

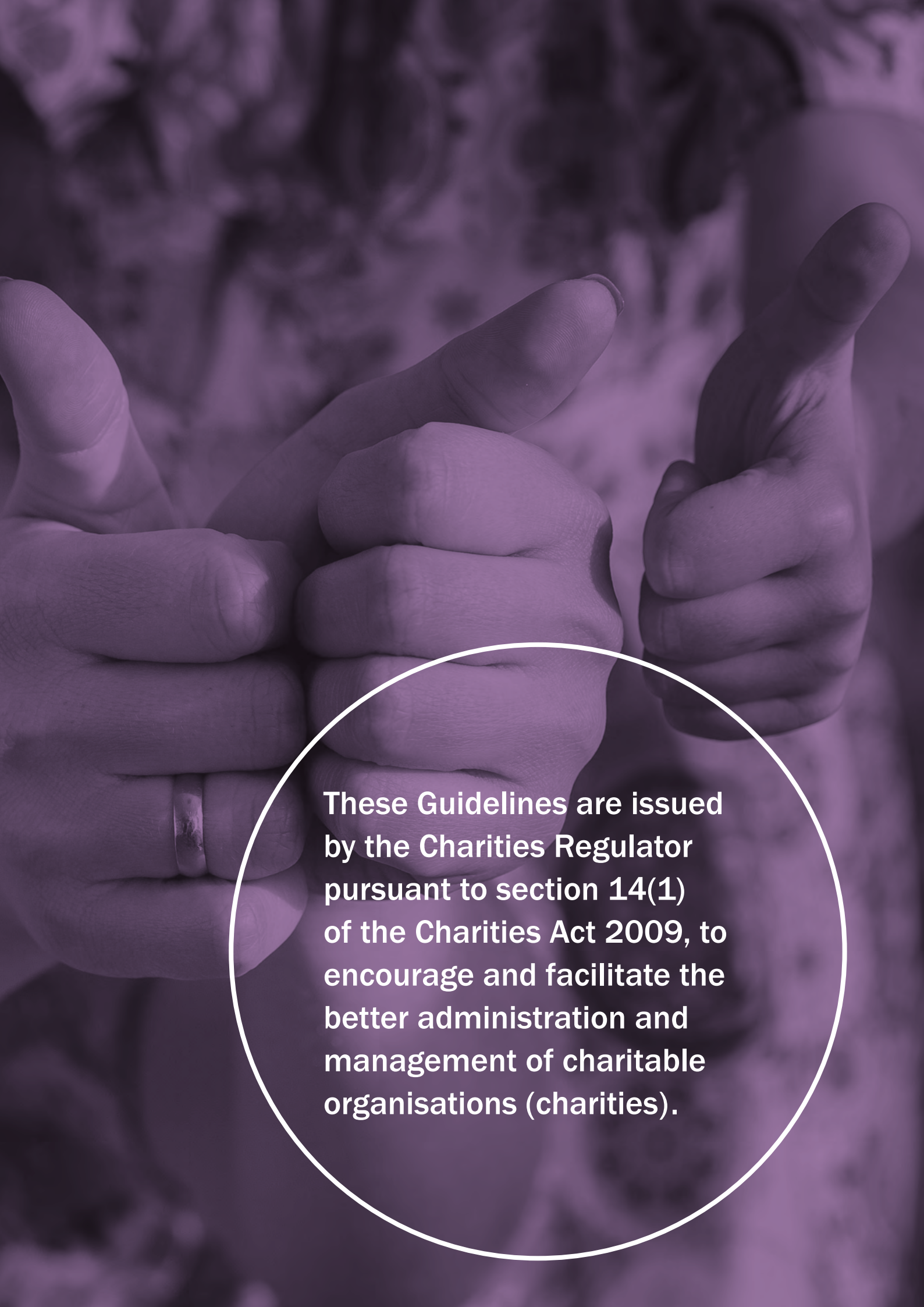


An Rialálaí
Carthanas

Charities
Regulator

Registration Guidelines



The image features three hands clasped together in a supportive grip, set against a blurred background of a crowd. A white circle is overlaid on the hands, containing the following text:

These Guidelines are issued by the Charities Regulator pursuant to section 14(1) of the Charities Act 2009, to encourage and facilitate the better administration and management of charitable organisations (charities).

Contents

1.	Who we are	4
2.	What this guide addresses?	5
3.	Is setting up a charity right for you?	5
4.	Preparing your application for registration	6
5.	Form a board of charity trustees	6
6.	Agree your organisation's name and structure	7
7.	Draft your organisation's governing document	8
8.	Plan for your organisation's future	9
9.	Draft your organisation's key policy documents	10
10.	The online application	12
11.	Assessment	14
12.	Decision	14
13.	Conclusion	15

LEGAL DISCLAIMER

This document is intended to provide general information in relation to applications for registration under section 39 of the Charities Act 2009. It is not, nor is it intended to be, a definitive statement of the law in this area. Organisations should obtain their own independent legal advice when making decisions relating to any of the matters referred to in this document.

1 Who we are

We are the Charities Regulatory Authority, or Charities Regulator for short. We are a statutory organisation, set up in October 2014, to regulate and protect charities.

We have a number of functions, such as setting up and maintaining the Register of Charities. We also ensure that charities comply with their legal requirements. We carry out investigations into the affairs of charities and we issue guidelines and codes of conduct¹.



¹ See www.charitiesregulator.ie for more information about us.

2 What this guide addresses?

All charities must apply to be registered with us.

This is a legal requirement. If you have yet to establish your charity, this document, along with our other guidance documents, should help you to make an informed decision on whether to proceed with an application to register as a charity. It will also help you to prepare your application.

While the registration process for most applications is likely to take four to six months to complete, certain applications may take longer. No registration fee currently applies.

3 Is setting up a charity right for you?

If you are considering setting up a charity, before beginning the registration process you should consider if it is the best way to achieve your aim. Ask yourself the following questions:

- Is there an existing charity carrying out the same activities that I could assist as a volunteer or as a charity trustee?
- Could I better address the need I have identified by setting up a donor-advised fund²? This is a fund created for the purpose of managing charitable donations on behalf of an organisation, a family, or an individual. The fund is administered by a third party charity and is an alternative to direct giving or a private foundation.
- Do I have the capacity and support to run a charity? (See our suite of guidance documents and e-learning tool for more information on charities including the duties of trustees and internal financial controls).

If you decide that setting up a charity is the right option for you, read on to learn more about the registration process, including some of the documentation, policies and processes required to register and run a charity.

2 See <http://www.communityfoundation.ie/giving/how-we-work/donor-advised-funds>

4 Preparing your application for registration

The registration process is detailed, so before commencing any activities or submitting an application to register, the following essential matters should be prioritised:



5 Form a board of charity trustees

The board of charity trustees are volunteers whose role carries significant responsibility.

Your organisation's board of charity trustees should have the right mix of skills to manage all aspects of the charity. We recommend that all prospective charity trustees read our guidance document, '*Guidance for Charity Trustees*' and complete the associated module available on our website through our e-learning tool⁴, before committing to the role.

3 Available from: www.charitiesregulator.ie

4 Available from: <https://trusteelearning.ie/>

6

Agree your organisation's name and structure

The name of your organisation must not be the same or similar to another registered charity and it must not be misleading or offensive.

When deciding the structure or legal form that your organisation will take, your organisation's board of charity trustees should consider what structure will best suit the organisation's charitable purpose or purposes and size. They should inform themselves of the implications regarding the particular structure they choose, for example whether charity trustees will be held personally liable without limitation for the debts of the charity.

The most common charity structures in Ireland are: a company limited by guarantee (clg), an unincorporated body and a charitable trust.



7

Draft your organisation's governing document

The governing document must make clear that your organisation is established for an exclusively charitable purpose or purposes.

The Charities Act 2009 sets out the specific categories of charitable purpose. What your organisation is set up to achieve (i.e. its main object as reflected in the main object clause of its governing document) must further at least one of those purposes and benefit the public or a section of the public in Ireland or elsewhere. These are two essential elements of the 'charity test'.

The main object clause, is set out near the beginning of a governing document. It clearly outlines **what** an organisation is set up to achieve, **where** it will operate, **who** it will help and **how** it will achieve its objectives.

- For example: 'The main object for which (insert name of organisation) was established is the advancement of the arts (**what**), in Ballina, Co. Mayo (**where**), for young people (**who**), through the provision of training in drama and stage skills free of charge (**how**).'

To draft the main object clause coherently, the board of charity trustees should plan, discuss and agree, exactly how the organisation will further its charitable purpose through its main object, to benefit the public or a section of the public in Ireland or elsewhere. The following four questions should assist:

- ✓ Is your organisation established for a charitable purpose(s) only?
- ✓ Do all of the activities your organisation undertakes (or plans to undertake) relate directly to furthering that charitable purpose(s)?
- ✓ Does your organisation apply all of its income and property towards that charitable purpose(s)?
- ✓ Is your charity's purpose(s) of public benefit?

Once the main object is agreed, the rest of the governing document should be drafted. Your organisation's governing document should provide the basis for everything that your organisation will do and how it will do it. We have produced two template model constitutions, one for a body corporate and the other for an unincorporated body.

The board of charity trustees can adopt the appropriate template in full or amend it to fit the organisation's specific needs. Any amendments the board of charity trustees make to the relevant template document must comply with both charity law and company law (if applicable). You can download the model constitution for a body corporate or the model constitution for an unincorporated body from our website⁵.

⁵ Available from: www.charitiesregulator.ie

8

Plan for your organisation's future

It is vital that every charitable organisation is managed in such a way that the public benefit it provides is sustainable and any charitable assets are safeguarded.

A level of planning and internal financial controls appropriate to the size of the organisation, will assist the board of charity trustees in ensuring your charity is managed effectively. The board of charity trustees should discuss how the organisation will continue year-on-year, its long and short-term goals, its financial estimates and priorities and how these will be monitored.

We recommend the board of charity trustees draft and agree a strategic plan and a business plan, before applying for registration.



9

Draft your organisation's key policy documents

Before commencing any activities, the board of charity trustees should draft and agree the organisation's key policy documents.

These documents should then be implemented as soon as the organisation commences activities. We will require a copy of each of the following documents (where applicable), during the application process:

- **Conflict of interest policy:** all charity trustees should be aware of what a conflict of interest is and discuss and adopt a policy for identifying, managing and recording all conflicts. We recommend that the board of charity trustees reads our guidance document 'Managing Conflicts of Interest', before drafting a conflict of interest policy. In addition to your organisation's conflict of interest policy, we will also require details of any 'connected persons'*.

***Section 2(2) of the Charities Act 2009 sets out what is meant by a 'personal connection' and who is classed as a 'connected person'.**

It includes familial, business and employment relationships. The board of charity trustees should be aware of any personal connection between:

- The charity trustees;
- A charity trustee and any paid member of staff;
- A charity trustee and any person providing goods or services at a cost to the charity e.g. landlord, accountant, equipments etc.

The board of charity trustees should consider whether any 'private benefit' is reasonable, necessary and ancillary to the organisation's charitable purpose.

Risk assessment procedures, safety checks and safeguards:

If your organisation plans to work with children or vulnerable adults, either as beneficiaries or as volunteers, the board of charity trustees must also draft and agree risk assessment procedures, safety checks and safeguards.

It is important that all risk assessment procedures, safety checks and safeguards relating to the protection of vulnerable persons are complied with, meet the applicable legal requirements and standards for both the planned and actual activities undertaken and are independently verified.

Beneficiary selection and fees policy:

Charitable organisations promote their charitable purpose and provide public benefit through their charitable activities. An organisation may work for the benefit of a specific category of person, for example, to support sufferers of a particular rare illness. Alternatively an organisation may work for the benefit of all, for example an environmental group. We recommend charity trustees draft and agree a policy on the organisation's intended beneficiaries. The policy should include details of any selection process the organisation will implement, where for example demand exceeds supply. The policy should also address any intended restrictions applied to persons accessing or receiving the public benefit, for example beneficiaries residing in a particular area. Any restrictions should be reasonable and justified.

Similarly should the organisation intend on charging a fee for the charitable activities it provides, the policy should outline the basis for the fee and whether it is likely to limit the number of persons or classes of person who will benefit from the organisation's charitable activities. The board of charity trustees should ensure that the policy outlines the measures in place to ensure that the charging of a fee does not limit who can benefit from the organisation's charitable activities.



10 The online application

Having prepared for the application process, the board of charity trustees should nominate an individual to complete the online application and act as the main point of contact should we have any queries.

The person nominated does not necessarily have to be a charity trustee, but they should have sufficient knowledge to complete the application.

There is a user manual on our website that will assist the nominated person to create an online account and complete the online application form.

The online application form has a number of sections that require your organisation's nominated person to input specific information. This information is outlined in section 39 of the Charities Act 2009 and can be summarised under the following headings:

Establishment details:

These details include your organisation's name, date of establishment and place of business/operating address.

Main Object Clause:

Based on the charitable purpose(s) selected, your organisation's nominated person will be asked to provide further details. For example:

- If your organisation is intending to support a project overseas, we will seek information about your organisation's partners in that location and details of your organisation's procedures for sending funds overseas;
- If your organisation is providing an animal rehoming service, we will seek information about the numbers and types of animals your organisation plans to rehome;
- If the charitable purpose of your organisation is the 'advancement of religion', we will seek information about the canons, laws, ordinances and tenets of the religion.

Charitable Purpose(s) and the public benefit it provides:

Your organisation's nominated person will be required to select a specific charitable purpose or purposes, in line with the Charities Act 2009 and consistent with your organisation's governing document. Where a number of charitable purposes are selected, the public benefit arising from each purpose must be identifiable.

To avoid delays at the online application stage, it is important that from the outset, the right charitable purpose or purposes are agreed by the charity trustees and included in your organisation's governing document.

Financial details and Accounts:

These details include your organisation's financial Year End date, gross income, financial projections and details of any assets. In addition, details of fundraising activities and of any professional fundraisers or consultants the organisation has engaged or intends to engage must be provided.

We also require the details of any bank accounts, including any credit union accounts, held by your organisation.

Trustees details:

The name of each member of the board of charity trustees along with their residential address, must be provided in the online application. Please note, where an application for registration is approved, the residential addresses of charity trustees will not be published on the publicly available Register of Charities.

The board of charity trustees must each sign a separate 'section 39 trustee declaration form'. This declaration form states that the application for charitable status is made by the trustees in accordance with section 39 of the Charities Act 2009 and that the information in the application is true and accurate to the best of their knowledge. Each form should be uploaded with the online application.

Note: It is an offence under section 39 of the Charities Act 2009 to knowingly or recklessly provide information or a particular to the Charities Regulator that is false or misleading in a material respect or which the person providing the information believes is not true.

The maximum penalty on conviction on indictment is a fine not exceeding €300,000 or up to 10 years imprisonment or both.

Prior to submitting an online application, it is possible for the nominated person to exit the form and save any changes that have been made, returning to complete the process at a later stage.

This is important, as an online application for registration will not be accepted unless it is fully complete and accompanied by all required information and documentation.

Other:

Your organisation's nominated person must also provide the following information, which we require to enable us to perform our functions under the Charities Act 2009:

- Details of the organisation's registration in other jurisdictions;
- Details of the organisation's reporting requirement to other bodies in the State;
- Links to any social media accounts associated with the organisation;
- Details, if applicable, where a charity trustee is, or was, a trustee of another charitable organisation.

11 Assessment

Our first step in processing your organisation's application is to check that it is complete and valid. It is in your organisation's interests to submit a complete application for registration at the outset, otherwise it will result in unnecessary delays.

Once your organisation's application is deemed to be complete, it will be assigned to one of our case officers and a full assessment will be carried out. The case officer will use the documentation and information provided to assess whether your organisation meets the requirements of the charity test.

The case officer may return your application to you seeking further detail or clarification and it is in your organisation's interests to respond to the case officer as quickly as possible.

In some cases, the board of charity trustees may be asked to attend a meeting to discuss your application. If you are invited to meet with us, you can bring advisors with you if you wish.

12 Decision

Once the case officer has completed an assessment of your application, they will make a recommendation on whether or not your organisation should be registered. A recommendation for registration will ultimately be referred to the Chief Executive Officer of the Charities Regulator for a final decision.

If your organisation's application is approved, we will notify you of this decision and your organisation will be added to the publicly available Register of Charities⁶.

6 Available from: www.charitiesregulator.ie

If we decide to refuse your organisation's application, we will issue a notice of intention to recommend refusal, setting out our reasons. You will have a right of reply before a final decision is made. If the final decision is a refusal, you will be informed in writing and the reasons for the refusal will be given.

If refused, you can appeal to the Charity Appeals Tribunal, an independent body established by the Charities Act 2009. Should you decide to appeal a decision to refuse your application, you must do so not later than 21 days after you receive notification of the decision to refuse, unless the Charity Appeals Tribunal extends the period for appealing the decision.

It is an offence under section 41 of the Charities Act 2009 for an unregistered charitable organisation to carry on activities in the State.

Any person who advertises, or invites members of the public to give money or property, or who accepts a gift of money or property, on behalf of a charitable organisation that is not a registered charitable organisation, or any person who causes another person to do so, will be guilty of an offence.

The maximum penalty on conviction on indictment is a fine not exceeding €300,000 or up to 10 years imprisonment or both.

13 Conclusion

This document provides some options to consider, when deciding whether or not registering a charity is the right option for you.

It provides insight regarding what is involved in the registration process and is intended to assist those who decide to make an application for registration.

Before you begin the online application process, use these handy checklists to ensure you have all of the information and documentation you will require.

Checklist: Information for the online application

✓	Name of charity	
✓	Principal place of business in the State	
✓	Details of the activities the charity carries out and intends to carry out to further its charitable purpose(s)*	
✓	Places where the charity carries on its activities, or intends to carry out its activities (incl. outside of the State)*	
✓	How the charity raises and proposes to raise funds*	
✓	Details of any fundraising agents*	
✓	The amount of any funds raised by the charity during the 12 months immediately preceding the application	
✓	The gross income of the charity during the financial year ending immediately preceding the application	
✓	Particulars of all bank and credit union accounts of the charity	
✓	Name of each charity trustee and the addresses at which they ordinarily reside	

* This information should be consistent with your organisation's strategic and business plans.

Below is a handy checklist of documents to have to hand when you are uploading your online application.

Checklist: Documentation for the online application

✓	Charity's Governing Document	
✓	Charity's Strategic Plan	
✓	Charity's Business Plan	
✓	Trustee declaration(s) signed and dated by all charity trustees	
✓	All financial accounts of the charity in respect of the 12 months immediately preceding the application	
✓	Conflict of Interest Policy	
✓	Risk assessment procedures, safety checks and safeguards, including details of the organisation providing Garda vetting (if applicable)	

Document Reference No RR GLS 8.2.1 002 Rev 000

Charities Regulator
3 George's Dock
IFSC
Dublin 1
D01 X5X0
Telephone: 01 633 1500

www.charitiesregulator.ie

© Charities Regulator 2018