



Memorandum of Understanding

between

the Charities Regulatory Authority

and

the Approved Housing Bodies Regulatory Authority

1. Definitions

1.1 In this Memorandum of Understanding:

- (i) “2009 Act” means the Charities Act 2009 as amended from time to time;
- (ii) “2019 Act” means the Housing (Regulation of Approved Housing Bodies) Act 2019 including any amendments to same;
- (iii) “AHBRA” means the Approved Housing Bodies Regulatory Authority established by section 8 of the 2019 Act;
- (iv) “AHB” means an Approved Housing Body as defined by section 2 of the 2019 Act
- (v) “Charities Regulator” means the Charities Regulatory Authority established by section 13 of the 2009 Act;
- (vi) “Data Protection Act” means the Data Protection Act 2018.
- (vii) “GDPR” means the General Data Protection Regulation.
- (viii) “MoU” means this Memorandum of Understanding;
- (ix) “parties” means the Charities Regulator and AHBRA 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 AHBRA overlap. This MoU provides a framework for a close working relationship between the Charities Regulator and AHBRA on matters within these areas. It supports cooperation and collaboration and facilitates 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; and in the interest of the protection of certain housing assets provided or managed by AHBs and the tenants of such dwellings and in the public interest for both parties.
- 2.2 The Charities Regulator and AHBRA are committed to the statutory purposes of this MoU which are¹:
- (i) to facilitate administrative cooperation between the Charities Regulator and AHBRA in the performance of their respective functions in so far as they relate to the regulation of AHBs which are also charitable organisations or charitable trusts;
 - (ii) to avoid duplication of activities by the Charities Regulator and AHBRA, and
 - (iii) to ensure, as far as practicable, consistency between decisions made or measures taken by the Charities Regulator and AHBRA 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 and/or the regulation of AHBs.
- 2.3 Within the scope of those statutory purposes additional objectives of this MoU are:
- (i) to promote cooperation in areas of strategic and high level operational interest;
 - (ii) to promote a common understanding of the responsibilities, working procedures, legal powers and constraints of the Charities Regulator and AHBRA;
 - (iii) to facilitate and provide the necessary safeguards for the exchange of information, with the objective of preventing, detecting and/or remedying misconduct or mismanagement in the administration of charities and charitable funds and AHBs;
 - (iv) to ensure appropriate consultation and co-operation on matters of mutual interest to ensure that charities and AHBs are encouraged to comply fully with their legal responsibilities under charity and housing law respectively and to adopt best practice in relation to governance;
 - (v) to promote sharing of knowledge, expertise and experience between the Charities Regulator and AHBRA.

¹ Section 33(1), 2009 Act and Section (23)(1) of the 2019 Act.

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.

Functions of the Charities Regulator

- 3.2 The key functions of the Charities Regulator under the 2009 Act² 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;
- (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 Development³ on matters relating to the functions of the Charities Regulator.

The Charities Regulator also has certain related functions, previously performed by the Commissioners of Charitable Donations and Bequests for Ireland, under the Charities Acts 1961 and 1973.

All functions relating to charitable organisations and charitable trusts that were vested in the Attorney General were transferred to the Charities Regulator pursuant to section 38 of the 2009 Act.

² Section 14, 2009 Act and section 82, 2009 Act.

³ 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.

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.

Particular statutory obligations to provide information

- 3.4 The Charities Regulator is required in accordance with section 28 of the 2009 Act to provide to AHBRA any 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 where the Charities Regulator is not satisfied that the information has already been reported to AHBRA, and AHBRA may use such information for the purpose only of the detection, investigation or prosecution of any such offence.

4. Statutory role, functions and relevant powers of AHBRA

Role of AHBRA

- 4.1 AHBRA is the independent regulator of Approved Housing Bodies as established by the 2019 Act.

Functions of AHBRA

- 4.2 The general functions of AHBRA⁴ are to:
- (a) establish and maintain a register of AHBs,
 - (b) register persons as AHBs,

⁴ As set out in Section 9 of the 2019 Act

- (c) prepare draft standards for approval by the Minister and publish the approved standards,
- (d) monitor and assess compliance by AHBs with the 2019 Act, in particular the approved standards,
- (e) carry out investigations under the 2019 Act,
- (f) in accordance with the 2019 Act, protect tenants and AHBs and cancel the registration of AHBs,
- (g) encourage and facilitate the better governance, administration and management, including corporate governance and financial management, of AHBs by the provision of such information and advice, as it considers appropriate,
- (h) with a view to promoting awareness and understanding of the 2019 Act, make available such information as appears to it to be expedient to give to the public about the operation of the 2019 Act,
- (i) collect such information concerning AHBs as it considers necessary and appropriate for the performance of its functions, and
- (j) publish such information concerning AHBs as it considers appropriate.

Relevant powers of AHBRA

4.3 AHBRA is empowered by various provisions of the 2019 Act to enter administrative cooperation arrangements with other regulators and to share relevant information with other agencies. In particular:

- (a) section 23 of the 2019 Act requires AHBRA, 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 24 of the 2019 Act empowers AHBRA 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 AHBRA as may reasonably be required for the purpose of enabling the relevant person to perform its functions.

5. Primary Areas of Co-operation

5.1 Both parties are engaged in the discharge of their respective regulatory functions in the public interest with particular focus on the proper operation of Approved Housing Bodies and the protection of certain housing assets and tenants in the case of AHBRA and on the proper operation of charities (some of which are also AHBs) in the case of the Charities Regulator. 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 supervision and compliance processes and investigations becomes aware of information relating to a particular charity conducting activities which come within AHBRA's remit, including information which may relate to suspected concealment, misinformation or fraud involving such a charity or a person responsible for its management that may lead to a suspicion of risk to the AHB or its assets or tenants, which may include but is not limited to a potential breach of the approved Standards for AHBs and/or the 2019 Act;
- (c) for AHBRA this includes but is not limited to: circumstances where AHBRA through its regulatory oversight programme, including its monitoring, concerns, investigation, notifiable events or assessment processes, becomes aware of potential breaches of the 2009 Act (which may include but is not limited to a charity not keeping proper books of account) or information which relates to a suspicion of risk or misuse of the charity's assets, or information 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) while each party remains responsible for supervision and enforcement activities for which it is the competent authority, in particular circumstances it may be appropriate for the parties to jointly co-operate and collaborate in the enforcement and execution of their statutory functions; such occasions will be determined and agreed on a case-by-case basis by the appropriate persons in each party;
- (e) for both parties, information may be exchanged where either party become aware that a charitable organisation may be describing or holding itself out as an AHB as defined by section 2 of the 2019 Act and is not registered under the 2019 Act or a charitable organisation may be operating as a charity or holding itself out as a charity and is not registered under the 2009 Act;
- (f) for both parties, information may be exchanged where either party has made a decision to cancel the registration of either the approved housing body under the 2019 Act or charity under the 2009 Act;
- (g) for both parties, this includes consultation with each party in respect of the development of codes, guidelines and standards on areas of mutual interest and concern that either party may develop and publish from time to time;
- (h) 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.

5.2 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.

5.3 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 content of the publication.

- 5.4 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.

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 2016/679, the Data Protection Acts 1998 - 2018, the 2009 Act, the 2019 Act and the Protected Disclosures Act 2014 and any amendments to this legislation.
- 6.2 Neither the Charities Regulator nor AHBRA 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 Acts 1998 - 2018 or any other statutory obligations that either party may have, neither the Charities Regulator nor AHBRA 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. Where information shared under this MoU constitutes confidential information, the parties agree to identify such information as 'Confidential' in the pro forma form in Annex 2 when the information is being shared with the other party.
- 6.4 Nothing in this MoU requires either the Charities Regulator or AHBRA to disclose confidential information except in accordance with law.
- 6.5 Any sharing of data undertaken between the Charities Regulator and AHBRA will be appropriately documented and will be subject to strict access and security controls and each party will ensure secure disposal of shared data.

Data Protection

- 6.6 Where information being shared contains personal data, the parties may share it where there is a legal basis for doing so, it being shared in accordance with the purpose for which it was collected or where applicable in accordance with a provision permitting further processing, it is transparent to data subjects and is in accordance with data protection legislation.
- 6.7 In respect of AHBRA, a Privacy Statement is available on its website.⁵ In respect of the Charities Regulator, a Data Protection Statement is available on its website.⁶
- 6.8 The relevant lawful basis for the parties' processing of personal data under this MoU is that processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. The relevant statutory bases are set out in section 3.3 and 4.3 above.

⁵ <https://www.ahbregulator.ie/legal-compliance/privacy-statement/>

⁶ <https://www.charitiesregulator.ie/en/data-protection>

- 6.9 While the determination of data protection relationships is a matter of fact, where any personal data is shared under this MoU, it is the view of the parties that their roles, respective responsibilities and independent statutory functions are indicative of an independent controller relationship.
- 6.10 The parties each confirm that they have in place the necessary security and organisational measures to keep any personal data secure in accordance with the GDPR and the Data Protection Act to ensure a level of security which is proportionate to the risks involved in processing the personal data in connection or accordance with this MoU.
- 6.11 The parties shall each inform the other as soon as possible if it comes to their attention that a data breach occurs in respect of personal data which has been shared by the other party. In the event of a data breach or suspected data breach, each party shall in its capacity as data controller be responsible for fulfilling the obligations placed on data controllers under the GDPR and the 2018 Act in respect of safeguarding the rights of data subjects and meeting any obligations of the data controller to inform the Data Protection Commission and, where necessary, the data subject.
- 7. Liaison and communication**
- 7.1 The parties agree to meet once each calendar year and more regularly where necessary, 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). Upon signing this MOU, each party will ensure that the identity and contact details (email and telephone number) of the persons referred to in Annex 1 will be exchanged with the other party. In the event that there is a change in the identity of a contact person referred to above during the term of this MOU, the relevant party will inform the other party of same and will forward the contact details of the replacement contact person.
- 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, to act in a good faith and to exchange information relevant to this MoU in a timely manner. Communication will be both formally through scheduled meetings and informally on an ad hoc basis.
- 7.5 The parties agree to use the pro forma form attached to this MoU at Annex 2 to exchange any concerns or information except in the case of an emergency where information can be exchanged orally. In the case of an emergency where information has been exchanged orally, the disclosing party agrees to use the pro forma form to record the exchange and will share it with the receiving party within a reasonable timeframe.

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. In these circumstances, both parties agree to act in good faith and in accordance with all relevant laws and in the interest of transparency and good governance.

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 every two years on the anniversary of its signing or more frequently if appropriate. In particular, the content of the MoU will be reviewed by the parties to ensure that it remains relevant.

Cost and expenditure

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

Disputes

- 8.8 Any disagreement arising from the interpretation of this MoU will be referred to the Chief Executives (by whatever name called) of each of the parties, who will endeavour to resolve it within the spirit implicit in this MoU. The parties agree to act in good faith and to make efforts to resolve any matter amicably. Should the matter not be resolved between the Chief Executives, the parties agree to mediation in order to reach a resolution.

Execution

- 8.9 The parties consent to the execution of this MoU by means of a simple electronic signature which shall be considered as an original signature and shall have the same validity, enforceability and permissibility as the original signature for the purpose of this Agreement.

Signed on behalf of the Charities Regulatory Authority

By: Helen Martin

Chief Executive

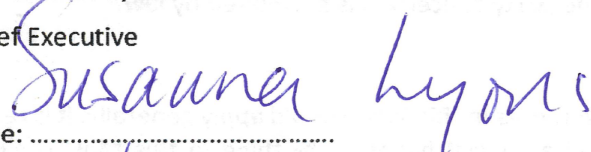


Date: 01/09/23.....

Signed on behalf of the Approved Housing Bodies Regulatory Authority

By: Susanna Lyons

Chief Executive



Date:

1/9/2023

Annex 1 – Designated liaison persons

Area of Liaison	Charities Regulator	AHBRA
Operational liaison including reporting of concerns	Director of Compliance & Enforcement	Head of Regulation
Legal Framework queries	Director of Compliance & Enforcement	Head of Legal & Compliance
Media queries	Head of Stakeholder Engagement	Head of Regulation

Annex 2

**Form for the Sharing of Information between
ABHRA and the Charities Regulator**

FROM	Charities Regulator Name: Position: Email Address: Phone Number:	Please Tick Appropriate Box <input type="checkbox"/>
	OR [delete as appropriate]	
	AHBRA Name: Position: Email Address: Phone Number:	<input type="checkbox"/>

TO:	Charities Regulator Name: Position: District: Email Address: Phone Number:	<input type="checkbox"/>
	OR [delete as appropriate]	
	AHBRA Name: Position: Email Address: Phone Number:	<input type="checkbox"/>

Name, Registered Charity Number, Address of Charity and AHB Registration Number:

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