



# Relate

The journal of developments in social services,  
policy and legislation in Ireland

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## Charities regulation in Ireland

Charitable organisations in Ireland are regulated by the Charities Act 2009. The main provisions of the Charities Act 2009 came into effect on 16 October 2014. The Act established the Charities Regulatory Authority as the body to ensure compliance with the provisions of the Act.

The Act reformed the law on charities in Ireland to ensure greater accountability and transparency and to ensure that charitable status is not abused. The Act also aims to enhance public trust and confidence in charities and create transparency across the charities sector.

This issue of *Relate* describes the main provisions of the Charities Act 2009, their effect on the administration of charities in Ireland, and the role of the Charities Regulatory Authority (Charities Regulator).

## What is a charity?

The Charities Act 2009 defines a charitable organisation as the trustees of a charitable trust or a body corporate (this usually means a company) or an unincorporated body:

- That promotes a charitable purpose only
- That is required under its constitution or governing documents to apply all of its property to further that purpose except for money used in its operation and maintenance (for example, staff wages) and, in the case of religious organisations or communities, money used for the accommodation and

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care of the members of the organisation or community, and

- None of whose property is payable to the members of that body except in specific circumstances

The Charities Act 2009 sets out specific types of organisations which are not, and cannot become, charities. These are known as *excluded bodies* (see page 3).

## Charitable purpose

Your organisation's 'purpose' is what it is set up to achieve. This purpose should describe what outcomes your organisation is set up to achieve, how it will achieve these outcomes, who will benefit from these outcomes and where the benefits will be felt. This purpose is usually set out in your organisation's governing document. If your organisation is a trust, this document will be the deed of trust which establishes the trust. If your organisation is a company, this document will be the constitution, formerly known as the memorandum and articles of association. Unincorporated associations may have a written set of rules.

A purpose will not be a charitable purpose unless it is of public benefit. For example, a gift or donation that benefits only one person, or is confined to a class of people who are connected to the donor either by family or business, is not of public benefit and so will not be regarded as charitable.

However, gifts which are limited to a class of people may be of public benefit depending on a number of factors including the reason for the limitation and the nature and purpose of the gift.

Section 3 of the Charities Act 2009 sets out the four types of charitable purposes as:

- The prevention or relief of poverty or economic hardship
- The advancement of education
- The advancement of religion
- Any other purpose that is of benefit to the community including, but not limited to, integration of the disadvantaged, promotion of health, environmental protection, animal welfare and the arts

## The prevention or relief of poverty or economic hardship

Poverty and economic hardship do not necessarily mean just a lack of money or material things. These terms may also relate to the impact that a lack of money or material things has on a person. For example, your organisation could fall into this category if it exists to provide money

management and debt advice, or training in work skills to improve employment prospects.

What constitutes the prevention or relief of poverty or economic hardship will vary depending on where and with whom your organisation works. For example, an organisation working in one of the world's poorest regions might provide clothing or food, but an organisation working in Ireland might help low-income families by providing gifts for children at Christmas.

## The advancement of education

The advancement of education requires your organisation to support education. This does not necessarily mean the direct provision of structured learning. For example, your organisation may exist to build schools in a developing country or provide school books to children of low-income families in Ireland.

## The advancement of religion

The Charities Act 2009 does not contain a definition of religion. However, existing case law has established that a religion has two core elements:

- Belief in a 'Supreme Being'
- Faith and worship of that 'Supreme Being'

In addition to examining whether your organisation meets the criteria of a religion, the Charities Regulator will also examine how your organisation advances this religion, for example, through the provision of places of worship, raising awareness of religious beliefs or doing missionary work.

Donations or gifts for the advancement of religion are presumed to be of public benefit, unless the contrary is proved. However, a donation or gift is not deemed to be for the advancement of religion if it is made to, or for the benefit of, an organisation or cult that employs oppressive psychological manipulation of its followers or to gain new followers, or whose main objective is to make a profit.

If the Charities Regulator wants to rule that a gift for the advancement of religion is not of public benefit, it must get the consent of the Attorney General. There is no appeal to the Charity Appeals Tribunal against such a decision by the Charities Regulator or the Attorney General.

## Any other purpose that is of benefit to the community

The Charities Act 2009 provides further detail of what is deemed to be a purpose of benefit to the community, and includes:

- Advancement of community welfare, including the relief of those in need by reason of youth, age, ill-health or disability
- Promotion of civic responsibility or voluntary work
- Promotion of health
- Promotion of religious or racial harmony
- Protection of the natural environment and the suffering of animals
- Advancement of the efficient and effective use of the property of charitable organisations
- Advancement of the arts, culture, heritage or sciences
- The integration of those who are disadvantaged, and the promotion of their full participation in society

## 'The charity test'

The Charities Act 2009 sets out the requirements which organisations must meet if they are to be considered a charitable organisation and therefore regulated by the Act. The Charities Regulator describes this as 'the charity test' and, to qualify, an organisation must meet **all** of the following criteria:

- Operates in the Republic of Ireland (this does not mean that the people that your organisation will benefit need to be in Ireland)
- Exists for a charitable purpose(s) (see above)
- Promotes this charitable purpose(s) only
- Carries out all activities to further this charitable purpose(s)
- Exists to benefit the public or a section of the public in Ireland, or elsewhere, through its charitable purpose(s)
- Is not an excluded body

## Excluded bodies

The Charities Act 2009 sets out specific types of organisations which are not, and cannot become, charities. These are known as *excluded bodies*.

Excluded bodies include:

- A political party, or a body that promotes a political party or candidate (there are separate registration requirements for political parties)
- 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 (see below)
- Sporting bodies (see below)
- A trade union or a representative body of employers
- A chamber of commerce

- A body that promotes purposes that are unlawful, contrary to public morality, contrary to public policy, in support of terrorism or terrorist activities, or for the benefit of an organisation, membership of which is unlawful

## *Sporting bodies*

Not all sports-related bodies are automatically excluded. For example, a cycling club for survivors of cancer and their families in a particular part of Ireland may be considered a charity under the advancement of community welfare and the promotion of health.

## *Promotion of political causes*

An organisation which has an exclusively political purpose cannot be a registered Irish charity under the Charities Act 2009. An organisation will be considered to have a political purpose if it is a political party, promotes a political party or candidate, or is set up exclusively to promote a political cause, such as bringing about a change in the law or policies of the Government or other public bodies.

However, a charity may engage in activities to promote a political cause provided that the promotion of the political cause:

- Relates directly to the advancement of its charitable purpose
- Does not promote a political party or candidate
- Is not contrary to the charity's governing document

In February 2018, the Charities Regulator published *Guidance on Charities and the Promotion of Political Causes* which explains the rules that apply to organisations when engaging in activities to promote a political cause. The publication is available to download at [charitiesregulator.ie](http://charitiesregulator.ie).

Charities which engage in promoting a political cause should also comply with the Regulation of Lobbying Act 2015. This Act requires anyone engaged in lobbying to make their identity known to the public by being on the Register of Lobbying and supplying certain information relating to their lobbying activities to the Standards in Public Office Commission (Standards Commission) on a periodic basis. Further information is available at [lobbying.ie](http://lobbying.ie).

## Types of charitable organisations

Charities can take a number of 'models' and 'forms'. These models may include service providers, grant givers and membership organisations, to name a few. The forms a charity can take may include a company limited by guarantee, other company types, associations or trusts. Whatever model or form a charity takes, it must pass 'the charity test' in order to apply to register.

### Charitable trusts

A charitable trust is 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 the advancement of that purpose, except for moneys expended in the management of the trust.

The advantages of a charitable trust include:

- It is well-adapted to the management of assets held for charitable purposes, either as a grant-making trust or as a trust supporting a charitable service constituted in another form
- The efficient management of substantial assets and the distribution of cash grants and where the administration of the trust will be undertaken by a small body of experienced trustees
- Relative speed, simplicity and lack of cost involved

The disadvantages of a trust include:

- They can be quite cumbersome and undemocratic in that, once the trustees are appointed, they are difficult to remove and therefore the group or charitable association only has indirect control over its own property
- It is not a suitable form for a charity which is a member organisation, or for one likely to engage in providing services, or to employ substantial numbers of staff
- Trustees have no limited liability and can be sued in their personal capacity for breach of trust and can be held personally liable for third-party debts
- There are far greater restrictions placed on the trustees of a trust than on directors of a company
- The alteration or change of trustees is complex. The trustees have no power to alter or amend the trust deed unless the trust deed specifically gives authority

### Bodies corporate

Charities are often established as companies. These are usually companies limited by guarantee and governed by

a constitution (formerly known as a memorandum and articles of association). Companies are subject to company law and are required to meet various rules in relation to keeping accounts and records. Company law is enforced by the Companies Registration Office (CRO) and the Office of the Director of Corporate Enforcement.

It may be appropriate to establish a company where some or all of the following apply:

- An unincorporated association has grown in size and level of organisational activity
- An organisation will be quite large
- It will employ staff
- It will deliver charitable services under contractual agreements
- It will regularly enter into contracts
- It will be an owner of freehold or leasehold land or other property

### Unincorporated associations

Some smaller charitable organisations may be established as unincorporated associations governed by a constitution or set of rules. These organisations are like clubs, consisting of people bound together by mutual agreement, who meet on a regular basis to pursue a common interest.

An unincorporated association is not a separate legal entity from its members, nor does it have limited liability or a legal personality of its own. This means that it cannot enter into contracts or own property.

The constitution is binding among members of the organisation, but it has no legal effect in regard to non-members. Therefore, anything done by the organisation is done by all the members of the organisation, who are responsible for all the activities of the organisation. Individual members are personally liable for any debts or obligations.

### Charity trustees

Charity trustees are the people who exercise control over and are legally responsible for the management of a charity. Charity trustees include:

- Trustees as specified in the deed of trust
- The directors and other officers of a company where the charity is a company. Where a charity is a company, a trustee who is also a director of the company has additional duties under company law and common law in their capacity as a company director.
- Officers, or anyone acting officially in control of the

organisation such as the board of management, in cases where the organisation is an unincorporated group

### ***Payments to trustees***

Charity trustees may not profit from carrying out their duties as a charity trustee. You cannot accept a salary specifically for acting as a charity trustee, or receive other benefits for this. However, reasonable expenses incurred in carrying out your duties may be reimbursed by your charity.

Section 89 of the Charities Act 2009 provides for charity trustees to enter into a written service agreement with a charity, but this section has not yet been commenced.

### ***Duties of a trustee***

Your primary duties as a charity trustee are contained within the governing document of your charity, legislation (statute) and common law (the body of Irish law based on established practice and decisions of the courts).

The general duties of a trustee are to:

- Comply with your charity's governing document
- Ensure that your charity is carrying out its charitable purposes for the public benefit
- Act in the best interests of your charity
- Act with reasonable care and skill
- Manage the assets of your charity
- Make appropriate investment decisions
- Ensure that your charity is registered on the Charities Regulator's Register of Charities
- Ensure that your charity keeps proper books of account
- Ensure that your charity prepares and furnishes financial accounts to the Charities Regulator
- Ensure that your charity prepares and furnishes an annual report to the Charities Regulator
- Ensure that you comply with any statutory directions issued by the Charities Regulator
- Ensure that the Charities Regulator is informed if you think that there are reasonable grounds for believing a theft or fraud has occurred (disclosure obligation)

Trustees are also required to ensure that their charity complies with the requirements of other relevant legislation, for example, data protection, health and safety and employment legislation.

### **Who may not be a trustee**

You may not be a trustee of a charitable organisation if you:

- Are adjudicated bankrupt
- Make a composition or arrangement with creditors – this means you cannot be a trustee if you enter an insolvency arrangement under the Personal Insolvency Act 2012
- Are a company that is in the course of being wound up
- Are convicted on indictment of an offence
- Are sentenced to a term of imprisonment by a court
- Are disqualified from acting as a director or auditor or from managing a company under the Companies Acts or disqualified from being a pension fund trustee under the Pensions Acts
- Have been removed from the position of a charity trustee by a High Court order under the Charities Act 2009

If you are not qualified to be a trustee, or you cease to be qualified, you may apply to the High Court for an order that you may be a trustee of a particular charity or a particular class of charities. The High Court may make such an order if it considers that this would be in the public interest and best interests of the charity concerned or the class of charities concerned.

It is an offence to act as a trustee while you are not qualified.

## **Charities Regulatory Authority**

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The Charities Regulatory Authority (or Charities Regulator) is an independent body, primarily responsible for ensuring the compliance of charitable organisations with the Charities Act 2009 and maintaining the public register of charitable organisations operating in Ireland.

The Charities Regulator has a website with detailed information on the legislation of charities in Ireland and requirements and obligations of charitable organisations [charitiesregulator.ie](http://charitiesregulator.ie).

### **Functions**

The general functions of the Charities Regulator are to:

- Increase public trust and confidence in the management and administration of charitable trusts and charitable organisations
- Promote compliance by charity trustees with their duties
- Promote the effective use of the property of charitable trusts or charitable organisations
- Ensure the accountability of charities to donors and beneficiaries of charitable gifts, and to the public

- Promote understanding of the requirement that charitable purposes confer a public benefit
- Establish and maintain a register of charities
- Ensure and monitor compliance by charities with the Charities Act 2009
- Carry out investigations in accordance with the Act
- Encourage and facilitate the better administration and management of charitable organisations by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and model constitutional documents
- Carry on such activities or publish such information concerning charitable organisations and charitable trusts as it considers appropriate
- Provide information or advice, or make proposals, to the Minister for Rural and Community Development on matters relating to its functions

## Register of charitable organisations

The Charities Regulator maintains a register of charitable organisations that operate or carry on activities in the State. Once an organisation is awarded charitable status, the Regulator assigns a Registered Charity Number (RCN) to that charity and it is entered on the register.

Registration with the Charities Regulator and having a Registered Charity Number (RCN) are separate to having a CHY number from the Revenue Commissioners. A CHY number is the number allocated by the Revenue Commissioners to charities which have been granted charitable tax exemption.

An organisation should first apply to the Charities Regulator for inclusion on the Register of Charities. If the organisation chooses, it may then apply to the Revenue Commissioners for charitable tax exemption.

The Revenue Commissioners decide whether or not an organisation is charitable for tax purposes and, as such, whether or not an organisation qualifies for exemption from tax.

The Revenue Commissioners are not bound by any decision of the Charities Regulator in relation to whether or not a purpose is of public benefit. They are also not bound by a decision of the Charities Regulator when they make decisions in respect of exemption from various taxes.

The Revenue Commissioners maintain a list of organisations which have been granted charitable tax exemption status at [revenue.ie](http://revenue.ie).

## New charities

There are currently more than 9,300 charities on the Register of Charities. In 2017, approximately 1,750 charities were added to the register.

An organisation which intends to operate or carry on charitable activities in Ireland must apply to be registered. The trustees of the charity must make the application. It is an offence for an organisation to describe itself or to hold itself out as being a charity if it is not registered with the Charities Regulator.

The Charities Regulator does not currently charge organisations a fee for registration, but it is envisaged that there will be a fee of €100 in the future. Each organisation must provide information about itself, where it operates and what kind of activities it carries out. It must also provide details of its trustees, including their addresses.

An organisation must provide details of its income and fundraising activities including:

- Details of all its bank accounts
- The manner in which it has raised or proposes to raise money
- How much it raised in the year before applying for registration
- Details about all professional fundraising agents or consultants engaged by it or intended to be engaged by it
- Its gross income in the last financial year
- Its financial accounts for the previous year

It must also specify the risk assessment procedures, safety checks and safeguards employed where its activities include working with vulnerable people (including older people, children and young people, sick people and people with disabilities). It must also provide a copy of its constitution or governing documents.

The Regulator may exempt an organisation from some of these requirements if meeting them would be unduly onerous on the organisation.

Once registered, details such as the name of the organisation, the addresses from which it carries out its activities, the names of its trustees, its objects and its registration number will be published. If any of the information in the register ceases to be correct, the trustees are obliged to inform the Regulator.

If the registered organisation is a company, the Charities Regulator will inform the Companies Registration Office (CRO) of its registration as a charity.

The Register of Charities is published online at [charitiesregulator.ie](http://charitiesregulator.ie).

## Name of the charity

The Charities Regulator may refuse to register an organisation if its name is:

- The same as, or similar to, another charity
- Designed to mislead the public about its purposes or activities
- Likely to cause members of the public to believe that it is connected with the Government, a local authority or a person or people with whom it is not connected
- Offensive

Once a charity is registered, its name may be changed only with the consent of the Regulator. Such consent may be refused for the same reasons. A decision to refuse consent may be appealed to the Charity Appeals Tribunal.

## Refusal to register

If the Regulator decides not to register an organisation, it must give reasons and tell the organisation of its right to appeal.

## Removal from register

The Charities Regulator may remove an organisation from the register for various reasons and, in some cases, may apply to the High Court for a ruling on its removal.

The Regulator **must** remove an organisation from the register:

- If, after consulting the Garda Síochána, the Regulator considers that the organisation is promoting purposes that are unlawful, contrary to public morality, contrary to public policy, in support of terrorism or terrorist activities, or for the benefit of an organisation, membership of which is unlawful
- Where the name of the organisation is changed without the consent of the Regulator

The Charities Regulator **may** remove an organisation from the register if the organisation:

- Is a company and it is convicted of an indictable offence
- Has contravened the legislation in relation to keeping accounts and carrying out audits
- Fails to provide the Regulator with required information

If a charity trustee of a registered charity ceases to be qualified as a trustee, the Regulator may apply to the High Court for an order authorising it to remove the organisation from the register.

An organisation that is removed from the register must

wait at least a year before applying to be registered again. (The Minister may shorten this period.) The Regulator must give information on the register about any organisations that have been removed.

## Charity Appeals Tribunal

The Charity Appeals Tribunal deals with appeals under the Charities Act 2009.

An organisation may appeal if the Regulator refuses to register it, or it is removed from the register without the involvement of the High Court.

An appeal to the Tribunal must be brought within 21 days of the decision in question. In general, the proceedings of the Tribunal will be in public, but the Tribunal may order that the identities of some or all of the parties involved not be disclosed. The Tribunal may charge fees. The Minister may appeal to the Tribunal against a decision by the Charities Regulator to register an organisation. The Regulator is bound by the decision of the Tribunal. A decision of the Tribunal may be appealed to the High Court on a point of law.

## Obligations on charities

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### Co-operation with the Charities Regulator

The Regulator may require an organisation to provide it with the information it needs to enable it to perform its functions. For example, the Regulator must be notified if a charity has amended the wording of its governing document, or if it has changed its charitable purpose, or if it has encountered financial irregularities.

The Regulator may appoint an inspector or inspectors to investigate a charity. The charity and its trustees are required to fully co-operate with such an investigation. Among other things, it is required to provide the inspector with all relevant accounts and documents. The inspector has a range of powers to compel people, including people not directly connected to the charity, to co-operate with the investigation. If appropriate, the Regulator may refer the report of the investigation to other authorities such as the Director of Public Prosecutions or the Revenue Commissioners.

The Regulator has a wide range of powers to require the production of information and to search premises if necessary.

The Citizens Information Board provides independent information, advice and advocacy on public and social services through [citizensinformation.ie](http://citizensinformation.ie), the Citizens Information Phone Service and the network of Citizens Information Services. It is responsible for the Money Advice and Budgeting Service and provides advocacy services for people with disabilities.

**Head Office** t 0761 07 9000  
**Ground Floor** f 01 605 9099  
**George's Quay House** e [info@ciboard.ie](mailto:info@ciboard.ie)  
**43 Townsend Street** w [citizensinformationboard.ie](http://citizensinformationboard.ie)  
**Dublin 2**  
**D02 VK65**

## Keeping accounts

The Act requires charities that are not companies to keep proper books of account that:

- Correctly record and explain the transactions of the organisation
- Enable the financial position of the organisation to be determined with reasonable accuracy at any time
- Enable the charity trustees to ensure that any statements of account are prepared in compliance with the regulations, and
- Enable the accounts of the organisation to be readily and properly audited

The accounts of the charity must be available for inspection by any person appointed under the Act to inspect them. The accounts must be kept for at least six years from the end of the financial year to which the accounts relate. If the charity is wound up during those six years, the trustees at the time remain obliged to retain the accounts and make them available where required unless the Regulator allows for their destruction.

Charities that are companies have similar obligations under the Companies Acts.

## Audited accounts

Charities that are not companies and whose annual gross income or total expenditure is greater than a prescribed amount are required to have their accounts audited. The Minister may not prescribe an amount greater than €500,000.

The Regulator has the power to send auditors to check the accounts. The organisation may be liable for the costs involved.

## Annual statement of accounts and reports

The trustees of charities that are not companies are obliged to prepare an annual statement of accounts in the form as prescribed by the Minister.

If the gross income or expenditure of the organisation is not more than €100,000 in any financial year, the trustees may prepare an income and expenditure account and a statement

of the assets and liabilities of the organisation instead of an annual statement of accounts.

Charities are required to prepare annual reports regarding their activities and submit them to the Regulator. In some cases, these reports must include a statement of accounts.

Certain organisations are exempt from these requirements, such as education bodies and charities whose income or expenditure is less than €10,000 (this may be increased to a maximum of €50,000).

The Companies Registration Office provides the Regulator with the annual returns of companies that are registered charities.

## Protection of whistleblowers

If an individual believes a charity or other individual has breached the legislation, they may report this to the Regulator. Such an individual may not be sued, even if the reports are incorrect, provided they acted in good faith.

Employees of charities who make such reports may not be penalised by their employer, provided they acted reasonably and in good faith. If an employee is penalised in these circumstances, a case may be brought to the Workplace Relations Commission.

## Rules about fundraising

The Street and House to House Collections Act 1962 is the main legislation dealing with fundraising. It provides that charities must apply to the Garda Chief Superintendent for a permit to collect money from houses and in public places.

The Charities Act 2009 provides for changes to some of the rules in relation to such fundraising from the public, but these sections of the Act have not yet been commenced.

In May 2018, the Charities Regulator published *Guidelines for Charitable Organisations on Fundraising from the Public* which is available at [charitiesregulator.ie](http://charitiesregulator.ie).

The information in *Relate* is intended as a general guide only and is not a legal interpretation