosos e indecentes"

que impedía en la práctica un fallo judicial al respecto. Esto se comprobó en 1999, cuando en un sonado caso se denunció a un periódico por publicar el chiste de un dibujante riéndose de la Iglesia Católica, y el juez que dirimió el caso resolvió que no podía haber procesamiento, al no existir una definición legal de en qué constituía una blasfemia.

Con ello, hasta este momento, ha habido un vacío legal que es lo que se ha intentado solventar con esta reforma. Ahora la definición de blasfemia existe y hay acogerse a ella a la hora de aplicar una ley que criminaliza a la persona que publique o pronuncie un contenido blasfemo, le considera responsable de un delito de blasfemia y contempla multas de hasta 25.000 euros para quienes infrinjan la norma.

En cualquier caso, se considerará que una persona publica o pronuncia un contenido blasfemo si concurren las siguientes circunstancias:

Que sea extremadamente abusivo o insultante en relación con asuntos considerados sagrados por cualquiera de las religiones, y por tanto causando escándalo a un número sustancial de seguidores de esa religión, y

Cuando se pretenda causar escándalo con la publicación o pronunciación de ese contenido

No obstante, el acusado de un delito de blasfemia puede probar en su defensa que cualquier persona razonable podría encontrar en el asunto al que se refiere la ofensa, un valor únicamente literario, artístico o científico, si bien, el concepto de religión al que se refiere esta Ley no comprende a las organizaciones o cultos que tengan como principal objetivo obtener un beneficio o que utilice la manipulación psicológica opresiva, bien en relación a sus seguidores o bien para ganarse nuevos adeptos.

Finalmente, en el caso de que una persona sea acusada de un delito de blasfemia, el tribunal puede acordar cualquiera de las siguientes actuaciones:

autorizar a las Fuerzas de seguridad a entrar (si fuese necesario haciendo uso de la fuerza) a cualquier hora, en cualquier lugar (incluyendo domicilios particulares) donde se tengan indicios razonables para creer que existen copias del documento que hace referencia al delito, buscar dicho material, confiscarlo y retirar todas las copias encontrado en el lugar.

ordenar la confiscación y retirada de todas las copias del material al que se refiere el delito que estén en posesión de cualquier persona.

especificar la manera en que las copias confiscadas y retiradas serán retenidas y almacenadas.

4. REGLAMENTO SOBRE LIBRE CIRCULACIÓN DE PERSONAS EN EL ÁMBITO DE LAS COMUNIDADES EUROPEAS (2008)⁸

EUROPEAN COMMUNITIES (FREE MOVEMENT OF PERSONS) (AMENDMENT) REGULATIONS 2008⁹

Este Reglamento responde a la necesidad de modificar la normativa vigente desde el año 2006 sobre libre circulación de personas en el espacio comunitario europeo¹⁰, dando cumplimiento a la Directiva Comunitaria 2004/48/EC1 del Parlamento Europeo, en relación con el derecho de los

⁸ Reglamento dictado por el Ministerio de Justicia, Igualdad y Reforma Legislativa, con fecha de 31 de julio de 2008.

⁹ S.I. No. 310 of 2008

¹⁰ Esta norma modifica la "European Communities (Free Movement of Persons) (No. 2) Regulations 2006", (S.I. No.656 of 2006), con la finalidad de reflejar en sus disposiciones la decisión del Tribunal Europeo de Justicia en su Sentencia sobre el caso "Metock and Others" (C-127/08), de 25 de Julio de 2008.

ciudadanos de la Unión Europea, así como de los miembros de su familia, a circular y residir libremente en el territorio de los Estados miembros.

Los destinatarios de este Reglamento son los siguientes:

- Los ciudadanos de la Unión Europea.

- Los miembros de la familia de ciudadanos de la Unión Europea, que aún no siendo ciudadanos propiamente dichos de la Unión, concurren en ellos las siguientes circunstancias:

que deseen entrar en el Estado en compañía de ciudadanos de la Unión, siempre que pertenezcan a su familia

que deseen unirse a ciudadanos de la Unión, siempre que sean miembros de una familia que se encuentra legalmente en el Estado.

- los miembros autorizados que pertenezcan a una familia de ciudadanos de la Unión, si reúnen los siguientes requisitos:

que deseen entrar en el Estado en compañía de ciudadanos de la Unión, siempre que sean miembros de su familia

que, formando parte de una familia de ciudadanos de la Unión que se encuentra legalmente en Irlanda, desee unirse a cualquiera de los integrantes de este núcleo familiar.

Según este Reglamento, en el caso de que se haya presentado la solicitud para la obtención de una tarjeta de residencia estando en vigor la normativa anterior, si aún no se ha resuelto el expediente, deberá regirse la concesión de esta tarjeta por lo establecido en esta disposición de 2008.

ANEXO

CHARITIES ACT 2009

Number 6 of 2009

AN ACT TO PROVIDE FOR THE BETTER REGULATION OF CHARITABLE ORGANISATIONS, AND, FOR THAT PURPOSE, TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS AN tU' DARA' S RIALA' LA CARTHANAS OR IN THE ENGLISH LANGUAGE THE CHARITIES REGULATORY AUTHORITY; TO PROVIDE FOR THE DISSOLUTION OF THE COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS FOR IRELAND; TO MAKE PROVISION IN RELATION TO THE REGULATION AND PROTECTION OF CHARITABLE ORGANISATIONS AND CHARITABLE TRUSTS; TO PROVIDE FOR THE REGISTRATION OF CHARITABLE ORGANISATIONS; TO PROVIDE FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE CHARITY APPEALS TRIBUNAL TO HEAR APPEALS FROM DECISIONS OF THE CHARITIES REGULATORY AUTHORITY; TO MAKE PROVISION IN RELATION TO FUND-RAISING BY OR ON BEHALF OF REGISTERED CHARITABLE ORGANISATIONS; TO PROVIDE FOR THE REPEAL OF CERTAIN PROVISIONS OF THE CHARITIES ACT 1961; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[28th February, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

1.—(1) This Act may be cited as the Charities Act 2009.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions, and for the repeal of different provisions of the Charities Act 1961 effected by *section 11*.

2.—(1) In this Act—

“Act of 1962” means the Street and House to House Collections Act 1962;

“Act of 1998” means the Education Act 1998;

“Act of 2001” means the Criminal Justice (Theft and Fraud Offences) Act 2001;

“Authority” has the meaning assigned to it by *section 13*;

“body” includes, in relation to a trust in respect of which there is only one trustee, that trustee;

“charitable gift” means a gift for charitable purposes;

“charitable organisation” means—

(a) the trustees of a charitable trust, or

(b) a body corporate or an unincorporated body of persons—

(i) that promotes a charitable purpose only,

(ii) that, under its constitution, is required to apply all of its property (both real and personal) in furtherance of that purpose, except for moneys expended—

in the operation and maintenance of the body, including moneys paid in remuneration and superannuation of members of the staff of the body, and

in the case of a religious organisation or community, on accommodation and care of members of the organisation or community, and

(iii) none of the property of which is payable to the members of the body other than in accordance with *section 89*, but shall not include an excluded body;

“charitable purpose” shall be construed in accordance with *section 3*;

“charitable trust” means a trust—

(a) established for a charitable purpose only,

(b) established under a deed of trust that requires the trustees of the trust to apply all of the property (both real and personal) of the trust in furtherance of that purpose except for moneys expended in the management of the trust, and

(c) none of the property of which is payable to the trustees of the trust other than in accordance with *section 89*;

“charity trustee” includes—

(a) in the case of a charitable organisation that is a company, the directors and other officers of the company, and

(b) in the case of a charitable organisation that is a body corporate (other than a company) or an unincorporated body of persons, any officer of the body or any person for the time being performing the functions of an officer of the body, and references to a charity trustee of a charitable organisation shall be construed as including references to a trustee of a charitable trust;

“chief executive” has the meaning assigned to it by *section 19*;

“company” means a company established under the Companies Acts;

“constitution” means the rules (whether in writing or not) governing the administration and control of a charitable organisation and that regulate its activities, and includes—

(a) in the case of a charitable organisation consisting of trustees of a charitable trust, the deed of trust establishing the charitable trust,

(b) in the case of a charitable organisation that is a company, the memorandum and articles of association of the company,

(c) in the case of a charitable organisation that is a body corporate other than a company, the charter, statute or other like instrument by which it is established, and

(d) in the case of a charitable organisation that is an unincorporated body of persons, the rules of the body, but does not include any enactment or rule of law applicable to the carrying on of the activities of the organisation;

“dissolved body” has the meaning assigned to it by *section 81*;

“education body” means—

(a) a vocational education committee established by section 7 of the Vocational Education Act 1930,

(b) a recognised school within the meaning of the Act of 1998,

(c) a management committee established for the purposes of section 37 of the Act of 1998,

(d) a parents’ association established in accordance with section 26 of the Act of 1998,

(e) a student council established in accordance with section 27 of the Act of 1998,

(f) an institution of higher education within the meaning of the Higher Education Authority Act 1971 (amended by section 52 of the Institutes of Technology Act 2006), or (g) a body established solely for the purpose of funding not more than one such institution of higher education;

“EEA Agreement” has the same meaning as it has in the European Communities (Amendment) Act 1993;

“EEA state” means—

(a) a member state of the European Communities (other than the State), or

(b) a state (other than a member state of the European Communities) that is a contracting party to the EEA Agreement; “establishment day” shall be construed in accordance with *section 12*;

“excluded body” means—

(a) a political party, or a body that promotes a political party or candidate,

(b) a body that promotes a political cause, unless the promotion of that cause relates directly to the advancement of the charitable purposes of the body,

(c) an approved body of persons within the meaning of section 235 of the Taxes Consolidation Act 1997,

(d) a trade union or a representative body of employers,

(e) a chamber of commerce, or

(f) a body that promotes purposes that are—

(i) unlawful,

(ii) contrary to public morality,

(iii) contrary to public policy,

(iv) in support of terrorism or terrorist activities, whether in the State or outside the State, or

(v) for the benefit of an organisation, membership of which is unlawful;

“judicial office in the Superior Courts” means the office of judge of the High Court or the office of judge of the Supreme Court;

“local authority” has the same meaning as it has in the Local Government Act 2001;

“material interest” shall be construed in accordance with section 2(3) of the Ethics in public Office Act 1995;

“Minister” means the Minister for Community, Rural and Gaeltacht Affairs;

“personal connection” shall be construed in accordance with *subsection (2)*;

“prescribed” means prescribed by regulations made by the Minister;

“public benefit” shall be construed in accordance with *section 3*;

“record” includes, in addition to any record in writing—

(a) a plan, chart, map, drawing, diagram, pictorial or graphic image,

(b) a disc, tape, soundtrack or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,

(c) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and

(d) a photograph;

“register” has the meaning assigned to it by *section 39*, and “registered” shall be construed accordingly;

“registered charitable organisation” means—

(a) a charitable organisation that is registered in the register, or

(b) a charitable organisation that, by virtue of *section 40*, is deemed to be registered in the register;

“registration number” has the meaning assigned to it by *section 40(6)(e)*;

“Tribunal” has the meaning assigned to it by *section 75*.

(2) (a) For the purposes of this Act—

(i) a person is connected with an individual if that person is a parent, brother, sister, spouse, grandparent or grandchild of the individual or a child of the spouse of the individual,

(ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual if that individual, or any of that individual's children, or any body corporate that that individual controls is a beneficiary of the trust,

(iii) a person is connected with any person with whom he or she is in partnership,

(iv) a person is connected with any person by whom he or she is employed under a contract of service,

(v) a body corporate is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it, and

(vi) any two or more persons acting together to secure or exercise control of a body corporate shall be treated in relation to that body corporate as connected with one another and with any person acting on the direction of any of them to secure or exercise control of the body corporate.

(b) In this subsection "control" has the meaning assigned to it by section 11 of the Taxes Consolidation Act 1997, and cognate words shall be construed accordingly.

3.—(1) For the purposes of this Act each of the following shall, subject to *subsection (2)*, be a charitable purpose:

(a) the prevention or relief of poverty or economic hardship;

(b) the advancement of education;

(c) the advancement of religion;

(d) any other purpose that is of benefit to the community.

(2) A purpose shall not be a charitable purpose unless it is of public benefit.

(3) Subject to *subsection (4)*, a gift shall not be of public benefit unless—

(a) it is intended to benefit the public or a section of the public, and

(b) in a case where it confers a benefit on a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all

of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit.

(4) It shall be presumed, unless the contrary is proved, that a gift for the advancement of religion is of public benefit.

(5) The Authority shall not make a determination that a gift for the advancement of religion is not of public benefit without the consent of the Attorney General.

(6) A charitable gift for the purpose of the advancement of religion shall have effect, and the terms upon which it is given shall be construed, in accordance with the laws, canons, ordinances and tenets of the religion concerned.

(7) In determining whether a gift is of public benefit or not, account shall be taken of—

(a) any limitation imposed by the donor of the gift on the class of persons who may benefit from the gift and whether or not such limitation is justified and reasonable, having regard to the nature of the purpose of the gift, and

(b) the amount of any charge payable for any service provided in furtherance of the purpose for which the gift is given and whether it is likely to limit the number of persons or classes of person who will benefit from the gift.

(8) A limitation referred to in *subsection (7)* shall not be justified and reasonable if all of the intended beneficiaries of the gift or a significant number of them have a personal connection with the donor of the gift.

(9) There shall be no appeal to the Tribunal from a determination of the Authority to which *subsection (5)* applies.

(10) For the purposes of this section, a gift is not a gift for the advancement of religion if it is made to or for the benefit of an organisation or cult—

(a) the principal object of which is the making of profit, or

(b) that employs oppressive psychological manipulation—

(i) of its followers, or

(ii) for the purpose of gaining new followers.

(11) In this section “purpose that is of benefit to the community” includes—

(a) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability,

(b) the advancement of community development, including rural or urban regeneration,

(c) the promotion of civic responsibility or voluntary work,

(d) the promotion of health, including the prevention or relief of sickness, disease or human suffering,

(e) the advancement of conflict resolution or reconciliation,

(f) the promotion of religious or racial harmony and harmonious community relations,

(g) the protection of the natural environment,

(h) the advancement of environmental sustainability,

(i) the advancement of the efficient and effective use of the property of charitable organisations,

(j) the prevention or relief of suffering of animals,

(k) the advancement of the arts, culture, heritage or sciences,

and

(l) the integration of those who are disadvantaged, and the promotion of their full participation, in society.

4.—(1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential, provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) Every order (other than an order under *section 1(2) or 12*) and regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

6.—The Minister shall—

(a) not later than 5 years after the establishment day, commence a review of the operation of this Act, and

(b) not later than 12 months after the expiration of the said 5 years, make a report to each House of the Oireachtas of his or her findings and conclusions resulting from that review.

7.—(1) Nothing in this Act shall operate to affect the law in relation to the levying or collection of any tax or the determination of eligibility for exemption from liability to pay any tax.

(2) The Revenue Commissioners shall not be bound by a determination of the Authority as to whether a purpose is of public benefit or not in the performance by them of any function under or in connection with—

- (a) section 207, 208 or 609 of the Taxes Consolidation Act 1997,
- (b) section 17 or 76 of the Capital Acquisitions Tax Consolidation Act 2003, or
- (c) section 82 of the Stamp Duties Consolidation Act 1999.

8.—This Act shall not apply to a trust the only property of which consists of—

- (a) shares in a qualifying company established for the purposes of section 110 of the Taxes Consolidation Act 1997,
- (b) shares in a company whose business consists solely of the leasing of plant and machinery,
- (c) dividends paid in respect of such shares, being dividends that are not retained as part of the property of the trust for more than 12 months, or
- (d) any other distribution of cash or assets made in respect of such shares, being cash or assets that are not retained as part of the property of the trust for more than 12 months.

9.—(1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address; or
- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.

(2) For the purpose of this section, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every

unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

10.—(1) A person guilty of an offence under this Act shall be liable—

(a) on summary conviction, to a fine not exceeding \5,000 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine not exceeding \300,000 or to imprisonment for a term not exceeding 10 years or to both.

(2) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) Summary proceedings for an offence under this Act may be brought and prosecuted by the Authority.

(4) Where a person is convicted of an offence under this Act the court shall order the person to pay to the Authority the costs and expenses, measured by the court, incurred by the Authority in relation to the investigation, detection and prosecution of the offence, unless the court is satisfied that there are special and substantial reasons for not so doing.

11.—The Charities Act 1961 is repealed to the extent specified in *column (2) of Schedule 2*.

(...)

**PROHIBITION OF FEMALE GENITAL MUTILATION
BILL 2009**

AN ACT TO PROHIBIT FEMALE GENITAL MUTILATION

[No. 30 of 2009]

1.—(1) A person who performs any procedure for the genital mutilation of a woman shall be guilty of an offence and shall be liable 10 on conviction on indictment to a fine or to imprisonment for a term not exceeding 10 years, or to both.

(2) In a prosecution for an offence under subsection (1)—

(a) it shall not be a defence to prove that a consent (including, where relevant, a consent of a parent, guardian or other 15 person having responsibility in relation to a person who has not attained the age of 16 years) was given by or on behalf of a woman to her genital mutilation;

(b) it shall be a defence to prove that—

(i) the procedure the performance of which is alleged to 20 constitute an offence under that subsection was a surgical operation performed by a registered medical practitioner (within the meaning of the Medical Practitioners Act 2007), and

(ii) that medical practitioner honestly believed, on 25 reasonable grounds, that the operation was necessary to safeguard the life or health of the woman concerned or to correct a genital abnormality or malformation.

(3) In this section— 30 “genital mutilation” includes any procedure for the excision, infibulation or any other form of mutilation, in whole or in part, of the external, or vulvar, female genitalia (including the labia majora, labia minora and clitoris) that is calculated or liable to cause serious or permanent

impairment of any or all of the normal functions of those 35 organs, including functions in relation to urination, menstruation, sexual intercourse and childbirth, or to cause pain, whether in relation to those functions or chronically; “woman” means a female person of any age.

2.—This Act may be cited as the Prohibition of Female Genital Mutilation Act 2009.

(...)

Purpose of Bill

Female genital mutilation (FGM) in a variety of its forms is practised in Middle Eastern countries, including the two Yemens, Saudi Arabia, Iraq, Jordan, Syria, and Southern Algeria, and in Africa, where it is practised in the majority of the continent including Kenya, Nigeria, Mali, Upper Volta, Ivory Coast, Egypt, Mozambique and Sudan. Although FGM is prevalent in countries with a mostly Islamic population, it is not an exclusively Islamic practice.

FGM is often referred to as female circumcision. However, while it and male circumcision both include the removal of well-functioning parts of the genitalia and are quite unnecessary, FGM is far more drastic and damaging than male circumcision. The term FGM covers three main varieties of genital mutilation:

1. “Sunna” circumcision, which consists of the removal of the prepuce and/or the tip of the clitoris;
2. clitoridectomy (also referred to as excision), which consists of the removal of the entire clitoris (both prepuce and glans), and the removal of the adjacent labia; and
3. infibulation (also referred to as pharaonic circumcision), which is the most extreme form and consists of the removal of the clitoris, the adjacent labia (majora and minora) and the joining of

the scraped sides of the vulva across the vagina, where they are secured with thorns or sewn with catgut or thread. A small opening is kept to allow passage of urine and menstrual blood. An infibulated woman must be cut open to allow intercourse on the wedding night and is closed again afterwards to secure fidelity to the husband.

Beyond the obvious initial pains of the operation, FGM has longterm physiological, sexual, and psychological effects. The unsanitary environment under which FGM takes place results in infections of the genital and surrounding areas. Some health consequences of FGM include primary fatalities as a result of shock, haemorrhage or septicaemia.

Long-term complications include sexual frigidity, genital malformation, delayed menarche, chronic pelvic complications, recurrent urinary retention and infection, and an entire range of obstetric complications whereas the foetus is exposed to a range of infectious diseases as well as facing the risk of having his or her head crushed in the damaged birth canal. In such cases the infibulated mother must undergo another operation whereby she is "opened" further to insure the safe birthing of her child.

FGM is entering developed countries with some immigrants who are holding on to their customs and identity. So, while between eight and ten million women and girls in the Middle East and in Africa are at risk of undergoing one form or another of genital mutilation, it is estimated that in the United States there are about ten thousand girls at risk of being subjected to this practice.

FGM could not be performed in this country by a medical practitioner acting in accordance with Medical Council guidelines, since it amounts to a form of surgical disfigurement which has no therapeutic value whatsoever and endangers the health of women.

The only risk, therefore, is that it might be carried out in a clandestine way.

The United Nations, UNICEF, and the World Health Organization consider FGM to be a violation of Human Rights and have made recommendations to eradicate the practice. FGM is now outlawed in the United States (at federal level and in several states), in some European countries (Britain, France, Sweden and Switzerland) and also in some African countries (Egypt, Kenya and Senegal).

In other countries with a common law tradition such as Australia and Canada, it has traditionally been argued that existing offences such as, for example, assault causing serious harm, are sufficient to outlaw FGM.

In Ireland the crime of assault is now set out in statutory form, in the Non-Fatal Offences against the Person Act 1996.

That legislation preserves, without re-stating, the various defences to that offence recognised by the common law. Precedents from previous judgments, including both those given by the Irish courts and by courts in other common law jurisdictions, must therefore be examined, since this area of the law has not been codified.

The issue is whether the common law would recognise, as a defence to a charge of assault causing serious harm, a defence that the victim of FGM had consented to a “surgical treatment” or, in the case of a minor, that her parents had given consent on her behalf.

At common law, precedent suggests that it is not possible to consent to an assault which causes actual bodily harm. However, there are exceptions to the general rule — games and sports, lawful chastisement by parents, dangerous exhibitions, reasonable surgical intervention, and so on. There is no clear cut rule. A person charged with an offence in such circumstances might seek to make comparisons with body piercing, tattooing, cosmetic surgery and the like.

In 1985 the UK Parliament decided the best way to deal with the issue was to legislate directly, rather than waiting on the uncertain outcome of future cases. The Prohibition of Female Circumcision Act 1985, was passed, in order to outlaw the practice, whether conducted by medical practitioners or others.

It is also the case that legislation which seeks to deal directly with a particular issue is enshrining the normative values of the community which enacts it and has a broad educational value.

The purpose of legislation would be bring certainty into an area of the law where there is at present uncertainty.

Finally, in June 2008 the Women's Health Council (a statutory body that advises the Minister for Health and Children on all aspects of women's health) published a report on the issue that called on the State to adopt a proactive approach to prevent the emergence of

female genital mutilation, including legislative reform. The Council called for specific legislation similar to the Prohibition of Female Genital Mutilation Bill 2001, on which this Bill is based, to be enacted, to provide legislative protection to women.

Provisions of Bill

Section 1(1) provides that a person who performs any procedure for the genital mutilation of a woman shall be guilty of an offence and shall be liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 10 years, or to both. (Assault occasioning serious harm is punishable by up to life imprisonment.)

Subsection (2)(a) clarifies the issue of consent. By that provision, in a prosecution for an offence it is not a defence to prove that a consent (including, where relevant, a consent of a parent, guardian or other person having responsibility in relation to a person who has not attained the age of 16 years) was given by or on behalf of a woman to her genital mutilation.

Subsection (2)(b) provides a defence of necessary surgical intervention.

In order to avail of the defence, it must be shown that the procedure was a surgical operation performed by a registered medical practitioner (within the meaning of the Medical Practitioners Act 1978) and that the medical practitioner honestly believed, on reasonable grounds, that the operation was necessary to safeguard the life or health of the woman concerned or to correct a genital abnormality or malformation.

Subsection (3) defines genital mutilation as including any procedure for the excision, infibulation or any other form of mutilation, in whole or in part, of the external, or vulvar, female genitalia (including the labia majora, labia minora and clitoris) that is calculated or liable to cause serious or permanent impairment of any or all of the normal functions of those organs, including functions in relation to urination, menstruation, sexual intercourse and childbirth, or to cause pain, whether in relation to those functions or chronically.

It is also made clear that “woman” means a female person of any age.

Section 2 provides for the short title of the Bill.

Bealtaine, 2009.

Wt. 40088. 653. 5/09. Cahill. (X54316). Gr. 30-15.

AMENDMENTS DEFAMATION BILL 2006

[No. 43b of 2006] [09 July, 2009]

SECTION 3

1. In page 7, lines 1 to 4, subsection (2) deleted and the following substituted:

“(2) This Act shall not affect the operation of the general law in relation to defamation except to the extent that it provides otherwise (either expressly or by necessary implication).”.

SECTION 5

2. In page 7, before section 5, but in Part 1, the following new section inserted:

5.—(1) The Minister shall, not later than 5 years after the passing of this Act, commence a review of its operation.

(2) A review under *subsection (1)* shall be completed not later than one year after its commencement.”.

SECTION 7

3. In page 8, subsection (1), lines 5 to 8 deleted and the following substituted:

“7.—(1) Where the plaintiff in a defamation action serves on the defendant any pleading containing assertions or allegations of fact,”.

4. In page 8, subsection (1), lines 12 and 13, “, or that further information” deleted.

5. In page 8, lines 14 to 19, subsection (2) deleted and the following substituted:

“(2) Where the defendant in a defamation action serves on the plaintiff any pleading containing assertions or allegations of fact, the defendant shall swear an affidavit verifying those assertions or allegations.”.

6. In page 8, subsection (3), lines 23 and 24, “assertions, allegations or further information” deleted and “assertions or allegations” substituted.

7. In page 8, subsection (3), line 26, “assertions, allegations or further information” deleted and “assertions or allegations” substituted.

“Review of operation of Act.

[SECTION 7]

8. In page 8, subsection (4), line 30, “assertions, allegations or further information” deleted and “assertions or allegations” substituted.

9. In page 8, subsection (4), line 32, “assertions, allegations or further information” deleted and “assertions or allegations” substituted.

10. In page 8, subsection (5), lines 36 and 37, all words from and including “or” in line 36 down to and including “be,” in line 37 deleted.

SECTION 14

11. In page 11, before section 14, but in Part 3, the following new section inserted:

14.—(1) Subject to *sections 15(1) and 16(1)*, any defence that, immediately before the commencement of this Part, could have been pleaded as a defence in an action for libel or slander is abolished.

(2) In this section—

“defence” shall not include a defence under—

(a) statute,

(b) an act of the institutions of the European Communities, or

(c) regulations made for the purpose of giving effect to an act of the institutions of the European Communities;

“European Communities” has the same meaning as it has in the European Communities Act 1972;

“statute” means—

(a) an Act of the Oireachtas, or

(b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues to be of full force and effect by virtue of Article 50 of the Constitution.”.

SECTION 15

12. In page 11, subsection (1), line 30, “Act in accordance with *section 1(2)*” deleted and “section” substituted.

13. In page 13, subsection (2), between lines 9 and 10, the following inserted:

“(v) made in the course of proceedings before an arbitral tribunal where the statement is connected with those proceedings,”.

14. In page 13, lines 17 to 20, subsection (4) deleted.

SECTION 16

15. In page 13, subsection (1), lines 26 and 27, “Act in accordance with *section 1*

(2)” deleted and “section” substituted.

“Abolition of certain defences.

[SECTION 16]

16. In page 13, lines 42 to 48 and in page 14, lines 1 to 4, subsection (3) deleted and the following substituted:

“(3) Without prejudice to the generality of *subsection (1)*, it shall be a defence to a defamation action for the defendant to prove that the statement to which the action relates is—

(a) a statement to which *Part 1 of Schedule 1* applies,

(b) contained in a report, copy, extract or summary referred to in that Part, or

(c) contained in a determination referred to in that Part.

(4) Without prejudice to the generality of *subsection (1)*, it shall be a defence to a defamation action for the defendant to prove that the statement to which the action relates is contained in a report, copy or summary referred to in *Part 2 of Schedule 1*, unless it is proved that the defendant was requested by the plaintiff to publish in the same medium of communication in which he or she published the statement concerned, a reasonable statement by way of explanation or a contradiction, and has refused or failed to do so or has done so in a manner that is not adequate or reasonable having regard to all of the circumstances.”.

SECTION 17

17. In page 14, lines 17 to 27, subsection (1) deleted and the following substituted:

“17.—(1) In a defamation action, the defence of qualified privilege shall fail if, in relation to the publication of the statement in respect of which the action was brought, the plaintiff proves that the defendant acted with malice.”.

SECTION 22

18. In page 18, subsection (1), lines 25 to 27 deleted and the following substituted:

“as soon as practicable after the plaintiff makes complaint to the defendant concerning the utterance to which the apology relates, or after the bringing of the action, whichever is earlier.”.

SECTION 24

19. In page 19, lines 1 to 11, subsection (1) deleted and the following substituted:

“24.—(1) It shall be a defence (to be known, and in this section referred to, as the “defence of fair and reasonable publication”) to a defamation action for the defendant to prove that—

(a) the statement in respect of which the action was brought was published—

(i) in good faith, and

(ii) in the course of, or for the purpose of, the discussion of a subject of public interest, the discussion of which was for the public benefit,

[SECTION 24]

(b) in all of the circumstances of the case, the manner and extent of publication of the statement did not exceed that which was reasonably sufficient, and

(c) in all of the circumstances of the case, it was fair and reasonable to publish the statement.”.

20. In page 19, subsection (2), lines 26 to 32, paragraph (f) deleted and the following substituted:

“(f) in the case of a statement published in a periodical by a person who, at the time of publication, was a member of the Press Council, the extent to which the person adhered to the code of standards of the Press Council and abided by determinations of the Press Ombudsman and determinations of the Press Council;

(g) in the case of a statement published in a periodical by a person who, at the time of publication, was not a member of the Press Council, the extent to which the publisher of the periodical adhered to standards equivalent to the standards specified in *paragraph (f)*.”.

21. In page 19, subsection (2), lines 41 and 42, paragraph (i) deleted and the following substituted:

“(i) the attempts made, and the means used, by the defendant to verify the assertions and allegations concerning the plaintiff in the statement.”.

22. In page 20, lines 4 to 15, subsection (4) deleted.

SECTION 26

23. In page 21, line 14, “High Court” deleted and “Circuit Court” substituted.

24. In page 21, between lines 28 and 29, the following subsection inserted:

“(3) For the avoidance of doubt, an applicant for a declaratory order shall not be required to prove that the statement to which the application concerned relates is false.”.

25. In page 21, lines 33 and 34, subsection (4) deleted.

26. In page 22, between lines 2 and 3, the following subsection inserted:

“(9) An application under this section shall be made to the Circuit Court sitting in the circuit where—

(a) the statement to which the application relates was published, or

(b) the defendant or one of the defendants, as the case may be, resides.”.

SECTION 31

27. In page 25, lines 4 to 12, section 31 deleted.

SECTION 34

28. In page 26, line 3, “criminal” deleted and “defamatory” substituted.

SECTION 35

29. In page 26, before section 35, but in Part 5, the following new section inserted:

35.—(1) A person who publishes or utters blasphemous matter shall be guilty of an offence and shall be liable upon conviction on indictment to a fine not exceeding €25,000.

(2) For the purposes of this section, a person publishes or utters blasphemous matter if—

(a) he or she publishes or utters matter that is grossly abusive or insulting in relation to matters held sacred by any religion, thereby causing outrage among a substantial number of the adherents of that religion, and

(b) he or she intends, by the publication or utterance of the matter concerned, to cause such outrage.

(3) It shall be a defence to proceedings for an offence under this section for the defendant to prove that a reasonable person would find genuine literary, artistic, political, scientific, or academic value in the matter to which the offence relates.

(4) In this section “religion” does not include an organisation or cult—

(a) the principal object of which is the making of profit, or

(b) that employs oppressive psychological manipulation—

(i) of its followers, or

(ii) for the purpose of gaining new followers.”.

30. In page 26, before section 35, but in Part 5, the following new section inserted:

36.—(1) Where a person is convicted of an offence under *section 35**, the court may issue a warrant—

(a) authorising any member of the Garda Síochána to enter (if necessary by the use of reasonable force) at all reasonable times any premises (including a dwelling) at which he or she has reasonable grounds for believing that copies of the statement to which the offence related are to be found, and to search those premises and seize and remove all copies of the statement found therein,

(b) directing the seizure and removal by any member of the Garda Síochána of all copies of the statement to which the offence related that are in the possession of any person,

(c) specifying the manner in which copies so seized and removed shall be detained and stored by the Garda Síochána.

(2) A member of the Garda Síochána may—

(a) enter and search any premises,

[*SECTION 35*]

(b) seize, remove and detain any copy of a statement to which an offence under *section 35** relates found therein or in the possession of any person, in accordance with a warrant under *subsection (1)*.

(3) Upon final judgment being given in proceedings for an offence under *section 35**, anything seized and removed under *subsection (2)* shall be disposed of in accordance with such directions as the court may give upon an application by a member of the Garda Síochána in that behalf.”.

[**Note: This is a reference to the section inserted by amendment No. 28.*]

SCHEDULE 1

31. In page 31, between lines 30 and 31, the following inserted:

“19. Any statement published by a person in accordance with a requirement under an Act of the Oireachtas whether or not that person is the author of the statement.”.

EUROPEAN COMMUNITIES (FREE MOVEMENT OF PERSONS) (AMENDMENT) REGULATIONS 2008

STATUTORY INSTRUMENTS.

S.I. No. 310 of 2008

I, Willie O’Dea, Acting Minister for Justice, Equality and Law Reform, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purposes of giving effect to Directive 2004/38/EC1 of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, hereby make the following regulations:

Citation

1. (1) These Regulations may be cited as the European Communities (Free Movement of Persons) (Amendment) Regulations 2008.
- (2) The European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006) and these Regulations may be cited as the European Communities (Free Movement of Persons) Regulations 2006 and 2008.

Interpretation

2. In these Regulations “Principal Regulations” means the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006).

Amendment of Principal Regulations

3. Regulation 3 of the Principal Regulations is amended by—

(a) the substitution of the following paragraphs for paragraphs (1) and (2):

“(1) These Regulations shall apply to—

(a) Union citizens,

(b) qualifying family members of Union citizens, who are not themselves Union citizens, and—

(i) who seek to enter the State in the company of those Union citizens in respect of whom they are family members, or

(ii) who seek to join those Union citizens, in respect of whom they are family members, who are lawfully in the State, and

(c) permitted family members of Union citizens—

(i) who seek to enter the State in the company of those

Union citizens in respect of whom they are family members, or

(ii) who seek to join those Union citizens, in respect of whom they are family members, who are lawfully present in the State.

(2) Where, before the coming into operation of the Regulations of 2008, a qualifying family member or a permitted family member had made an application to the Minister for a residence card and the application had not been determined by the Minister then, that application shall be deemed to be an application under these Regulations (as amended by the Regulations of 2008) and shall be dealt with accordingly.”, and

(b) the insertion of the following paragraph after paragraph (4):

“(5) In this Regulation, “Regulations of 2008” means the European Communities (Free Movement of Persons) (Amendment) Regulations 2008.”.

GIVEN under the Official Seal of the Minister for Justice, Equality and Law Reform. 31 July 2008 Acting Minister for Justice, Equality and Law Reform