



An Roinn Gnóthaí Eachtracha
Department of Foreign Affairs



An Rialálaí
Carthanas

Charities
Regulator

Memorandum of Understanding

between

the Charities Regulatory Authority

and

the Minister for Foreign Affairs, as represented by the Department of Foreign Affairs

1. Definitions

1.1 In this Memorandum of Understanding:

- (i) “2009 Act” means the Charities Act 2009 as amended from time to time;
- (ii) “Charities Regulator” means the Charities Regulatory Authority established by section 13 of the 2009 Act;
- (iii) “DFA” means the Minister for Foreign Affairs, as represented by the Department of Foreign Affairs;
- (iv) “MoU” means this Memorandum of Understanding;
- (v) “parties” means the Charities Regulator and DFA and “party” means either of them.

2. Purposes and objectives of this MoU

- 2.1 The parties recognise that there are areas where the performance of the functions of the Charities Regulator and DFA overlap. This MoU provides a framework for a working relationship between the Charities Regulator and DFA on matters within these areas. It supports cooperation and collaboration in the interest of ensuring appropriate sharing and assessment of information by both parties in the interest of upholding the integrity of charitable organisations and charitable trusts (“charities”) in Ireland and supporting public confidence in charities operating in Ireland or under Irish law.
- 2.2 The Charities Regulator and DFA are committed to the statutory purposes of this MoU which are¹:

¹ Section 33(1), 2009 Act.

- (i) to facilitate administrative cooperation between the Charities Regulator and DFA in the performance of their respective functions in so far as they relate to the regulation of charitable organisations or charitable trusts;
- (ii) to avoid duplication of activities by the Charities Regulator and DFA, and
- (iii) to ensure, as far as practicable, consistency between decisions made or measures taken by the Charities Regulator and DFA in so far as any part of those decisions or measures consists of or relates to a determination of any matters concerning the regulation of charitable organisations or charitable trusts.

2.3 The additional objectives of this MoU are:

- (i) to promote a common understanding of the responsibilities, working procedures, legal powers and constraints of the Charities Regulator and DFA;
- (ii) to facilitate and provide the necessary safeguards for the effective investigation and the exchange of information, with the objective of preventing, detecting, remedying misconduct or mismanagement in the administration of charities and charitable funds;
- (iii) to ensure appropriate consultation and co-operation on matters of mutual interest to ensure that charities are encouraged to comply fully with their legal responsibilities under charity law and adopt best practice and governance.

3. Statutory role, functions and relevant powers of the Charities Regulator

Role of the Charities Regulator

- 3.1** The Charities Regulator is the independent regulator of Irish charities as established by the 2009 Act. The Authority was established under the 2009 Act² in October 2014.

Functions of the Charities Regulator

- 3.2** The key functions of the Charities Regulator under the 2009 Act³ are:

- (i) to increase public trust and confidence in the management and administration of charitable trusts and charitable organisations;
- (ii) to promote compliance by charity trustees with their duties in the control and management of charitable trusts and charitable organisations;
- (iii) to promote the effective use of the property of charitable trusts or charitable organisations;
- (iv) to ensure the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public;
- (v) to promote understanding of the requirement that charitable purposes confer a public benefit;
- (vi) to establish and maintain a register of charitable organisations;
- (vii) to ensure and monitor compliance by charitable organisations with the 2009 Act;

² Section 13, 2009 Act.

³ Section 14, 2009 Act and section 82, 2009 Act.

- (viii) to carry out investigations in accordance with the 2009 Act;
- (ix) to 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;
- (x) to carry on such activities or publish such information concerning charitable organisations and charitable trusts as it considers appropriate;
- (xi) to provide information or advice, or make proposals, to the Minister for Rural and Community Development⁴ on matters relating to the functions of the Charities Regulator;
- (xii) to perform functions, previously performed by the Commissioners of Charitable Donations and Bequests for Ireland, under the Charities Acts 1961 and 1973.

Relevant powers of the Charities Regulator

3.3 The Charities Regulator is mandated by various provisions of the 2009 Act to enter administrative cooperation arrangements with other regulators and to share relevant information with other agencies. In particular:

- (a) section 33 of the 2009 Act requires the Charities Regulator, so far as is consistent with the proper performance of its functions, to endeavour to secure administrative cooperation between it and relevant regulators, and authorises it to enter an MoU or other arrangement with any relevant regulator for the purposes set out above;
- (b) section 32 of the 2009 Act empowers the Charities Regulator to provide a relevant person having functions relating to ensuring compliance with statutory requirements or to the detection, investigation or prosecution of offences with information in the possession of the Charities Regulator as may reasonably be required for the purpose of enabling the relevant person to perform his or her functions;
- (c) in certain circumstances, the Charities Regulator is required under section 28(1) of the 2009 Act to provide information obtained by the Charities Regulator in the performance of its functions that causes the Charities Regulator to suspect that an offence has been committed by a charity trustee or a charitable organisation to specified persons.

4. Role and functions of DFA

Role of DFA

4.1 The mission of the DFA is to serve the Irish people, to promote their values, and advance their prosperity abroad, and to provide the Government with the capabilities, analysis and influence to ensure that Ireland derives the maximum benefit from all areas of its external engagement.

Functions of DFA

4.2 The DFA fulfils a diverse range of functions through its headquarters and network of diplomatic and consular missions abroad. These include the administration and management

⁴ Functions under the 2009 Act were transferred to the Minister for Rural and Community Development pursuant to the Charities (Transfer of Departmental Administration and Ministerial Functions) Order 2017.

of a broad range of grant schemes and programme areas which provide significant funding to Irish charities.

Role of DFA for the purposes of this MoU

- 4.3 The Ministers and Secretaries Acts 1924 to 2020 provide the overall statutory basis for the Department's work. The DFA is a "relevant regulator" for the purposes of s. 33 of the Charities Act 2009 by virtue of S.I. No. 586 of 2017.
- 4.4 The DFA has a broad remit which includes serving Irish people at home and abroad; promoting reconciliation and cooperation; advancing Ireland's interests, influence and value; working for a fairer, just, secure and sustainable world; advancing Ireland's prosperity. As part of this, the Department provides significant grant funding to Non-Governmental Organisations, many of which are Irish and as such are registered with the Charities Regulatory Authority. The majority of grant funding is channelled through the Development Cooperation and Africa Division (DCAD) to Irish NGOs to implement programmes and projects in countries classified by the OECD as being eligible for overseas development assistance. DCAD also provides grants to Irish registered charities for global citizenship education in Ireland. In addition, grants are provided to NGOs through the Department's Emigrant Support Programme to strengthen ties with the diaspora, to reach to those who are less connected with our existing networks and to support new ways of building connections and support for the vulnerable. The Department also provides grants to NGOs through the Reconciliation Fund, to better relations within and between traditions in Northern Ireland, between North and South, and between Ireland and Britain.

5. Primary Areas of Co-operation

- 5.1 Both parties are engaged in the discharge of their respective functions in the public interest. DFA manages a broad range of grant schemes and programme areas and provides significant funding to Irish charities, including, but not limited to significant funding for Irish international development NGOs, as well as grants for conflict resolution, reconciliation, peace building, diaspora and immigrant supports.

All grants funded by the Department must contribute to delivering on one or more of the Department's high-level goals, related outcomes and priority outputs, as set out in the Statement of Strategy and related policies and strategies.

The CRA focuses on the proper operation of charities. The parties agree that their respective functions will be best discharged in a spirit of mutual cooperation and therefore agree to cooperate in particular in relation to the following matters (without limitation):

- (a) on cross referral of concerns (appropriately redacted) where one party believes that the matter falls within the remit of the other; in this regard, both parties will respect, maintain and adhere to all requirements of the relevant legislation;
- (b) for the Charities Regulator this includes but is not limited to: circumstances where the Charities Regulator, through its investigations and its compliance processes becomes aware of information which may relate to suspected concealment, misinformation or fraud involving a charity or a person responsible for its management that is partnered with DFA;
- (c) for DFA this includes but is not limited to: circumstances where DFA through its monitoring and auditing processes becomes aware of concerns which may relate to the management and governance of a charity or which may lead to a suspicion of unlawful activity involving such a charity or a person responsible for its management;

- (d) in particular, information may be shared on the registration status of charities;
- (e) any other matter in respect of which the parties agree that their cooperation would be in keeping with the spirit of this MoU or otherwise desirable in the public interest.

6. Exchange of Information

General

- 6.1 The parties will ensure that any disclosure of information under the terms of this MoU is carried out in a manner that is prompt, efficient, proportionate and fully in compliance with the law, including in particular the General Data Protection Regulation, the Data Protection Act 2018 and the 2009 Act.
- 6.2 Neither the Charities Regulator nor DFA will use any information disclosed under this MoU for any purpose other than the purpose of performing its statutory functions.
- 6.3 Without prejudice to any obligations under the Freedom of Information Act 2014, the Data Protection Act 2018 or any other statutory obligations that either party may have, neither the Charities Regulator nor DFA will disclose any confidential information received under the terms of this MoU to any third party without first obtaining the consent of the party that provided such information.
- 6.4 Nothing in this MoU requires either the Charities Regulator or DFA to disclose confidential information except in accordance with law.
- 6.5 Any sharing of data undertaken between the appropriate point of contact in the Charities Regulator and DFA will be appropriately documented and will be subject to strict access and security controls and will ensure secure disposal of shared data.

7. Liaison and communication

- 7.1 The parties agree to meet at least once each calendar year to review the effectiveness of this MoU and identify any issues that require to be addressed. Strategic, policy or operational meetings will be arranged as required and as agreed between the relevant liaison persons.
- 7.2 In order to ensure that matters are handled at the appropriate level, contact between the parties will be established between designated liaison persons (as set out in Annex 1).
- 7.3 The designated liaison persons may delegate ongoing liaison to other members of staff, but should ensure that such members of staff have the appropriate authority to agree principles, policy and processes or are in a position to secure that agreement within a reasonable time.
- 7.4 The parties undertake to communicate as appropriate on all matters of mutual concern. Communication will be on both formally through scheduled meetings and informally on an ad hoc basis.
- 7.5 The parties agree to consult each other in relation to any significant new strategic or policy proposals likely to affect the other party and to provide such relevant information or advice as is necessary.
- 7.6 Where possible, each party will, before publishing any materials, statements, reports or press releases on a matter relevant to the other party and its statutory remit, notify the other party in advance of publication and provide sufficient detail to enable the other party to understand the subject matter of the proposed publication.

8. **Miscellaneous matters**

Legal status of MoU

- 8.1 This MoU does not give rise to legally enforceable obligations on the part of either party. However, both parties will observe and give due respect to the agreed terms of this MoU.

Amendment of this MoU

- 8.2 Any provision of this MoU may be varied by the agreement in writing of both parties.

No disclosure if prohibited

- 8.3 This MoU does not operate to require either party to disclose information to the other if the disclosure of that information by the party concerned is prohibited by law.

Exceptional cases

- 8.4 While it is intended that the arrangements in this MoU should apply generally, it is recognised that some circumstances will require special handling. Nothing in this MoU prevents the making of arrangements to meet specific exceptional needs.

Effective Date

- 8.5 This MoU comes into effect upon the date of its signature by both parties and will continue in effect until it is terminated.

Review

- 8.6 This MoU will be reviewed annually on each anniversary of its signing. In particular, the content of the MoU will be reviewed to ensure that it remains relevant.

Joint training

- 8.7 The parties agree that they may engage in joint training or knowledge sharing exercises involving their respective personnel where doing so would support the purposes of this MoU.

Cost and expenditure

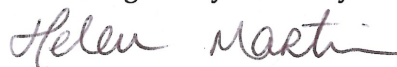
- 8.8 Each party will be solely responsible for the administration of, and any expenditure associated with activities carried out by it under this MoU.

Disputes

- 8.9 Any disagreement arising from the interpretation of this MOU will be referred to the Chief Executive of the Charities Regulator and the Assistant Secretary, DCAD, DFA who will endeavour to resolve it within the spirit implicit in this MoU.

Signed on behalf of the Charities Regulatory Authority

By: Helen Martin



Chief Executive

Date: 27/06/22

Signed on behalf of the Department of Foreign Affairs

By: Joe Hackett



Secretary General

Date: 27 June 2022

Annex 1 – Designated liaison persons

Area of Liaison	Charities Regulator	DFA
Legal Framework queries	Legal Advisor	Legal Advisor
Operational liaison including reporting of concerns	Director of Compliance & Enforcement	Deputy Director, Civil Society Unit
Media queries	Head of Stakeholder Engagement	Deputy Director, Communications Unit