



An Rialálaí
Carthanas

Charities
Regulator

FURTHER SUBMISSION TO THE JOINT COMMITTEE ON SOCIAL
PROTECTION, COMMUNITY AND RURAL DEVELOPMENT AND
THE ISLANDS

ON THE

GENERAL SCHEME OF THE CHARITIES (AMENDMENT) BILL
2022

30TH September 2022

Introduction

The Charities Regulatory Authority (“Charities Regulator”) welcomes the publication of the General Scheme of the Charities (Amendment) Bill 2022 by the Minister for Rural and Community Development and the opportunity provided by the Joint Committee on Social Protection, Community and Rural Development and the Islands (“Committee”) to provide written submissions to it on the General Scheme.

About the Charities Regulator

Established in October 2014 under the Charities Act 2009 (“the 2009 Act”), the Charities Regulator is an independent statutory body responsible for regulating charities in Ireland. A key statutory function under the 2009 Act is to increase public trust and confidence in the management and administration of charitable organisations. This in turn is supported by our other statutory functions which include maintaining the Register of Charities (“the Register”), which is publicly available, and ensuring that charities comply with charity law. Public trust underpins the viability of the sector, and issues relating to one charity can have a detrimental impact on the wider sector. Public trust and confidence in the regulatory framework for charities is also important in providing assurance to beneficiaries, donors and the wider public that the sector is regulated effectively.

The Charities Regulator also carries out functions under the Charities Acts 1961 and 1973 which were transferred to it under the 2009 Act when the body known as the Commissioners for Charitable Donations and Bequests for Ireland was dissolved. The Charities Regulator’s remit is therefore quite wide and involves assessment of what can often be complex applications for registration and other charity services.

The Charities Regulator currently has 43 staff members and its annual budget is approximately €4.4 million. In order to provide assistance to registered charities, applicants and the public, the Charities Regulator runs a small contact centre. In 2021, the contact centre dealt with approximately 17,000 telephone, e-mail and web contacts from the public.

About Ireland’s Registered Charity Sector

At the end of May 2022, there were 11, 498 registered charities (including schools) and 76,339 charity trustees on the Register. While registered charities can take different legal forms, the majority are either companies or unincorporated associations. Charity trustees are volunteers who are responsible for overseeing the operations of registered charities and include directors, board members and committee members of a charity.

Charity trustees have significant legal duties in the control and management of charities. Key obligations under the 2009 Act include, but are not limited to, a requirement to –

- keep proper books of account,
- submit an annual report to the Charities Regulator within 10 months of a charity's financial year end, which provides an overview of the charity's finances and activities in the previous year and is, subject to a small number of exceptions, published on the public Register of Charities,
- provide any information requested on foot of a statutory direction, and
- notify the Charities Regulator where there are reasonable grounds for believing that an offence under the Criminal Justice (Theft and Fraud Offences) Act 2001 has been or is being committed.

In addition, charity trustees have responsibilities under common law relating to the control and management of charity property including a responsibility to use charity property effectively. Setting out these duties in the Act provides clarity for new and existing trustees in relation to their role and responsibilities.

Promoting, verifying and enforcing compliance

A primary function of the Charities Regulator is to establish and maintain the Register. Applying to become a registered charity is a legal process and the Charities Regulator has a dedicated team carrying out this function. Processing applications in accordance with the provisions of the Act necessitates significant interaction with charities and charity trustees to help them meet the requirements of the Act and be registered. During **2021**:

- 282 charities were registered. Only 3 applications were refused.
- 3,650 forms to maintain the accuracy of the Register were administered.
- 69 change of name requests were processed. Consent was provided in all cases.
- Over 17,000 queries via email and telephone were dealt with.

The Charities Regulator also has the power to remove charities from the Register of Charities in certain circumstances. For example, if a charity changes its name without obtaining the consent of the Charities Regulator the 2009 Act stipulates that the Regulator must remove the charity from the Register. In other instances, such as where a charity fails to file its annual report on time or to respond to a statutory request for information, the Charities Regulator has the option to remove a charity from the Register. This is a very important power in the context of the statutory function to establish and maintain a register. The quality and accuracy of the information on the Register is of critical importance to public trust and confidence. The 2009 Act places the onus for keeping the Register up to date and accurate on charities themselves but currently does not provide a means of ensuring that they do this. Therefore, the Charities Regulator welcomes the proposed amendments requiring charities to seek its consent in relation to fundamental changes to their constitution or when changing their charitable purpose. The power to remove charities who do not comply with this is consistent with the existing provision in relation to the change of name. The Charities Regulator is aware of the potential serious

consequences for a charity of being removed from the Register and, as with all of its decisions, any decision to remove will adhere to the rules of natural justice. All decisions to remove will have a right of appeal to the Charity Appeals Tribunal.

Another function of the Charities Regulator is to ensure and monitor compliance with the 2009 Act. In addition to publishing guidance and templates, and holding seminars, for example, the Compliance and Enforcement function of the Charities Regulator considers issues that are brought to its attention regarding charities which are called ‘concerns’. The vast majority of concerns are dealt with without recourse to any of the statutory powers available to the Charities Regulator. This is in keeping with the Charities Regulator’s balanced and proportionate approach to regulation by focusing its efforts on voluntary compliance where possible as opposed to statutory enforcement. Some statistics from **2021** which demonstrate this are:

- 543 concerns were closed.
- 7 statutory directions to provide information issued.
- 4 statutory directions to produce records issued.
- Inspectors appointed in 2 cases.
- 1 Intermediate sanction of temporary removal from the Register imposed.
- 0 prosecutions.
- 0 charities removed from the Register for breach of the Act.

In November 2018, following a comprehensive consultative process with the charity sector and other stakeholders, the Charities Regulator published the Charities Governance Code (“the Code”) which is a tool designed to assist Ireland’s charity trustees to carry out their duties and ensure that the charities for which they are responsible are run well. Since publishing the Code, the Charities Regulator has provided training and seminars on the Code and has also published a suite of guidance documents and template materials to further assist charity trustees and those working and volunteering with charities.

The Charities Regulator takes a risk based, proportionate approach to compliance, targeting its resources at those sectors and organisations that are at most risk of non-compliance. The Charities Regulator’s primary method of resolving issues arising under the Charities Acts is to work with charities to bring them into compliance. In most cases, the Charities Regulator will first seek information from a charity on a voluntary basis where appropriate. Where this is not provided or the charity’s response does not sufficiently address the concern raised, the Charities Regulator may seek further information from the charity by way of a statutory direction. If having issued such a direction, the Charities Regulator is not assured by its engagement with the charity and significant concerns remain, it may, depending on the nature of the particular concern or concerns, propose the imposition of intermediate sanctions (where they can be applied) or the appointment of inspectors to investigate the

affairs of the charity. It is also open to the Charities Regulator to seek certain Court orders under section 74 of the Charities Act 2009 in relation to a charity in certain circumstances.

The Charities Act 2009 includes a number of offence provisions. While such provisions can play an important role in terms of deterring non-compliance and dealing effectively with serious breaches, the Charities Regulator's general preference is to resolve issues where they arise through means other than prosecution wherever possible. Given the diversity in size and complexity of the charities that make up the charities sector in Ireland, proportionality is to the forefront of the Charities Regulator's regulatory approach. It is therefore important that the Charities Regulator has an array of regulatory tools available to it to enable it to tailor its regulatory responses to individual cases in a fair and proportionate manner and to target its limited resources to the areas that will have the greatest impact.

General Scheme of the Charities (Amendment) Bill

The Charities Regulator has been seeking amendments to the 2009 Act and the Charities Act 1961 for a number of years to address certain fundamental and practical issues in the application of those Acts. A number of these amendments were originally included in the Courts and Civil Law (Miscellaneous Provisions) Bill 2017 ("2017 Bill").

The proposed amendments reflected in the General Scheme of the Charities (Amendment) Bill 2022 ("General Scheme") incorporate the amendments which originally formed part of the 2017 Bill along with some additional amendments which have been identified in the subsequent years. The amendments set out in the General Scheme fall into three broad categories:

- (1) Amendments intended to ensure that all registered charities, regardless of their legal form, are subject to the same regulatory framework i.e. the application of key statutory requirements relating to financial statements, audits and independent examinations to charities that are companies.
- (2) Amendments intended to provide for a modification of the range powers and clarify duties and to establish a clearer link between –
 - the Charities Regulator's statutory functions as set out in section 14 of the 2009 Act,
 - the existing legal duties of charity trustees and governance requirements, and
 - the compliance and enforcement framework provided for in Parts 3 and 4 of the 2009 Act

in order to ensure that necessary and appropriate regulatory tools are available to the Charities Regulator to enable it to adopt a regulatory approach which is proportionate in the circumstances e.g. ability to apply intermediate sanctions in

place of a criminal prosecution in appropriate cases where a criminal prosecution is the only course available at present.

- (3) Amendments intended to address a number of practical difficulties encountered in the day-to-day operation of the 2009 Act and the Charities Act 1961.

Some of the proposed amendments are discussed below in order to provide some further context for the Charities Regulator's view that there is a compelling need for amendment of 2009 Act and Charities Act 1961 as proposed in the General Scheme.

Category 1: Amendments intended to ensure all registered charities, regardless of their legal form, are subject to the same regulatory framework

Heads 13, 14, 15 and 16: These amendments, which mainly relate to the removal of certain exemptions under sections 47, 48, 50 and 52 of the Charities Act 2009 for charities that are companies, are intended to ensure that the compliance and enforcement framework provided for under the 2009 Act can be applied fairly to all charities regardless of their legal form. Companies currently account for approximately 41% of registered charities and when schools are excluded they account for approximately 60%.

In the Charities Regulator's first [Irish Public Survey](#) (Amárach, 2021) 84% of respondents said having more information on the charity's accounts and financial transactions would increase their trust and confidence in a charity.

Consistent with the Charities Regulator's function of ensuring the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public, the amendments that have been proposed in relation to sections 48 (Annual statement of accounts), 50 (Annual audit or examination of accounts) and 52 (Annual reports) in particular are intended to bring charities that are companies within the scope of these provisions. This will facilitate the introduction of standards for all registered charities on a proportionate basis (regardless of legal form) in relation to the preparation and submission of financial statements to the Charities Regulator. It is intended that once submitted, all financial statements of registered charities (other than those of private charitable trusts) will be published on the public [Register of Charities](#) thereby providing greater transparency for the public regarding charity finances and increasing charities' accountability to donors, funders, volunteers, staff and the wider public.

Summary of the requirements proposed by the Charities Regulator by type and size of charity

Charity Criteria	Meet 2 out of 3 of - Gross Income Under €25,000; Balance Sheet Under €25,000; No employees	Gross Income or Total Expenditure Under €250,000	Gross Income or Total Expenditure Exceeds €250,000
No requirement to prepare financial statements (note 1)	✓	-	-
Prepare financial statements on Receipts & Payments basis or Accruals basis (note 1)	-	✓	-
Independent Examination	-	✓	-
Prepare financial statements on Accruals basis in accordance with Charity SORP	-	-	✓
Annual Audit	-	-	✓

Note 1 - A charity that is a company must prepare financial statements on an accruals basis under the Companies Act 2014

Category 2: Amendments intended to enhance statutory powers and clarify trustee duties

The Charities Regulator’s approach to regulation is to bring charities into compliance on a voluntary basis where possible, rather than to take enforcement action to “punish” non-compliance. This is particularly important given the nature of the charity sector.

Nonetheless, to be effective and to instil public confidence, a regulator must have a suite of appropriate tools available which it can utilise when necessary. Many contraventions under the Act are offences liable to criminal prosecution. While this might be an appropriate enforcement action in very serious cases it is likely to be disproportionate in others. More importantly a criminal prosecution does not of itself remedy the non-compliance. The Charities Regulator welcomes the proposed expansion of the circumstances in which it can impose intermediate sanctions as an alternative to criminal prosecution.

The proposed amendment also removes the requirement for the Charities Regulator to bring criminal proceedings against a charity’s trustees where intermediate sanctions are not accepted or are not complied with. This will enable the Charities Regulator to consider the most appropriate and proportionate regulatory response in the circumstances.

Heads 20, 24 and 26: These amendments seek to enhance existing statutory provisions under the 2009 Act and clarify the duties of charity trustees in relation to the management and administration of the charities they oversee. The proposed amendments include the following:

- (a) A new section, section 54B is a formal statement of existing duties already applicable under common law and for charity trustees of charities that are companies, already codified under the Companies Act 2014. The section will underpin key regulatory work in the area of compliance and governance and enable the Charities Regulator to meet its statutory functions in relation to increasing public trust and confidence in the management and administration of charities (s. 14(1)(a)) and in relation to promoting compliance by charity trustees with their duties in the control and management of charitable trusts and charitable organisations (s. 14(1)(b)).

The Charities Regulator notes that the proposed new section is not an offence provision meaning that any breach by a charity trustee of statutory duties in the section will not amount to a criminal offence under the 2009 Act unlike other sections of the Act. This is appropriate given the nature of the new section. The inclusion of the new section in the 2009 Act provides clarification to charity trustees as to their fundamental responsibilities. The proposal to cross-reference it in the amended section relating to intermediate sanctions, which will require an additional amendment, will provide a means by which the Charities Regulator can seek to further promote and enforce compliance by charity trustees with basic standards of governance set out in the Charities Governance Code.

- (b) A new section (s. 66A) provides that when inspectors appointed by the Charities Regulator under Part 4 of the 2009 Act to investigate the affairs of a charity deliver a final report which identifies areas requiring action by the charity, that the Charities Regulator has a formal mechanism under the 2009 Act to follow up with the charity on any issues identified. The 2009 Act does not currently have such a mechanism. This means that where inspectors identify issues, the Charities Regulator is entirely reliant on the charity voluntarily providing it with a plan detailing how it intends to address the relevant issues.

While most charities do engage on a voluntary basis, this is a significant gap in Part 4 of the 2009 Act and needs to be addressed in order to ensure that the Charities Regulator has the power to require charities to take specific actions on foot of an inspectors' report and is in a position to take appropriate action in the event that those actions are not carried out. Failure by a charity to take remedial action on foot of an inspectors' report without consequence could have a detrimental effect on

public trust and confidence in the sector. The power to make recommendations and/or directions as part of an investigative report by a regulator is not unusual.

- (c) The purpose of the proposed amendment of section 73 is to broaden its potential application. The imposition of intermediate sanctions, where warranted, may in certain circumstances be a more effective and proportionate regulatory remedy than prosecution for an offence. Intermediate sanctions, for example, can include the publication of the particulars of a charity's contravention by the Charities Regulator. This may be a more effective way of ensuring compliance with regulatory obligations by the charitable organisation concerned. It also provides a greater level of transparency for donors, funders, volunteers and the public.

Furthermore the amendment proposed is intended to make it clear that failure to comply with an intermediate sanction imposed under section 73 can lead to a prosecution or other regulatory action rather than a prosecution being mandatory in such cases, as would appear to be the position currently. For a number of reasons, prosecution may not be considered to be the optimal regulatory response even where intermediate sanctions are breached. The Charities Regulator should be permitted to exercise its discretion as to the most appropriate and proportionate regulatory action, where intermediate sanctions under section 73 are, for whatever reason, not effective. The proposed amendments to section 73 are therefore intended to facilitate a greater level of flexibility of approach and proportionality of regulatory action.

Category 3: Amendments intended to address a number of practical difficulties encountered in the day-to-day operation of the Charities Act

Heads 7, 27 and 29: These amendments include provisions which include the following:

- (a) Amendment of section 39 of the 2009 Act –
- to allow for the withdrawal of applications for registration by applicants and for the rejection of incomplete charity registration applications – these are basic requirements of any registration process and yet are not specifically provided for in the 2009 Act;
 - to clarify certain issues which have arisen since Brexit in relation to the registration of charities – this is particularly important in the context of All-Ireland charities;
 - to require charity trustees to notify the Charities Regulator in advance if a charity proposes to wind up or otherwise cease its activities – this is an important

amendment as it will enable the Charities Regulator to ensure that a charity engages in an orderly wind up with due regard for any staff, service users and other beneficiaries, volunteers, donors, funders and the public.

(b) Amendment of section 74 of the 2009 Act –

- to allow for certain applications to be made to the Circuit Court rather than the High Court, which would reduce potential costs associated with court proceedings for both charities and the Charities Regulator;
- to specifically refer to winding up orders which is an important remedy in circumstances where a charity's trustees are, for whatever reason, unable to engage in an orderly wind up of a charity.

(c) Amendment of sections 2 and 89 to establish a clear rule that charity trustees cannot be paid for trustee-related duties and should not be in a position of paid employment with a charity of which they are trustees, unless the charity has the approval of the Charities Regulator for such an arrangement. Difficulties have been identified in relation to the practical application of section 89 of the 2009 Act in its current form. As a result, the section has not been commenced. The issues that it is understood section 89 were intended to address are important however. In particular it is important that there is absolute clarity on the issue of payments to charity trustees and that there is discretion for the Charities Regulator, in appropriate cases, to approve proposals from individual charities or more broadly in respect of certain types of charities as is the case in other common law jurisdictions such as England and Wales. It is anticipated that a transitional provision will be required in order to deal with some existing arrangements, pre-dating the Charities Act 2009, whereby some trustees are paid as a consequence of arrangements set out in statute or elsewhere.

(d) Amendment of section 34(2) of the 1961 Act, which deals with the disposition of charity property for less than market value, but which is currently limited to dispositions between charities with different charitable purposes. The proposed amendment would allow for the transfer of charity land to another charity with a similar charitable purpose which may be better able to continue or re-establish the use of the land for charitable purposes for the benefit of the public such as the continued operation of schools and other educational facilities.

In conclusion, our core function is to work to increase public trust and confidence which are the bedrock of the charity sector. We are committed to achieving this, working with all of our stakeholders. The amendments we are seeking are designed to assist with this work, and further strengthen and enhance our ability to deliver a balanced and proportionate approach to the regulation of Ireland's charity sector.