



# The Charities Act 2009

10 July 2009

*This guide outlines the main features of the Charities Act 2009 and offers practical steps for charities that will be affected by the new legislation.*

*It is important to note that the provisions of the Charities Act did not come into force when the Act was signed into law in February 2009. The Act will be commenced in stages by the Minister for Community, Rural and Gaeltacht Affairs. The Wheel will keep you updated as the new provisions come into force.*

## **1. The purpose and main provisions of the Charities Act**

The purpose of the Charities Act is to reform the law relating to charities in order to:

- ensure greater accountability
- protect against abuse of charitable status and fraud
- enhance public trust and confidence in charities and increase transparency in the sector.

The Charities Act allows for the creation of new institutions, such as a Charities Regulator, a Register of Charities, the Charity Appeals Tribunal and provides for the first time in primary legislation a definition of charitable purposes.

Organisations that wish to present themselves to the public as charities, or fundraise directly from the public for charitable purposes, will have to seek and secure inclusion in the new Register of Charities. Organisations that are currently recognized as being charities by the Revenue Commissioners will be automatically included in the new register.

Charities that are companies limited by guarantee will continue to be bound by all the requirements of company law (including those relating to the submission of annual audited accounts to the Companies Registration Office).

There will be no automatic entitlement to the tax relief schemes operated by the Revenue Commissioners who will continue to determine eligibility for tax relief for charities that are registered with the Charity Regulator.

The Act gives the Minister for Community, Rural and Gaeltacht Affairs powers to make regulations in relation to charitable fundraising, but it is intended in the first instance that codes of practice (to be developed in consultation with charities) will be used to regulate the operational aspects of fundraising.

The Department of Community, Rural and Gaeltacht Affairs has worked in partnership with the charities sector to develop a model to regulate fundraising through the application of non-statutory Codes of Practice. You will find further details on the development of the codes and on the fundraising requirements below.

## **2. Implications of the Charities Act**

### **2.1 New Definition of Charities**

Only organisations that pursue purely charitable purposes (see list below) and provide services of public benefit will be eligible for inclusion in the new Register of Charities. The charitable purposes” defined in the Act are:

- 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, which is specifically broken down in the Act to include:
  - the advancement of community welfare, including the relief of those in need by reason of youth, age, ill-health or disability
  - the advancement of community development, including urban or rural regeneration
  - the promotion of civic responsibility or voluntary work
  - the promotion of health, including the prevention or relief of sickness, disease or human suffering
  - the advancement of conflict resolution or reconciliation
  - the promotion of religious or racial harmony and harmonious community relations
  - the protection of the natural environment
  - the advancement of environmental sustainability
  - the advancement of the efficient and effective use of the property of charitable organisations
  - the prevention or relief of suffering of animals
  - the advancement of the arts, culture, heritage or sciences
  - the integration of those who are disadvantaged, and the promotion of their full participation in society.

### **2.2 New institutions**

- A new **Charities Regulatory Authority** (hereafter referred to as the Charity Regulator) will be established to secure compliance by charities with their legal obligations and to encourage the better administration of charities.
- The Regulator will maintain a **Register of Charities**, which will be accessible by the public.
  - Any organisation currently in receipt of charitable tax exemption from the Revenue Commissioners will be automatically registered with the Charity Regulator when the register is established.
  - All other charitable organisations operating or carrying out any activities in the Republic will be required to register within six months of the establishment of the register.
  - All charitable organisations will be obliged to ensure that their details are correctly entered in the register.
  - All charities will be obliged to state in their public literature (letters, publications, reports etc) that they are a registered charity.
  - All registered charities will have a unique registration number.
  - It will be an offence for a body not on the register to claim that it is a registered charity, or to operate or fundraise as a registered charity.

- A **Charity Appeals Tribunal** will be established to which organisations can appeal certain decisions that the Regulator may make in relation to them.
- **Consultative panels** may be established by the Regulator to assist it in its work and to ensure effective consultation with stakeholders.

## 2.2 Reporting requirements

- All charities will be required to submit an **Annual Activity Report** to the Regulator. The content of the annual activity report has yet to be determined. The Minister has indicated he will consult with the sector on the content of the report, and the legislation provides for flexibility in relation to reporting by larger and smaller charities.
- All charities will be required to keep **financial accounts**, and the following provisions are made in relation to the filing of annual statements of accounts:
  - **Charities that are registered as companies:** The Companies Registration Office will automatically forward Annual Returns by charities that are companies to the Charity Regulator (to minimise duplication of report-filing).
  - **Charities that are not companies** will face the following financial-reporting requirements:
    - a. Organisations with income above an as-yet-to-be-prescribed threshold will be required to submit audited accounts to the Charity Regulator.
    - b. Charities with income less than this threshold may submit examined accounts (less demanding and expensive to produce).
    - c. Charities with income less than €10,000 will be exempted from filing annual accounts (they will however have to submit their Annual Activity Report) unless, of course, they are companies, where the fining requirements of Company Law will still apply.

## 2.3 Fundraising

- Both cash and non-cash (i.e. direct debits, standing orders etc) charitable fundraising from the public will require permits from the Gardaí, and only registered charities will be able to conduct charitable fundraising.
- Sealed collection boxes will be the standard requirement for collections in public places and the boxes will have to display the name and charity number of the charity (the Regulator has the discretion to make an exception to the sealed collection box rule to facilitate the making of change for token sellers).
- Charities that fundraise will be expected to comply with the non-statutory *Statement of Principles for Fundraising* (available at [www.ictr.ie](http://www.ictr.ie)), and will also be expected to comply with specific *Codes of Good Practice for Fundraising* when they are developed.

## 2.4 Political and lobbying activities

Charities will be allowed to promote a political cause if it relates directly to their charitable purpose.

## 2.5 Trustees

- 'Charity Trustees' are defined in the Act and are those persons having day-to-day control of a charitable organisation. This means that the Directors (under company law) of a charity that is a company limited by guarantee will be considered to be the trustees of the charity. There may of course be other trustees, in addition to the directors, and charities will be obliged to inform the regulator of the identity of all trustees.. Equally for charities with 'management committees' or 'core groups', the members of these groups will be considered to be 'trustees' as a result of this Act.
- A charity will be permitted to pay a Charity Trustee (or persons connected to a trustee) for work they conduct for the charity which is not related to their role as a trustee (if all the trustees agree in advance that this is appropriate for the charity concerned). A charity is not, and will not be, permitted to pay trustees for their work in their capacity as a trustee (other than for receipted expenses). This type of payment arrangement may require an amendment to the constitutional documentation of most charities
- Charities will be permitted to purchase 'directors and officers' insurance to indemnify its trustees for liabilities relating to acts done or omitted by the trustee in good faith and in performance their functions as a charity trustee.

## 3. How to prepare

Achieving best practice in governance and management will enable your organisation to comply with the legislation. If your organisation takes some time now to review its structure and its governance and management practice it should be well prepared for the commencement of the new provisions described in this document.

- Join The Wheel's Charities Regulation Network of interest for regular updates and news on every aspect of charity regulation (email [ivan@wheel.ie](mailto:ivan@wheel.ie) to join)
- Complete The Wheel's Governance Checklist (page 4) to review and analyse your organisation's structural and governance procedures
- Attend The Wheel's capacity building events (see [www.wheel.ie/events](http://www.wheel.ie/events) for a schedule of forthcoming events).
- Keep up to date and informed through our online regulation resources section [www.wheel.ie/charityregulation](http://www.wheel.ie/charityregulation)
- Read the following best practice guides:
  - *Solid Foundations: a resource guide for building strong and effective organisations in the community and voluntary sector*, The Wheel, 2007
  - *Getting to Grips with Governance: a resource guide for community and voluntary organisations*, The Wheel, 2008
  - *Reducing the Risk: a resource guide to risk management in community and voluntary organisations*, The Wheel, 2009

**For further information, advice and support please contact at The Wheel:**

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## Good Governance Checklist

Although every organisation is different, the trustees of any community/voluntary/charitable organisation - also known as the governing body - should be able to answer 'yes' to all of the following questions:

- Are you absolutely clear about who are the trustees that make up the governing body of your organisations?
- Do you have a 'governance manual' containing all the information that your governing body needs, including the structure of the organisation and how decisions are made?
- Do you have written terms of reference for the governing body, each sub-committee / working group in your organisation, as well as written role descriptions for trustees and officers?
- Are all members of the governing body aware of their responsibilities?
- Do you have the right number of people on your governing body?
- Do you have proper planning and systems in place for the recruitment, induction and ongoing training of people on your governing body?
- Do you have written procedures for rotating or retiring trustees from your governing body?
- Has the role of external representatives (i.e. appointees, of for example state bodies) on your governing body been discussed and agreed openly?
- Are all the appointments of directors/trustees up to date and have all necessary returns been made?
- Can the charity trustees clearly identify the members of the organisation?
- Have you conducted an audit of skills of your governing body?
- Is there a clear and respectful relationship between the Chairperson and the most senior member of staff in your organisation?
- Are the meetings of your trustees (governing body) and members effective? Are they properly recorded and do you record minutes?
- Do the Memorandum and Articles of Association/Constitution need to be altered to take advantage of the provisions of the Charities Act?

Published by:

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