

# Forming A Charity

July 2018

## Introduction

If you wish to establish or operate a charity in Ireland there are a number of steps to take and matters to consider.

All charities **must** be included in the *Register of Charities* maintained by the Charities Regulator. You can register your charity at [www.charitiesregulatoryauthority.ie](http://www.charitiesregulatoryauthority.ie) or contact them at:

**Charities Regulator**, 3 Georges Dock, IFSC, Dublin 1, D01 X5X0

**Telephone:** 01 633 1500

**Email:** [info@charitiesregulator.ie](mailto:info@charitiesregulator.ie)

The **Charities Regulator** is Ireland's national statutory regulatory agency for charitable organisations. The Regulator was established on the 16th of October 2014 under the terms of the Charities Act 2009.

**Any organisation which is a charity, refers to itself as a charity or creates the impression in the public mind that it is a charity, is legally required to be registered with the Charities Regulator.**

In order that you can decide whether or not your organisation is a charity in Irish law, the check out the [Regulator's guidance page](#), where you can download [What is a Charity?](#) You can also take a look at the Regulator's [Frequently Asked Questions](#).

## Overview of Registering Your Charity

Registration with the Charity Regulator is an online process. Here are the Charities Regulator's [Registration Guidelines](#). You can find out more about the registration process [at the Regulator's website](#).

During registration will be asked to provide certain key information, names and documents, these must be uploaded to your charity account (not sent in hardcopy form), and include your organisation's Constitution, any financial records, and a declaration of eligibility to be registered as a charity.

The Charities Regulator will then assess your application for eligibility and will contact you if you if they have any queries. This process may take some time. While in the process of registering with the Charities Regulator, organisations **cannot** carry out any fundraising or charitable activities. They can continue, however, to put in place their organisational structures.

## Before you begin...

The first question to ask when thinking of establishing a charity for a particular purpose is the following:

***Is there already an organisation out there with the same purpose and can we more effectively work with them rather than establishing an independent entity?***

Remember that establishing a new charitable organisation can be a lot of work for the volunteer charity trustees who end up sitting on the 'board' or 'committee'. These volunteer trustees will have to assume legal responsibility for the work of the organisation, ensuring annual reporting to a variety of different regulators – which carries a cost as well as involves a lot of time. Even if another organisation does not exist that does precisely what you believe is needed, perhaps you could partner with them to run your service or project under the legal and governance authority of their pre-existing organisational structure?

After careful thought, if you judge the most effective way to achieve your purpose is to establish a new charity then read on as we've produced a number of resources that we think you'll find useful.

## Deciding on Your Organisation's Legal Form

One of the earliest decisions that needs to be made is the legal form of the organisation. For example will you decide to form as Company Limited by Guarantee (CLG), an unincorporated association, a co-operative or as a Charitable Trust. Further details on these legal forms can be found below.

No matter which legal form your organisation chooses, there are a number of requirements that you will have to fulfil to register with the Charities Regulator:

- You must clearly state in your governing document (Constitution, Rules etc.) your primary [charitable purpose](#) and your charitable objectives (the things that you are going to do), all of which must be in furtherance of your primary charitable purpose.
- There are also specific clauses relating to income & property that must be contained in your governing document, regardless of your legal form. These standard clauses are available [in sample constitution documents available from the Charities Regulator's website](#).
- You must have at least three unrelated trustees (your charity's voluntary board members).

The Charities Regulator has produced a set of [Model Constitutions, one for Companies Limited by Guarantee and one for Unincorporated charitable organisations](#). These Constitutions have been agreed with the Revenue Commissioners and will be suitable for an organisation which will also wish to seek charitable tax exemption status. It incorporates all the required clauses.

**The Wheel strongly recommends that you use this template as the basis for your governing document.**

## Legal Status & Forms

A charity must decide what form of legal structure would best suit and facilitate its activities, and adopt an appropriate governing instrument or constitution. The form best suited to the function of any charity depends very much on its purposes, the planned activities of the charity and how it is proposed to fund these activities.

Often groups will start off as unincorporated associations and then, if they become bigger and undertake more activities, such as employing staff, they may decide to incorporate. With growing complexity and more prominent risks the members of the group need protection so they are not individually liable for the activities of the organisation.

Charitable organisations now mainly take one of three types of legal structure, each of which typically has its own 'constitution' or 'governing instrument':

Type of legal structure	Governing Instrument
Unincorporated Association	Constitution or rules
Charitable Trust	Trust deed or Declaration of Trust
Company Limited by Guarantee	Constitution-comprising a Memorandum and Articles of Association

See the next section below for an overview of each of the structures above.

## Governing Instrument (or Constitution)

*This may take the form of a Constitution or Trust deed. The governing instrument of a corporate charity, previously known as a Memorandum and Articles of Association, is now also called a Constitution.*

The governing instrument should set out the following information:

- The name of the charity;
- The main objects of the charity which must fall under one of the primary [charitable purposes](#) of the Charities Act 2009;
- The powers of the charity (which allow the charity to carry out its function, e.g. the power to fund-raise or hold property);
- Details of its geographic range of operation;
- Its rules, which should cover membership, appointments and dismissals, executive committees, meetings and any other rules required for the proper conduct of the organisation.
- There are specific income & property clauses that must be contained in your Constitution, regardless of your legal form. These clauses are available in the [Common Requirements](#) document at [www.charitiesregulatoryauthority.ie](http://www.charitiesregulatoryauthority.ie).
- The Charities Regulator has produced a set of [Model Constitutions, one for Companies Limited by Guarantee and for Unincorporated charitable organisations](#).

To read more about the importance of a strong constitution, see pp 18 – 24 of [Sustainable Communities: A Governance Resource Book for Small Community and Voluntary Organisations.](#)

## Unincorporated Association

### Overview

Many charitable organisations are constituted as unincorporated associations and are usually governed by a set of rules in the form of a Constitution. Such organisations are like clubs, consisting of people bound together by mutual agreement, who meet on a regular basis to pursue a common interest. Many smaller charitable organisations are formed this way.

An unincorporated association structure is appropriate, and is recognised by the Charities Regulator as a suitable form for a charitable organisation. Many smaller unincorporated associations do not have a Constitution or written rules, however if the organisation is a charity the Charities Regulator will require it to have a written Constitution.

### Constitution

The Charities Regulator requires the following to be set out in a written agreement:

- The name of the association
- Its aims and objectives which must fall under one of the primary [charitable purposes](#) of the Charities Act 2009
- Details of its Trustees, the people on its overall governing body (e.g. Board, Management Committee) and the eligibility for same
- The role, function and contractual arrangement of the Trustees – **the Charity Regulator requires there to be a minimum of 3 unrelated Trustees**
- The appointment of the Trustees
- The terms of office of the Trustees; and
- The powers and duties of the Trustees
- Specific income and property clauses

The Charities Regulator has produced a [Model Constitution for an unincorporated charity](#).

An unincorporated association is not a separate legal entity nor does it have limited liability or a legal personality of its own. This means that it cannot enter into contracts or own properties.

The Constitution is binding between members of the organisation, but it has no legal effect in relation to non-members. Therefore anything done by the organisation is done by all members of the organisation who are responsible for all the activities of the organisation.

Any debts incurred by an unincorporated association can result in the members or the board being made personally liable for these debts or obligations.

### Trustees/Board/Management Committee

The trustees and its members are bound by the objects of the charity and they are under a duty not to do anything that is outside the scope of the objects of the charity.

The trustees act as agents for the members of the charity and are normally authorised under the constitution to enter into contracts and arrangements that are necessary for the purposes or activities of the charity.

Once the trustees act within their authority for furthering the purposes of the charity, then their decisions are binding upon the members. The trustees may be liable for the repayment of any debts that they have incurred on behalf of the charity and such debts can be met from the charitable organisation’s own funds unless the trustees have not acted prudently, lawfully and in accordance with the charitable organisation’s governing instrument.

<p><b>Advantages</b></p>	<ul style="list-style-type: none"> <li>• Charitable organisations often commence as unincorporated associations and become incorporated as they grow in size or acquire assets.</li> <li>• Its legal requirements are limited to those imposed by the Charities Act 2009 &amp; the Charity Regulator, the Revenue Commissioners if it has a CHY number, and the contractual relationship between its members.</li> <li>• The biggest advantage is that it is easy and inexpensive to set up.</li> <li>• It also has considerable discretion in the manner of its operation and administration and therefore appeals to small voluntary groups.</li> </ul>
<p><b>Disadvantages</b></p>	<ul style="list-style-type: none"> <li>• The biggest disadvantage is that the members are not entitled to limited liability, making them personally liable for their actions including financial failures of the charitable organisation</li> </ul>

## Trust

### Overview

The principle distinction between trusts and other legal forms is that their purpose is the protection and use of designated property rather than in setting rules for how individuals may be best organised to act collectively.

### Trust Deed

The constitution, governing document is called a ‘Trust Deed’ and it sets out the key matters of the Trust such as:

- The appointment of trustees
- The removal of trustees
- The objectives of the trust
- The powers of the trustees; and
- The power to amend the Trust Deed.

The internal relationships of a trust (like those of an unincorporated association) are established by the terms of the governing instrument, be it a Trust Deed or a Declaration of Trust.

### Trustees/Board/Management

The trustees conduct all external relationships in a contractual capacity. In the case of a Trust, a trustee is a person who derives his or her appointment and responsibilities from the terms of a trust.

<p><b>Advantages</b></p>	<ul style="list-style-type: none"> <li>• It is well adapted to the management of assets held for charitable purposes either as a grant-making trust or as a trust ancillary to a service-providing charity constituted in another form.</li> <li>• It can be best described as a “charity vehicle” where the tasks to be performed are the management of substantial assets and the distribution of cash grants and where the administration of the trust will be undertaken by a small body of experienced trustees with ready access to professional advice.</li> <li>• The main advantages are the relative speed, simplicity and lack of cost involved.</li> </ul>
<p><b>Disadvantages</b></p>	<ul style="list-style-type: none"> <li>• It can be quite cumbersome and undemocratic in that once the trustees are appointed, they are difficult to remove and therefore the group or charitable association only has indirect control over its own property.</li> <li>• It is not a suitable form for a charity which is a member organisation, nor for one likely to engage in providing services, nor to employ substantial numbers of staff.</li> </ul>

- Trustees have no limited liability and can be sued in their personal capacity for breach of trust and can be held personally liable for third party debts.
- There are far greater restrictions placed on the trustees of a trust than on directors of a company.
- The alteration or change of trustees is complex. The trustees have no power to alter or amend the trust deed unless the trust deed specifically provides such authority.

The Charities Regulator has certain responsibilities and regulatory authority over charity trusts under the Charities Act 2009 – please see [here](#) for further information.



## Company Limited by Guarantee

### Overview

A company is an association of people formed for the purpose of some business or undertaking carried on in the name of the group. A company is a separate legal entity and exists separately or independently of its members. There are various types of companies, but the type of company most commonly used by charities is 'Company Limited by Guarantee' (CLG), this type of company has no share capital.

A Company Limited by Guarantee is required to have a minimum of one member and 2 Directors. There is no maximum amount of members for a Company Limited by Guarantee. **The Charities Regulator requires a CLG to have 3 unrelated Directors. The Revenue Commissioner requires a CLG to have 3 unrelated Directors and 3 company members.**

It may be appropriate to establish a company where some or all of the following apply:

- The unincorporated association has grown in size and organisational activity;
- The organisation is to be quite large;
- It will employ staff;
- It will deliver charitable services under contractual agreements;
- It will regularly enter into contracts; and
- It will be an owner of freehold or leasehold land or other property.

### Constitution

The Constitution of a Company Limited by Guarantee comprises a Memorandum and Articles of Association. This document is the governing instrument of the company.

The Memorandum of Association sets out the objects of the company and the Articles of Association set out the rules and regulations of the company.

To ensure compliance with the Charities Regulator and Revenue Commissioners requirements in seeking charitable exemption from tax, the **Memorandum of Association** must state the following:

- The name of the company
- Its aims and objectives -which must fall under one of the primary [charitable purposes](#) of the Charities Act 2009
- The limited liability clause-this states that the liability of the members is limited
- The capital clause- Stating the amount they have undertaken to contribute to the assets of the company in the event it is wound up, typically €1
- The association clause- where the founding members declare that they wish to form a company

The **Articles of Association** are the regulations by which a company can be governed and managed and set out the internal management of the company and the particular areas covered will include:

- Members of the company
- Annual general meeting and extraordinary general meetings
- Board of directors appointment, removal of same, specific roles: Chair etc.
- Meeting of the directors
- Minutes of meetings
- Company seal
- Accounts and audits

There are also specific clauses relating to income & property that must be contained in your Constitution. These clauses are available in the [standard clauses](#) document at [www.charitiesregulatoryauthority.ie](http://www.charitiesregulatoryauthority.ie).

The Charities Regulator has also produced [a Model Constitution for Companies Limited by Guarantee](#). This Constitution has been agreed with the Revenue Commissioners and will be suitable for an organisation which will also wish to seek charitable tax exemption status. It incorporates all the required clauses.

**Trustees/Board/Management**

A CLG is required to have a minimum of two directors, one of whom must be resident within the State. There is no maximum number. **However, the Charities Regulatory Authority and the Revenue Commissioners requires that there be at least 3 unrelated directors if the company is a charity.**

The Directors are usually elected by the members of the company at the AGM. Some companies also empower directors to co-opt directors onto the board.

<p><b>Advantages</b></p>	<ul style="list-style-type: none"> <li>• Limits the liability of members</li> <li>• Allows the company to enter into contracts in the company name, rather than in the individual names of members.</li> <li>• Is, therefore, more appropriate when the organisation intends to employ staff or lease or own property for example.</li> </ul>
<p><b>Disadvantages</b></p>	<ul style="list-style-type: none"> <li>• The biggest disadvantage is that incorporation has costs associated with forming and maintaining the company – including compliance with company law.</li> </ul>

## Charitable Tax Exemption Status

The Charities Regulator and the Revenue Commissioners are two distinct bodies. It is the Charities Regulator that has responsibility for the registration and regulation of charities in Ireland, not the Revenue Commissioners.

**All charities in Ireland are now legally required to register with the Charities Regulator to receive their charity registration number** - this is the number which identifies an organisation as a charity in the eyes of the law and the public, and the number which is legally required to appear on all printed/fundraising materials, website, email signatures etc.

**No charity is legally required to apply to Revenue for a CHY number** unless they wish to avail of charitable tax exemption schemes – an organisation may do so on an optional basis, if it may incur certain tax liabilities as a result of its activities.

To apply for the charitable tax exemption you must complete the Revenue Commissioners' leaflet and application form, available here-[CHY1](#).

Visit the [Charity section](#) of [Revenue.ie](#) for more information.

Or contact

**Office of the Revenue Commissioners**, Charities Section,  
Government Offices, Nenagh, Co. Tipperary.

Tel: 067 63400 ext. 63377, Fax: 067 32916, Lo call: 1890 66 63 33, [Email: charities@revenue.ie](mailto:charities@revenue.ie)

See **Appendix 1** below for detailed information on the Revenue Commissioner's Tax Relief on Donations Scheme.

## Next Steps

- ✓ Explore [the Charities Regulator's various guidance documents and resources](#).
- ✓ [Join The Wheel](#) to benefit from supports for your charity, including expert training at reduced cost, discounts on products and services, policy briefings and important updates on key developments in the sector.
- ✓ Explore [www.wheel.ie](#) for more information on the governance and management of a charity.
- ✓ Read [Sustainable Communities: A Governance Resource Book for Small Community and Voluntary Organisations](#)
- ✓ Complete the [Charity Trustee Drivers Licence](#) to find out about the role and responsibilities of your charity's trustees

*This document was prepared by The Wheel based on publicly available information.*

## APPENDIX 1: Tax Reliefs on Donations to Charities

### Tax Reliefs for Individual and Corporate Donations to Charities

Certain tax reliefs are available under Irish tax law for donations of over €250 made in any one year made to eligible charities – both from individuals (PAYE or self-assessed) as well as from corporate bodies. This note outlines how it works.

**Note:** that this is not designed to be tax advice, and all individuals, companies and charities should seek advice from a qualified professional if they want to avail of this scheme.

Please see the [Revenue Commissioners](#) website for more information.

How the tax relief is applied depends on which taxpaying category the donor falls into:

1. In the case of **PAYE taxpayers or self-assessment taxpayers**, the tax relief is applied at a blended rate of 31% of the donation (once it is over €250 in any one year). This is applied for by the charity to the Revenue Commissioners who, after processing it, will pay the charity directly. In order to apply for a refund of tax paid on a donation over €250, the donor and the charity must have completed, and submitted the relevant forms.
2. **Corporate donors** simply claim a deduction for the donation as if it were a trading expense.

In the first case, the tax relief is paid directly to the charity whilst in the second case, the donor, i.e. the company receives the tax relief.

#### 1. What is meant by a Donation?

To qualify for the tax relief a donation must satisfy a number of conditions:

1. It must be in the form of money.
2. It must not be repayable.
3. It must not confer any benefit on the donor or any person connected with the donor.
4. It must not be conditional on, or associated with, any arrangement involving the acquisition of property by the charity or approved body.

#### 2. Which Charities are Eligible for this tax-relief on Donations Scheme?

The tax relief detailed below is only available for donations to **Eligible Charities** or **Approved Bodies**. What does this mean?

An **Eligible Charity** is defined by the legislation as any charity within the State, which is authorised in writing by the Revenue Commissioners for the purpose of this Scheme. Since the commencement of the Charities Regulator, **an organisation must be a registered charity before applying for the scheme.**

In order to qualify for **eligible charity status**, the charitable organisation:

a) must have a charitable tax exempt number or CHY No. and

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- b) must have been in operation for at least three years since being granted the CHY No.
- c) must make a formal application to Revenue on the form provided *Form of application to Revenue for Authorisation as an "Eligible Charity" for the purposes of Section 45, Finance Act, 2001 (donations to eligible charities)*.
- d) must meet any other conditions that Revenue may require from time to time.

Authorisations issued under the scheme will be valid for periods ranging up to five years and can be renewed upon expiry by completing a fresh application.

### 3. How does it work for Donors?

The following points are relevant for donors who are individual people, as opposed to companies – regardless of whether they are PAYE or self-assessed.

To qualify for the relief, an individual's total donations must amount to at least €250 in a tax year - but tax relief will not apply to donations in excess of €1,000,000. (In addition, individuals who are 'associated' with a charity may not claim relief on donations to that charity above an amount equivalent to 10% of their total income). All donations must meet the condition of being made "at arms-length with no strings attached", meaning that there can be no benefit to the donor (see section 1 above for further information about the type of donation that is eligible).

A single, blended rate of 31% is used to gross-up qualifying donations from all individuals (regardless of whether they are PAYE or self-assessed). Under the current system the tax refund on a donation of €250 is 31% of this which is €112.32. The charity claim €112.32 against this €250 donation back from the Revenue Commissioners, thus growing the size and impact of that particular donation by 31%!

The individual in question must fill in a 'declaration form' granting the charity the right to claim the tax paid on that particular sum that they donated, back from the Revenue Commissioners. Once filled in, this form lasts for 5-years and the charity can use it every year to claim tax back from that particular individual. The form is called a CHY3 form and can be found on the charities section of the Revenue Commissioners website.

The renewal process of the declaration form is simple. Individuals are not required to fill out a new form on the expiry of their current declaration but they may instead renew the form online, by e-mail, by text, by letter or by phone (only leaving a recorded message). Charities are required to keep a record of all such renewals, which may be audited by the Revenue Commissioners.

As of January 1<sup>st</sup> 2014, charities are able to file tax refund claims using the Revenue Online Service (ROS).

**Note:** donations by corporate bodies should treat charitable donations as standard business expenses (there is no upper limit on the size of donations).