

# Charities (Amendment) Bill 2023

No. 98 of 2023

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## Abstract

The purpose of the Charities (Amendment) Bill 2023 is to make amendments to the Charities Act 2009 in respect of accounting, audit and reporting requirements, responsibilities of trustees and the operation of the Register of Charities.



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## Glossary and abbreviations

Table 1 Glossary and abbreviations

Term	Meaning
2009 Act	Charities Act 2009
Authority	Charities Regulatory Authority (as per 2009 Act)
Bill	Charities (Amendment) Bill 2023
Committee	Joint Committee on Social Protection, Community and Rural Development and the Islands
Department	Department of Rural and Community Development
Minister	Minister for Rural and Community Development
Register	Register of Charities
Regulator	Charities Regulator (operational name of the Authority)

## Introduction

The [Charities \(Amendment\) Bill 2023](#) ('the Bill') and the accompanying [Explanatory Memorandum](#) were published on Friday, 22 December 2023. The Bill is scheduled to be taken for Second Stage in Dáil Eireann on Tuesday, 23 January 2024.

The purpose of this Bill is to make amendments to the [Charities Act 2009](#) ('the 2009 Act'). The 2009 Act is the principal primary legislation that governs the operation of charities. As well as providing a definition of charities and their operational and reporting requirements, it also provided for the establishment of the Charities Regulator ('the Regulator').<sup>1</sup> The Department of Rural and Community Development ('the Department') noted that the new legislation proposes to update existing charity law with a view to improving the ability of the Regulator to carry out its statutory functions and improving public trust and confidence in the charity sector.<sup>2</sup>

This Bill is aligned with the Department's recently published [Statement of Strategy 2023-2025](#), with one of the Strategic Objectives to:

"Ensure that the Charities Regulator has the necessary powers to increase public trust and confidence in the management, governance and administration of charities".<sup>3</sup>

In December 2023, the Minister for Rural and Community Development ('the Minister') advised that the Bill:

<sup>1</sup> Department of Rural and Community Development (2023) Regulatory Impact Analysis: Charities (Amendment) Bill 2023 - Summary of Regulatory Impact Analysis (RIA). November 2023, p.1

<sup>2</sup> [gov.ie](http://www.gov.ie) - Minister Humphreys publishes the General Scheme of the Charities (Amendment) Bill 2022 ([www.gov.ie](http://www.gov.ie))

<sup>3</sup> Department of Rural and Community Development, 2023, [Statement of Strategy 2023-2025](#), p.22

.. plans to update existing charity law and expand the role of the Charities Regulatory Authority, with the intention of increasing transparency in the way charities report and implement new provisions that will clarify certain thresholds and the general duties of trustees.<sup>4</sup>

Whilst the Minister of State at the Department of Rural and Community Development noted that:

Our charity sector is an important and valued part of Irish society, playing an integral role in the provision of services to our communities. With over 11,500 charities on the Charities Register, the work of the Charities Regulator is also vitally important. The aim of the charities (amendment) Bill is to improve the ability of the regulator to conduct its statutory functions, providing greater transparency, clarity and fairness in the regulation of charities, leading to greater public trust and confidence in the sector. It is important that we strike the right balance between necessary regulation and proportionate governance, ensuring a reasonable and fair approach is at its core.<sup>5</sup>

## The Bill

**Part 1** contains standard provisions, namely the short title and commencement, and definition.

**Part 2** of the Act contains provisions and amendments to the Principal Act (i.e. the 2009 Act).

- The primary purpose of the amendments in Part 2 is to *enhance and consolidate* the existing legal framework for the Charities Regulatory Authority ('the Authority') to conduct its statutory functions. The measures proposed are intended to:
  - introduce greater transparency to the way in which charities report,
  - enhance public confidence in the sector.

These include amendments that will facilitate the introduction of financial regulations for the sector proportionate to the charity's size.

- In addition, this Part amends Section 3 of the 2009 Act in respect of what shall be a recognised charitable purpose.
- This Part also contains amendments related to charity trustee duties and provides for the Authority to intervene in instances where there are governance and oversight concerns in a charity.
- In addition, it also provides for amendments in other areas, including the sharing of information, sanctions, and remuneration.

**Part 3** concerns amendments to the Charities Act 1961, and the Taxes Consolidation Act 1997 respectively. The provisions contained in Part 3 will provide:

- legal clarity in respect of Court ordered schemes,

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<sup>4</sup> [Departmental Priorities – Tuesday, 12 Dec 2023 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>5</sup> [Charitable and Voluntary Organisations – Tuesday, 14 Nov 2023 – Parliamentary Questions \(33rd Dáil\)](#)

- assist in respect of dispositions of charity lands on terms that are advantageous to the charity, and
- remove the requirement for prior written notice on potential litigants intending to commence proceedings in relation to a charity.

## Background

As of end of December 2023, there were just over 11,500 registered charities in Ireland, ranging from small, local volunteer-only charities to large, national or international organisations employing thousands of people.<sup>6</sup> In addition, there were 76,399 charity trustees<sup>7</sup> on the Register (as of end May 2023).<sup>8</sup>

### Recent controversies and challenges in the charity sector

The charity sector has experienced a number of high-profile challenges in recent years, including most recently, the Peter McVerry Trust (with the Regulator appointing inspectors to conduct an investigation into the charity in October 2023<sup>9</sup>) as well as earlier issues in respect of other charities such as ChildFund Ireland<sup>10</sup>, Bóthar<sup>11</sup> and Console<sup>12</sup>. This has resulted in the sector having what has been described as a “distinctly bruised reputation over the past seven years”.<sup>13</sup> Drops in charity income have been linked to challenges in the sector, with research from The Wheel reporting that “One in three charities have reported a drop in their income due to scandals in the sector”<sup>14</sup>. More recently, the Minister for Housing warned of a potential “contagion effect” following the issues with the Peter McVerry Trust, and an associated impact on public trust<sup>15</sup>. Earlier this year, the Regulator reported that the salaries of senior staff and a lack of transparency on how money is used were amongst the public’s main concerns in a survey regarding the charity sector in

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<sup>6</sup> For further information, please see: <https://www.charitiesregulator.ie/media/ib1j5owt/20231231-public-register-of-charities-1.xlsx>

<sup>7</sup> These are “volunteers who give their time to manage the charity and accept the legal responsibilities which arise as part of their management duties – which includes directors, board members and committee members”. (Source: Charities Regulator, 2023, [Irish Attitudes towards the Charity Sector: An Amárach Report](#), May 2023, p.1)

<sup>8</sup> Charities Regulator, 2023, [Irish Charity Survey 2022: An Amárach Report](#), June 2023, p.1

<sup>9</sup> [Charities Regulator appoints inspectors to investigate Peter McVerry Trust – The Irish Times](#)

<sup>10</sup> [Ex-charity chief spent ‘excessive and inappropriate’ amount on dining and travel \(irishexaminer.com\)](#)

<sup>11</sup> For instance, see: [Charity Bóthar claims ex-CEO misappropriated donations \(rte.ie\)](#); [Former Bóthar chief admits taking hundreds of thousands from charity – The Irish Times](#); [Bóthar scandal costs charity more than €1m | Independent.ie](#)

<sup>12</sup> This was a suicide prevention charity that RTÉ indicates closed following revelations broadcast by RTÉ Investigations Unit [Source: [Charities report drop in income after scandals \(rte.ie\)](#)]

<sup>13</sup> [Peter McVerry Trust problems ‘eminently salvageable’, says charity rescue expert \(irishexaminer.com\)](#) (October 2023)

<sup>14</sup> [Charities report drop in income after scandals \(rte.ie\)](#) (September 2016)

<sup>15</sup> [Fears Peter McVerry Trust crisis will have ‘contagion effect’ – The Irish Times](#) (October 2023)

Ireland.<sup>16</sup> Referencing salary levels, the Chief Executive of the Regulator noted at a Bar Council webinar (2021) that charities can “rush to appoint an expensively-paid chief executive before they have even done any fundraising” and advised that:

Not every charity requires a CEO and this is something we come across a lot – applications coming in from charities that haven’t even started their activities and they are already talking about paying the CEO €150,000 a year, and they haven’t even raised a penny.<sup>17</sup>

Further, she raised concerns about incidents where the chief executive is the sole employee (or one of two employee) and highlighted that:

There has to be a sense of reasonableness about what boards of trustees are approving. Again it comes back to: is this required, in terms of advancing your charitable purpose?

Does your charity need 20 employees to deliver on its mandate, given what you’ve decided you are going to do and the services that you are providing to the public.

These are all questions. I would urge charity trustees not to start with: we need a CEO, or we need ten people. You really have to look, and to justify.<sup>18</sup>

In terms of transparency, she recently asserted that:

The general public want to know how their donations are used, and to see evidence of what has been achieved by the particular charity that they have donated to ... Providing clear details on these two areas would create improved levels of trust and confidence amongst 90 per cent of the population.<sup>19</sup>

Further, recent media reports in respect of the sector have highlighted issues in respect of both governance and public trust and confidence. For instance, the Irish Times reported that there was a 13% increase in the number of concerns about charities reported by members of the public in 2022, with complaints relating to governance, legitimacy and financing being the most common.<sup>20</sup>

In terms of governance, RTE reported failures to file annual returns on time:

Many Irish charities failed to meet their obligations under governance standards last year, according to the Charities Regulator. Its latest annual report shows that 41% of charities failed to file their annual finances and activities on time ... there has been a 5% decrease in the number of total annual reports submitted by charities year-on-year, according to the Regulator. By the end of 2022, 73% of reports had been submitted, which the Charity Regulator CEO described as “very disappointing”.<sup>21</sup>

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<sup>16</sup> [Public concerned by transparency and use of donations in charities, study by regulator finds – The Irish Times](#) (May 2023)

<sup>17</sup> [Too many charities rush to appoint expensive bosses, says regulator \(lawsociety.ie\)](#) (February 2021)

<sup>18</sup> [Too many charities rush to appoint expensive bosses, says regulator \(lawsociety.ie\)](#) (February 2021)

<sup>19</sup> [Public concerned by transparency and use of donations in charities, study by regulator finds – The Irish Times](#) (May 2023)

<sup>20</sup> [Complaints about charity governance, legitimacy and finances received by regulator – The Irish Times](#) (July 2023)

<sup>21</sup> [41% of charities failed to file annual finances on time \(rte.ie\)](#)

Further, the Chief Executive of the Regulator highlighted the impact of compliance with governance processes and public trust and confidence, noting that:

.. it was “very disappointing” to see so many charities missing deadlines to submit annual reports about their finances. She said the forms were a “very basic statutory requirement, which is there so the public have some transparency about charities’ finances”.

“In the interests of the public and out of fairness to the majority of charities that submit their annual reports on time each year, we have signalled to the sector that we will deal decisively with those charities that have repeatedly failed to file annual reports in a timely manner,” she said.

“There is a clear and direct link between public trust in the charity sector and transparency and accountability within the sector.”<sup>22</sup>

However, the Wheel (the national association of charities, community groups and social enterprises) asserted that there were resource issues in respect of achieving compliance in respect of governance processes:

The state has rightly invested in developing regulations and compliance processes for the sector, including the Charities Regulator and the Charities (Amendment) Bill. However, there has been no equivalent investment made by the state to support the capacity of charities to comply with these processes. More pointedly, many funding programmes from state agencies specifically exclude the use of any allocated monies for necessary compliance work associated with these contracts. In addition, expansion and duplication of reporting information across state bodies and agencies further exacerbates an already difficult situation.<sup>23</sup>

Notwithstanding this, the Wheel welcomed the publication of the Bill noting that:

This is an important piece of legislation for the sector and the public. In particular, we welcome the introduction of the financial reporting standard and the inclusion of human rights as a charitable purpose.<sup>24</sup>

However, it called for greater support for charities in achieving these compliance standards:

We very much look forward to engaging with our members and policymakers, and to working with government on delivering greater resources to the sector to assist compliance requirements.<sup>25</sup>

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<sup>22</sup> [Complaints about charity governance, legitimacy and finances received by regulator – The Irish Times](#) (July 2023)

<sup>23</sup> [Pre-Budget Submission - July 2023 \(wheel.ie\)](#), p.8

<sup>24</sup> [Facebook message](#), 22 December 2023

<sup>25</sup> [Facebook message](#), 22 December 2023

## Charities Regulator

The Charities Regulatory Authority ('the Regulator') was established on 16 October 2014 under the 2009 Act. It is responsible for the regulation of charitable organisations and the protection of charitable assets. In addition, it maintains the Register of Charities ('the Register'), on which all charities operating in the State must be included. It is an independent statutory body that operates under the aegis of the Department.<sup>26</sup> The Regulator's mission statement is:

To regulate the charity sector in the public interest so as to ensure compliance with the law and support best practice in the governance, management and administration of charities.<sup>27</sup>

The values of the Regulator are set out in Figure 1 below, whilst its functions are set out in the text box below.

Figure 1 Values of the Regulator



*Reproduced from the Regulator<sup>28</sup>*

<sup>26</sup> Charities Regulator, 2022, [Annual Report 2021](#), p.4

<sup>27</sup> [What We Do | Charities Regulator](#)

<sup>28</sup> [What We Do | Charities Regulator](#)

### Functions of the Regulator

- increase public trust and confidence in the management and administration of charitable trusts and charitable organisations;
- promote compliance by charity trustees with their duties in the control and management of charitable trusts and charitable organisations;
- promote the effective use of the property of charitable trusts or charitable organisations;
- ensure the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public;
- promote understanding of the requirement that charitable purposes confer a public benefit;
- establish and maintain a register of charitable organisations;
- ensure and monitor compliance by charitable organisations with the Charities Act;
- carry out investigations in accordance with the Charities Act;
- 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;
- carry on such activities or publish such information (including statistical information) concerning charitable organisations and charitable trusts as it considers appropriate;
- provide information (including statistical information) or advice, or make proposals, to the Minister on matters relating to the functions of the Charities Regulator.

*Source: Derived from the Regulator<sup>29</sup>*

The Regulator's [Third Statement of Strategy 2022 – 2024](#) sets out 4 Strategic Objectives<sup>30</sup>, as per Table 2 below.

**Table 2 Strategic Objectives of the Regulator**

Strategic Objective 1	Public trust and confidence in registered charities is strengthened
Strategic Objective 2	Regulatory oversight and supervision by the Charities Regulator is effective and proportionate
Strategic Objective 3	Registered charities have available to them the guidance and materials necessary for them to be well governed
Strategic Objective 4	The Charities Regulator operates efficiently and delivers enhanced services

*Reproduced from the Regulator<sup>31</sup>*

<sup>29</sup> [What We Do | Charities Regulator](#)

<sup>30</sup> Each of these were accompanied by metrics (i.e. measurable indicators), which set out at a high level how these objectives would be met. [Charities Regulator, 2021, [Third Statement of Strategy 2022-2024](#), p.11]

<sup>31</sup> Charities Regulator, 2021, [Third Statement of Strategy 2022-2024](#), October 2021, p.11

The proposed legislation, and its relationship with the Regulator's Strategic Objectives, was referenced in the foreword to the Strategy, which noted:

.. the importance of continuing to advocate for the enactment of much-needed legislative amendments through a Charities (Amendment) Bill to facilitate the levels of transparency and accountability that the public clearly expects. A risk analysis carried out as part of the development of this Strategy, identified a failure to enact these essential amendments as the greatest threat to the Charities Regulator's ability to meet our strategic objectives.<sup>32</sup>

## Policy context

### An overview of the charities sector

A 2023 [report](#) from the Regulator mapped the social and economic<sup>33</sup> impact of registered charities in Ireland.<sup>34</sup> It reported that, as of 31 December 2022, there were 11,506 charities on the Register (of which 32.2% were primary, special or post-primary schools). Excluding schools, 60% of charities had some form of company structure, the most common being Company Limited by Guarantee ("CLG").<sup>35</sup> In terms of charitable purpose, the 2009 Act sets out specific categories of charitable purposes<sup>36</sup>:

- 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 (further broken down into 12 sub-purposes to include, for instance, promotion of health, or the protection of the natural environment).

The most common charitable purpose was the advancement of education, accounting for almost 32% of the registered charities (see Table 3 overleaf). When schools are excluded, the advancement of education remained the most common charitable purpose (14%).<sup>37</sup>

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<sup>32</sup> Charities Regulator, 2021, [Third Statement of Strategy 2022-2024](#), October 2021, p.6

<sup>33</sup> The Regulator noted that neither schools nor the HSE formed part of the analysis. In the case of the HSE, this was because its inclusion would "detract from the overall analysis" as it was described as "by far the largest registered charity in the State", with an annual income in excess of €22.4 billion reported for 2021. [Source: [Volunteers contribute €1 billion worth of time to Irish charities | Charities Regulator](#)]

<sup>34</sup> This report is based on information obtained from the Register and 6,067 annual reports relating to 2021 which were submitted to the Regulator.

<sup>35</sup> Charities Regulator, 2023, [Report on the Social and Economic Impact of Registered Charities in Ireland](#), September 2023, p.4,5

<sup>36</sup> The Regulator noted that these are broad terms that may not illustrate the breath of the sector. For instance, the charitable purpose of 'the promotion of health' includes, amongst other things, hospitals and hospices, mental health services, residential care, counselling services, patient and survivor supports, community defibrillators, hospital radio and respite care. [Source: Charities Regulator, 2023, [Report on the Social and Economic Impact of Registered Charities in Ireland](#), September 2023, p.7]

<sup>37</sup> Charities Regulator, 2023, [Report on the Social and Economic Impact of Registered Charities in Ireland](#), September 2023, p.7

Table 3 Charitable purpose of charities (Charities Regulator, 2023)

Area	Charitable Purpose	N° Charities*	%
Education	Advancement of education	6,674	31.9
Community welfare	Advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability	2,380	11.4
Poverty or economic hardship	Relief of poverty or economic hardship	1,757	8.4
Integration of disadvantaged	Integration of those who are disadvantaged, and the promotion of their full participation, in society	1,739	8.3
Religion	Advancement of religion	1,590	7.6
Health	Promotion of health, including the prevention or relief of sickness, disease or human suffering	1,384	6.6
Community development	Advancement of community development, including rural or urban regeneration	1,382	6.6
Civic responsibility or voluntary work	Promotion of civic responsibility or voluntary work	1,108	5.3
Arts, culture, heritage or sciences	Advancement of the arts, culture, heritage or sciences	1,092	5.2
Conflict resolution or reconciliation	Advancement of conflict resolution or reconciliation	229	1.1
Environment	Protection of the natural environment	414	2.0
Environment	Advancement of environmental sustainability	392	1.9
Community relations	Promotion of religious or racial harmony and harmonious community relations	282	1.3
Property	Advancement of the efficient and effective use of the property of charitable organisations	275	1.3
Animal suffering	Prevention or relief of suffering of animals	230	1.1

\*Charities with multiple charitable purposes are included in the count for each of their purposes

Source: Derived from the Regulator<sup>38</sup>

Turning to charity trustees, Table 4 overleaf shows the number and distribution of charity trustees across schools/non-school charities. It shows that there was an average of 6.6 trustees per charity, with schools having a higher average than non-schools (8.1 versus 5.9).

<sup>38</sup> Charities Regulator, 2023, [Report on the Social and Economic Impact of Registered Charities in Ireland](#), September 2023, p.8

Table 4 Number of charity trustees (by charity type) (Charities Regulator, 2023)

	N° Charities	N° Trustees	Average per charity
Schools	3,705	30,101	8.1
Non-schools	7,801	46,368	5.9
<b>Total</b>	<b>11,506</b>	<b>76,469</b>	<b>6.6</b>

\*Individuals may be trustees for more than one charity

Source: Derived from the Regulator<sup>39</sup>

In terms of the 6,067 annual reports filed for 2021, total income of €19.7 billion and total expenditure of €18.6 billion was declared by the registered charities. Nearly two-thirds of charities (62.6%) had incomes of less than €250,000, with over a third (37.8%) having annual incomes of less than €50,000. Of note is that 1,639 charities had not submitted an annual report for 2021 when the data was extracted for analysis – notwithstanding that these were overdue<sup>40, 41</sup>

Over 55% of charities had employees, whilst 44.8% had none. Of those with employees, more than half of these (55%) employed fewer than 10 people and 13% (441) had part-time staff only. Overall, more than 71% of charity employees worked in charities with incomes in excess of €10 million. As can be seen from Table 5 below, almost a quarter of charities indicated that they had no volunteers<sup>42</sup>, whilst over half (55%) of those with volunteers reported having fewer than 20. A small minority of charities (approximately 2%) had more than 250 volunteers.<sup>43</sup>

Table 5 Volunteer numbers within charities (excluding schools) (Charities Regulator, 2023)

Volunteer bands	N° Charities	%
None	1,305	23.5%
1-9	2,134	38.4%
10-19	922	16.6%
20-49	677	12.2%
50-249	404	7.3%
250-499	58	1.0%
500-999	26	0.5%
1,000-4,999	26	0.5%
5,000+	11	0.2%

\*Based on annual reports submitted to the Charities Regulator relating to 2021

Source: Derived from the Regulator<sup>44</sup>

<sup>39</sup> Charities Regulator, 2023, [Report on the Social and Economic Impact of Registered Charities in Ireland](#), September 2023, p.9

<sup>40</sup> Under section 52 of the 2009 Act, all registered charities must file an annual report with the Regulator within 10 months of their respective financial year end.

<sup>41</sup> Charities Regulator, 2023, [Report on the Social and Economic Impact of Registered Charities in Ireland](#), September 2023, p.10

<sup>42</sup> The Regulator cautioned that volunteer numbers are indicative as some charities include their charity trustees in their volunteer count (notwithstanding that they are advised not to do so). Further, the Regulator noted that the reference year of 2021 might have been impacted by COVID-19 restrictions.

<sup>43</sup> Charities Regulator, 2023, [Report on the Social and Economic Impact of Registered Charities in Ireland](#), September 2023, p.23,27

<sup>44</sup> Charities Regulator, 2023, [Annual Report 2022](#), July 2023, p.15

In terms of charity trustees, research undertaken for the Regulator found that most adults (80%) have not considered becoming a charity trustee (a volunteer who accepts the legal responsibilities associated with charity management as a board or committee member), whilst those who had considered it, but not followed through, cited a range of barriers (with lack of time and not being aware of what's involved as the main barriers). By corollary, charities report finding it increasingly difficult to appoint trustees, with almost 4 in 10 (38%) reporting attracting new trustees as one of their greatest challenges.<sup>45</sup> Attracting new trustees/succession planning was a greater challenge for smaller charities (income of less than €50,000) as opposed to those with an income of more than €500,000 (45% versus 27%).<sup>46</sup>

### Governance and annual reporting

Turning to governance, the [Charities Governance Code](#) ('the Code') is issued by the Charities Regulator under [section 14\(1\)\(i\)](#) of the 2009 Act, to encourage and facilitate the better administration and management of charitable organisations. The Code presents the "minimum standards" charities are expected to meet to ensure that it is effectively managed.<sup>47</sup> The Code comprises:

- six principles of governance which all charities should apply (see Figure 2 below);
- core standards that all charities are expected to meet when putting the principles into action; and
- additional standards that reflect best practice for charities with high levels of income and/or complex organisational and funding structures and/or significant numbers of employees.<sup>48</sup>

Figure 2 Principles of governance (Charities Governance Code)



Reproduced from the Regulator<sup>49</sup>

<sup>45</sup> Charities Regulator, 2023, [Irish Attitudes towards the Charity Sector: An Amárach Report](#), May 2023, p.11

<sup>46</sup> Charities Regulator, 2023, [Irish Charity Survey 2022: An Amárach Report](#), June 2023, p.14

<sup>47</sup> [Charities Governance Code \(charitiesregulator.ie\)](#), p.2,4

<sup>48</sup> [Charities Governance Code \(charitiesregulator.ie\)](#), p.5

<sup>49</sup> Charities Regulator, 2023, [Annual Report 2022](#), July 2023, p.31

According to the Regulator,

The prevalence of governance issues as the most common reason in relation to which concerns are raised regarding charities over the last number of years underlines the importance of the implementation of the Charities Governance Code by charities. The Code is designed to assist charities in achieving best practice, and adhering to the standards set out in the Code will help charities to avoid issues that lead to concerns being raised with the Charities Regulator.<sup>50</sup>

The Code was formally rolled out in 2020, with charities required to declare their level of compliance with it in their annual report to the Regulator since 2021. Table 6 below shows the levels of declarations of compliance for both 2021 and 2022. In 2022, almost three-quarters of charities (73%) declared full compliance with the Code (as compared to 69% in 2021). Just 7% of charities declared themselves to be non-compliant in 2022, as compared to 16% in 2021.<sup>51</sup>

Table 6 Declarations of compliance with the Charities Governance Code 2001, 2022

	Charities 2022	% 2022	Charities 2021	% 2021
Declared themselves to be in full compliance	4,706	73	4,245	69
Declared themselves to be partially compliant	746	12	912	15
Declared themselves to be non-compliant	481	7	967	16
Preferred not to complete the compliance declaration	504	8	26	0
Submitted Charities Governance Code compliance declaration	6,437		6,150	

*Reproduced from the Regulator<sup>52</sup>*

The Regulator reported that its Compliance and Enforcement Unit continuously monitor declarations of compliance, with a random selection of charities annually asked to submit their Compliance Record Form in order for its accuracy to be verified by the Regulator. In 2022, this sampling found that 65% of the declarations of full compliance made during the year were accurate<sup>53</sup>, a slight increase of 2% on 2021.<sup>54</sup>

Whilst failure to file an annual report<sup>55</sup> on time is an offence under the Act (for both the charity and the trustees), the Regulator reported that the number of charities filing their annual report on time

<sup>50</sup> [Charities Regulator Compliance Report 2022](#), p.5

<sup>51</sup> Charities Regulator, 2023, [Annual Report 2022](#), July 2023, p.32

<sup>52</sup> Charities Regulator, 2023, [Annual Report 2022](#), July 2023, p.32

<sup>53</sup> The Regulator advised that where inaccuracies were found to have been submitted, the relevant charities were instructed to amend their declaration of compliance and monitoring to ensure that they comply.

<sup>54</sup> Charities Regulator, 2023, [Annual Report 2022](#), July 2023, p.32

<sup>55</sup> The contents of the annual report are published online and contain a range of information, including:

- What a charity has done over the last 12 months to further each of its charitable purposes;
- Who a charity has helped;
- How a charity raised and spent funds; and
- Where the benefits of a charity's work were felt. [Source: Charities Regulator, 2023, [Annual Report 2022](#), July 2023, p.26]

has declined in recent years, with just six in ten (59%) registered charities doing so in 2022. By the end of the year, a further 14% of charities had filed their annual reports, bringing the total reports submitted to the Regulator to 73%, a decrease of 5% year on year.<sup>56</sup> In this context, the Chief Executive of the Regulator noted that:

It is very disappointing to see charities fail to comply with their obligations to complete and file an annual report on time with the Regulator ... This report provides a vital window into a charity's work for the general public and for potential donors and volunteers. And, for the many charities that file on time, it demonstrates a commitment to transparency and accountability to their supporters and the wider public.<sup>57</sup>

Further, she highlighted the link between public trust and transparency/accountability within the charity sector and noted that:

As a regulator, we strive to assist charities in meeting their regulatory requirements, but ultimately, it is charities and their trustees who are best placed to ensure they are meeting their legal obligations and operating transparently and in an appropriate manner at all times.<sup>58</sup>

Analysing the annual reports for the 71% of charities with a financial year running 1 January to 31 December 2021, the Regulator reports that larger charities were more likely to file on time, with the smallest of charities being the least likely to meet the filing deadline. As Table 7 below shows, whilst 82.3% of the largest charities (based on income) filed on time, just 66.4% of the smallest charities filed on time.<sup>59</sup>

**Table 7 Annual report filing (Charities Regulator, 2023)**

Size of charity (income)	Number in sample	Number filing on time (by 31 October 2022)	% filing on time
€0 - €10,000	709	471	66.4%
€10,001 - €25,000	380	288	75.8%
€25,001 - €50,000	358	260	72.6%
€50,001 - €100,000	451	320	71.0%
€100,001 - €1,000,000	1,690	1,300	76.9%
>€1,000,001	818	673	82.3%
<b>Total</b>	<b>4,406</b>	<b>3,312</b>	<b>75.2%</b>

*Reproduced from the Charities Regulator<sup>60</sup>*

<sup>56</sup> Charities Regulator, 2023, [Annual Report 2022](#), July 2023, p.26

<sup>57</sup> Charities Regulator, [Press Release: Governance standards improve across charity sector](#), July 2023

<sup>58</sup> Charities Regulator, [Press Release: Governance standards improve across charity sector](#), July 2023

<sup>59</sup> Charities Regulator, 2023, [An overview of Ireland's smaller charities](#), November 2023, p.22

<sup>60</sup> Charities Regulator, 2023, [An overview of Ireland's smaller charities](#), November 2023, p.22

In terms of non-compliance with reporting requirements, the Regulator advised that it takes a “proportionate approach” in cases where charities breach the requirements of the Act. Noting that it will seek to work with charities to achieve compliance in the first instance, it indicated that some charities still fail to comply. In that context, the Regulator advised that it was adopting a ‘stricter’ approach to non-compliance and a targeted compliance programme:

In the interests of transparency and fairness to those charities that do file their annual reports on time, the Charities Regulator is adopting a stricter approach to enforcing compliance with this obligation. It is committed to implementing a targeted compliance programme during 2023 to increase levels of compliance with annual reporting obligations with possible enforcement action including prosecution of the charity and the individual charity trustees and /or removal of the charity from the Register of Charities where annual reports have been outstanding for a considerable period.<sup>61</sup>

Of note is that the [Irish Charity Survey 2022](#) found that just over half of charities agreed that increased regulation and the introduction of the Code had improved the operation of their charity (17% strongly agreed; 38% agreed). Noting that a quarter of respondents indicated challenges in respect of the “administrative burden” on charities, it was reported that:

On balance, the Charities Governance Code benefits charities and public perceptions of the sector though for some, complying with the Code is difficult and can act as a disincentive to submit the annual report.<sup>62</sup>

All told, two thirds of respondents indicated that the Code assisted their charity to improve how it is run (19% strongly agreed; 48% agreed), whilst over half of respondents indicated that compliance with the Code increased public trust and confidence in their charity (16% strongly agreed; 37% agreed) and just under half reported that the introduction of the Code had improved public understanding of how charities are run (11% strongly agreed; 34% agreed). However, a fifth of respondents agreed with the statement that complying with the Code is too difficult (5% strongly agreed; 16% agreed).<sup>63</sup>

Additionally, the survey found differing opinions in respect of the varying responsibilities of charities and the Regulator in respect of governance, operational and public engagement matters. For instance, it was noted that more survey participants felt that many of the governance and operational matters assessed should be the responsibility of the charity itself, with the Regulator responsible for improving trust & making information accessible to the public. As Figure 3 overleaf shows, half of respondents expressed the belief that responsibility for ensuring that a charity is transparent and accountable lay with the Regulator, with a minority (43%) believing this to be the responsibility of the charity itself. However, the majority indicated that responsibility for ensuring a charity is well run (60%) and operating in an ethical way (55%) lies with the charity. Further, the majority of respondents felt that the Regulator should be responsible for improving public trust in

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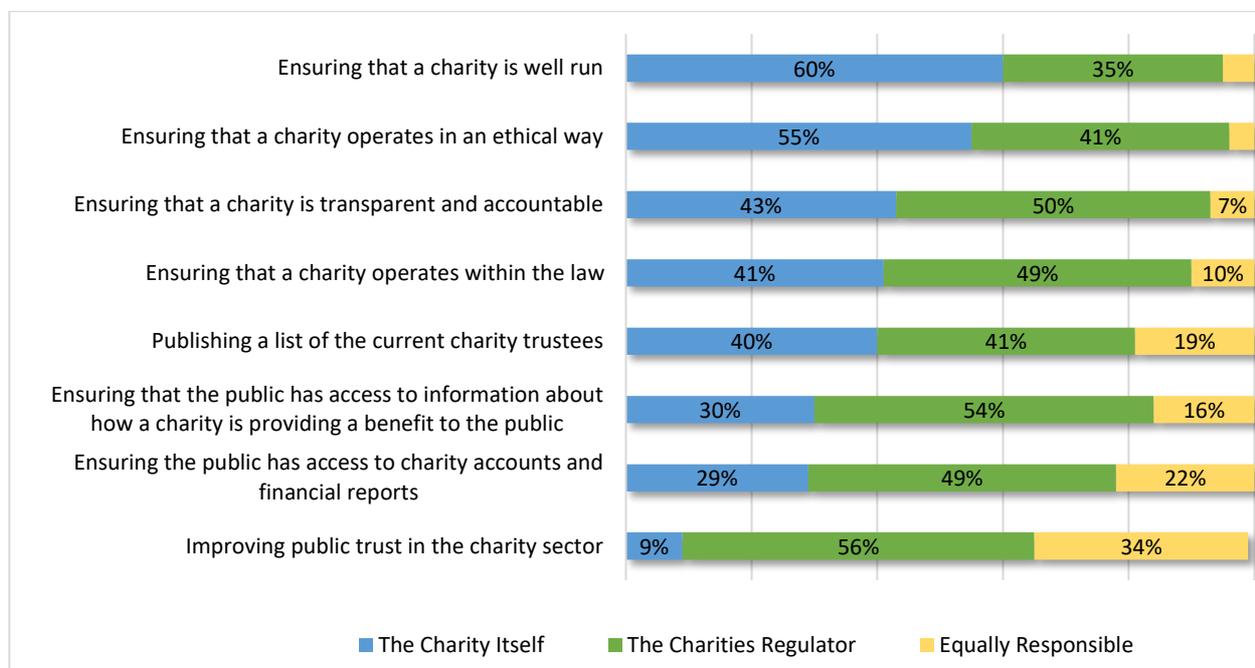
<sup>61</sup> Charities Regulator, 2023, [Annual Report 2022](#), July 2023, p.27

<sup>62</sup> [Presentation: Survey of Charities](#), June 2023, p.41,68

<sup>63</sup> [Presentation: Survey of Charities](#), June 2023, p.68

the charity sector (56%). Of note is that a higher proportion of respondents to the public survey felt that public trust and confidence had decreased as compared to respondents to the survey of charities (37% versus 26%).<sup>64</sup> Issues in respect of public trust and confidence in charities will be further discussed in the next section.

Figure 3 Responsibilities of the charity versus the Regulator (2022)



Data drawn from Charity Regulator<sup>65</sup>

In terms of concerns<sup>66</sup> raised with the Regulator in 2022<sup>67</sup>, the most frequent categories were 'Governance issues' (36%) and 'Legitimacy of the charity' (35%), with the third most common being concerns in respect of 'Financial controls and transparency' (17%). Similar proportions were reported in respect of 2021.<sup>68</sup>

Under Part 4 of the 2009 Act, the Regulator has the power to appoint inspectors to investigate the affairs of any charity.<sup>69</sup> All told, the Regulator has appointed Inspectors to a range of charities over

<sup>64</sup> [Presentation: Survey of Charities](#), June 2023, p.39; Charities Regulator, 2023, [Irish Charity Survey 2022: An Amárach Report](#), June 2023, p.6,7,16

<sup>65</sup> [Presentation: Survey of Charities](#), June 2023, p.39

<sup>66</sup> As explained by the Regulator, 'concerns' refer to alleged breaches of the Charities Act 2009, which may come to the Regulator's attention in a number of different ways, including the Regulator's online concerns form (which may be completed by the general public), media reports and the Regulator's monitoring work. [Source: [Charities Regulator Compliance Report 2022](#), p.6]

<sup>67</sup> 642 individual concerns were raised with the Charities Regulator in 2022, an increase of 13% on the 568 individual concerns that were received in 2021; whilst the number of concerns raised by organisations increased from 416 in 2021 to 574 in 2022 (+11%). [Source: [Charities Regulator Compliance Report 2022](#), p.5,11]

<sup>68</sup> Charities Regulator, 2023, [Annual Report 2022](#), p.30

<sup>69</sup> Charities Regulator, 2023, [Annual Report 2022](#), p.6

the last 5 years, with a number of statutory investigations reports published. Table 8 below provides an overview of some of these.<sup>70</sup>

Table 8 Statutory Investigations, Charities Regulator

Statutory investigation reports published <sup>71</sup>
<ul style="list-style-type: none"> <li>• BirdWatch Ireland - <a href="#">Inspectors' report 2022</a></li> <li>• Cabhrú - <a href="#">Inspectors' report 2021</a></li> <li>• ChildFund Ireland - <a href="#">Inspectors' report 2021</a></li> <li>• Galway University Foundation - <a href="#">Inspectors' report 2019</a></li> <li>• Solas Galway Picture Palace - <a href="#">Inspectors' report 2018</a></li> <li>• GLEN - <a href="#">Inspectors' report 2018</a></li> <li>• Ataxia Ireland - <a href="#">Inspectors' report 2017</a></li> </ul>
Additional (selected) Statutory investigations, by year opened
<p><b>2020</b><sup>72</sup></p> <ul style="list-style-type: none"> <li>• Bóthar</li> </ul>
<p><b>2021</b><sup>73</sup></p> <ul style="list-style-type: none"> <li>• Inner City Helping Homeless<sup>74</sup></li> </ul>
<p><b>2022</b><sup>75</sup></p> <ul style="list-style-type: none"> <li>• Irish Society for Prevention of Cruelty to Animals</li> <li>• Navan Mental Health Housing Association Limited</li> </ul>
<p><b>2023</b></p> <ul style="list-style-type: none"> <li>• Peter McVerry Trust<sup>76</sup></li> </ul>

### Public confidence and trust in charities

Research<sup>77</sup> conducted for the Regulator found that trust and confidence have become more important when deciding to support a charity for the first time – with 80% of respondents reporting that trust and confidence in a charity is very important when deciding to donate, a significant increase since the benchmark level of 65%.<sup>78</sup>

<sup>70</sup> Please note that the list of open statutory investigations has been compiled through reviewing the Regulator's Annual Reports (2020, 2021, and 2022), its press releases, and notations in the Register. Its contents have been kindly verified by officials from the Department of Rural and Community Development.

<sup>71</sup> For further information, see: [Compliance and enforcement | Charities Regulator](#)

<sup>72</sup> Charities Regulator, 2021, [Annual Report 2020](#), p.18

<sup>73</sup> Charities Regulator, 2022, [Annual Report 2021](#), p.15

<sup>74</sup> [Charities Regulator appoints inspectors to investigate the affairs of Inner City Helping Homeless | Charities Regulator](#)

<sup>75</sup> Charities Regulator, 2023, [Annual Report 2022](#), p.31

<sup>76</sup> [Charities Regulator appoints inspectors to investigate Peter McVerry Trust | Charities Regulator](#)

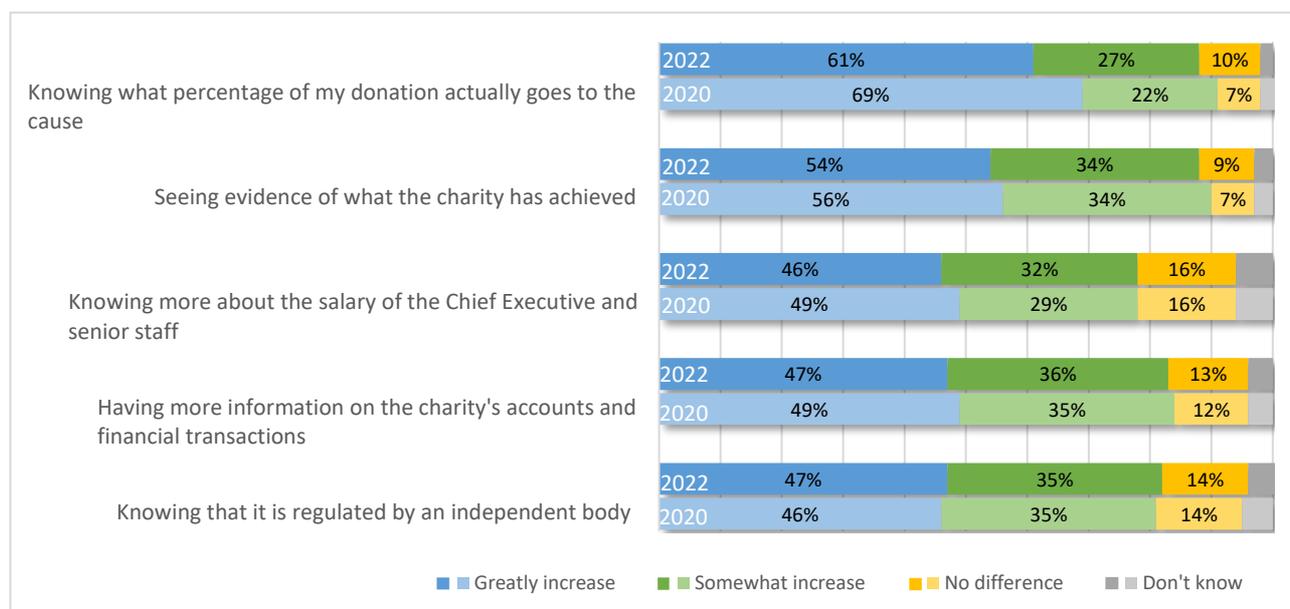
<sup>77</sup> This was a repeat (with some minor changes reflecting the post-pandemic context) of a survey conducted in late 2020, which used the same online methodology with a final sample of 2,000 adults aged 18+ years.

<sup>78</sup> Charities Regulator, 2023, [Irish Attitudes towards the Charity Sector: An Amárach Report](#), May 2023, p.5

General trust and confidence in charities was found to have declined over the previous two years, with lack of transparency regarding how funding is used, perceptions of high salaries of executive staff and negative media coverage reported as the main drivers of this decline. Of note is that the charity sector was not perceived as a homogenous entity, with a 'hierarchy of trust' depending on the size/scale/scope of the charity. Charities that supported personal and small, local charities engendered the highest levels of trust, whilst attitudes towards national charities were described as more neutral. Lowest levels of trust were found in respect of international charities.<sup>79</sup>

Concerns in respect of charities included lack of transparency in terms of how donations are used, lack of information on how a charity is run, high administration costs and the salaries of senior staff. By corollary, measures that would increase trust and confidence in a charity included transparency regarding how donations are used and evidence of what has been achieved by a charity. All told, almost 9 in 10 respondents indicated that these measures would positively increase their trust and confidence in a charity (see Figure 4 below).<sup>80</sup>

Figure 4 Measures that would increase trust and confidence in a charity (2020,2022)



Data drawn from Charity Regulator<sup>81</sup>

In 2021, the Regulator published research<sup>82</sup> on public engagement with charities, which included a focus on public trust and confidence<sup>83</sup>. All told, 91% of respondents reported a "reasonable level of

<sup>79</sup> Charities Regulator, 2023, [Irish Attitudes towards the Charity Sector: An Amárach Report](#), May 2023, p.2,5,6

<sup>80</sup> Charities Regulator, 2023, [Irish Attitudes towards the Charity Sector: An Amárach Report](#), May 2023, p.7,12

<sup>81</sup> Charities Regulator, 2023, [Irish Attitudes towards the Charity Sector: An Amárach Report](#), May 2023, p.13

<sup>82</sup> A total of 2,001 people responded to the survey carried out by Amárach on behalf of the Regulator. [Source: [Charities Regulator publishes Irish Public Survey | ...](#)]

<sup>83</sup> [Charities Regulator publishes Irish Public Survey | ...](#)

trust and confidence” in the charity sector<sup>84</sup>, with 36% rating their level of trust highly (i.e. 8+ out of 10), with females more likely to give such ratings than males (39% versus 32%). Greater trust and confidence were evident in charities that respondents personally support, as well as in small local charities (as compared to international charities). Whilst 16% of respondents reported an increase in trust and confidence in charities over the previous 2 years, half (50%) reported that it had not changed and a third (34%) indicated that it had decreased. Respondents over 55 years were most likely to report a decrease in trust and confidence, with younger respondents (16-34 years) least likely to report this (41% versus 24%). Similarly, younger respondents (16-34 years) were more likely than those aged 55+ years to report an increase in trust and confidence in the previous 2 years (24% versus 12%).<sup>85</sup>

Concerns around financial decisions and administration were cited as the top reasons for those who responded that their trust and confidence in charities had decreased (see Figure 5 below).<sup>86</sup>

Figure 5 Reasons for decrease in trust and confidence in charities (Charities Regulator, 2021)



Data drawn from Charities Regulator<sup>87</sup>

In terms of charity regulation, fewer respondents in 2022 (as compared to 2021) were aware that only registered charities are regulated (56% versus 67%). However, 7 in 10 respondents were aware that it is an offence for an individual or organisation to represent themselves as charity if they are not registered. Further, whilst 8 in 10 respondents indicated that they would have more confidence in the charity sector if they knew it was regulated by an independent body, a similar majority were concerned that regulation was not having any effect. This was noted as related to

<sup>84</sup> [Charities Regulator publishes Irish Public Survey | ...](#)

<sup>85</sup> Charities Regulator, 2021, [The Charities Regulatory Authority, Irish Public Survey: An Amárach Report](#), April 2021, p.41,42

<sup>86</sup> Charities Regulator, 2021, [The Charities Regulatory Authority, Irish Public Survey: An Amárach Report](#), April 2021, p.43

<sup>87</sup> Charities Regulator, 2021, [The Charities Regulatory Authority, Irish Public Survey: An Amárach Report](#), April 2021, p.43

the perception, amongst other things, that regulation was either not strict enough or that issues continue to emerge in the sector.<sup>88</sup> There was “considerable support for tougher action” from the Regulator, with 54% strongly agreeing and 30% agreeing that the Regulator needs to take “much tougher action against registered charities than it does at the moment”. Further, a majority of respondents either strongly agreed (35%) or agreed (31%) with the statement that the Regulator “should monitor charities at a high risk of wrongdoing very closely, even if this means it can’t monitor lower risk charities at all”.<sup>89</sup>

Turning to charities themselves, a quarter respondents to the [Irish Charity Survey 2022](#) indicated that they felt that public trust and confidence in the sector had decreased, something that the majority (55%) attributed to “Media coverage of serious issues in some charities impacting on all charities” and more than a quarter (27%) attributed to “On-going public dialogue about perceived issues in the Charity sector e.g. CEO salaries, high expenses, money spent on administration”. A quarter of respondents indicated that this decrease had negatively impacted recruitment of volunteers/staff for their charity.<sup>90</sup>

### Charity Legislation in Ireland

The Law on Charities in Ireland has a complex history originating from the law of equity, the common law and statute. Equitable principles permitted a charitable trust to be established which departed from the usual trust principles of requiring identifiable beneficiaries and having a duration falling within a set period of time. Charitable trusts are able to exist in perpetuity and be for purposes, rather than for specific persons.

The legal framework for charities was further developed in Ireland by the introduction in 1786 of an Act for the Better Discovery of Charitable Donations and Bequests.<sup>91</sup> Forty years later, Queen Victoria signed into law the Commissioners and Charitable Donations and Bequests Act (Ireland) 1844, introducing a statutory committee and commissioners that endured in the facilitation of charities and their operation until 2014.<sup>92</sup> The [Charities Act 1961](#) repealed all earlier Acts but preserved the role and powers of the Commissioners; powers which were then subsequently enlarged in the [Charities Act 1973](#). Apart from some miscellaneous amendments, no further statutory reform followed for over 40 years until the enactment of the [Charities Act 2009](#).<sup>93</sup>

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<sup>88</sup> Charities Regulator, 2023, [Irish Attitudes towards the Charity Sector: An Amárach Report](#), May 2023, p.19

<sup>89</sup> [Presentation: Public Attitudes Towards Ireland’s Charity Sector](#), May 2023, p.51

<sup>90</sup> Charities Regulator, 2023, [Irish Charity Survey 2022: An Amárach Report](#), June 2023, p.6; [Presentation: Charities Survey](#), June 2023, p.32

<sup>91</sup> George III c.18, amended by 40 George III c.75. See Leonard Shelfer, *A Practical Treatise of the Law of Mortmain, and Charitable Uses and Trusts* (London: S. Sweet, 1836)

<sup>92</sup> 7 & 8 Vic. c.97 See Chapter 3 in Oonagh B. Breen, Alison Dunn and Mark Sidel (eds), *Regulatory Waves: Comparative Perspectives on State Regulation and Self-Regulation Policies in the Nonprofit Sector* (Cambridge: Cambridge University Press, 2017)

<sup>93</sup> [Social Welfare \(Miscellaneous Provisions\) Act 2002](#), Pt.2.

### Legal Structures for Establishing Charities<sup>94</sup>

Charities in Ireland typically take one of the following legal forms:

- Unincorporated Association: A flexible and informal structure without a separate legal personality.
- Trust: An arrangement where trustees hold assets for the benefit of the charity's purposes.
- Company Limited by Guarantee (CLG): A legal entity that does not share capital and is limited by the guarantee of its members.

Organisations formed under any of these structures may be eligible for charitable tax exemptions, provided they meet certain criteria.

### Rational for seeking Charitable Status

Benefits of Charitable Status

- Enhanced Public Confidence: Being a registered charity can bolster public trust and credibility.
- Statutory Protection: In Ireland, only registered charities can legally claim charitable status, thereby safeguarding authentic organisations.
- Potential for tax Exemption: While registration alone doesn't secure tax benefits, it is a necessary step towards applying for tax-exempt status.

Obligations of Charitable Status:

- Comprehensive Regulation: Charities must comply with legislation, submit annual reports and are subject to the Charities Regulatory Authority's supervision.
- Limited Scope of Activities: Registered charities are restricted in their ability to engage in political and commercial endeavours.
- Governance Compliance: Charities are required to follow governance protocols, including having a minimum of three trustees who serve without compensation.

## The Charities Act 2009

The [Charities Act 2009](#) ('the 2009 Act') stands as the cornerstone in the framework of Irish law, governing the operation and regulation of charitable organisations within Ireland. Enacted with the intent to foster transparency and accountability, the Act delineates the legal obligations of charities, establishes the Charities Regulatory Authority/Charities Regulator (referred to as 'the Regulator' throughout), and sets forth the criteria for what constitutes a charitable purpose. This legislation mandates the registration and reporting of charitable entities and aims to ensure that the activities and financial dealings of these organisations are in the public interest and for the public benefit.

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<sup>94</sup> The Wheel, "[Factsheet – Forming a Charity](#)", July 2018

## Charitable purpose

With the introduction of the 2009 Act, Ireland established a statutory definition of 'charitable purpose' in [Section 3](#) of the Act. This definition builds on the common law *Pemsel* heads of charity,<sup>95</sup> namely, relief of poverty, advancement of education, advancement of religion and "*other purposes beneficial to the community*".

The 2009 Act updated the language of the common law and expanded in more detail what was meant by *other purposes beneficial to the community* in s.3(11) of the Act. These are:

- (a) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health, or disability,
- (b) the advancement of community development, including rural or urban regeneration,
- (c) the promotion of civic responsibility or voluntary work,
- (d) the promotion of health, including the prevention or relief of sickness, disease or human suffering,
- (e) the advancement of conflict resolution or reconciliation,
- (f) the promotion of religious or racial harmony and harmonious community relations,
- (g) the protection of the natural environment,
- (h) the advancement of environmental sustainability,
- (i) the advancement of the efficient and effective use of the property of charitable organisations,
- (j) the prevention or relief of suffering of animals,
- (k) the advancement of the arts, culture, heritage or sciences, and
- (l) the integration of those who are disadvantaged, and the promotion of their full participation, in society.

These subheadings represent areas in which, prior to the introduction of the 2009 Act, the Irish Revenue Commissioners granted charitable tax exemption and therefore was simply the codification of Revenue practice.

Each purpose must be of public benefit in order to be a charitable purpose under section 3. There is a statutory presumption that a gift for the advancement of religion is of public benefit unless the contrary is proven. All other charitable purposes must be shown to be intended to benefit the public or a section of the public.

Certain organisations are excluded, as set out in section 2(1) of the 2009 Act:<sup>96</sup>

- A political party;
- A body that promotes a political party or candidate;
- A body that promotes a political cause that does not relate directly to the advancement of the body's charitable purpose.

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<sup>95</sup> Named after the case of Commissioners for Special Purposes of Income *Tax v Pemsel* [1891] AC 531, 583.

<sup>96</sup> See the definition of "excluded body" in section 2(1) of the Charities Act 2009 for a full list of bodies which cannot be a registered charity under the Act.

This means that any organisation which falls into one of the categories of excluded bodies is not, and cannot become, a registered charity.

### The Advancement of Human Rights and Trusts for Political Purposes

In contrast to the UK, Ireland opted not to recognise the advancement of human rights as a charitable purpose or the promotion of amateur sports under section 3(11) of the Act.<sup>97</sup> This deliberate omission has been criticised<sup>98</sup> and in 2015, the Joint Oireachtas Committee on Justice, Defence and Equality Oireachtas Committee recommended that this be added as a charitable cause.<sup>99</sup>

In 2013, in a successful appeal against the decision of the UK Charity Commission not to register Human Dignity Trust (HDT) as a charity,<sup>100</sup> a broad interpretation was placed by the Tribunal on the phrase 'the advancement of human rights' concluding that the promotion and protection of human rights which includes litigation is not a political purpose, nor a form of a political activity. As a result, Biehler expressed the view that 'it will be increasingly difficult to sustain the political purposes exclusion where objects designed to advance human rights are at issue.'<sup>101</sup> Elias CJ stated in the decision of the Supreme Court of New Zealand in *Re Greenpeace of New Zealand Inc*<sup>102</sup> that 'in the circumstances of modern participatory democracy and modern public participatory processes in much administrative and judicial decision-making, there is no satisfactory basis for a distinction between general promotion of views within society and advocacy of law change'.

The proposed Bill aims to broaden the definition of charitable purposes to include Human Rights. However, the Joint Committee on Social Protection, Community and Rural Development and the Islands in their [Report on the Pre-Legislative scrutiny of the General Scheme of the Charities \(Amendment\) Bill, 2022](#) has expressed concerns that the Bill does not distinguish between charities established solely for political purposes and those engaging in political advocacy as part of their broader charitable activities.

Furthermore, the Irish Council for Civil Liberties (ICCL) has highlighted a shift in the Charities Regulator's advice in this area. The Regulator's guidance, released in December 2021, used different language from its 2018 document. The 2018 guidance stated:

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<sup>97</sup> Breen, Oonagh B, [Charitable Organisations and Charity Policy in Ireland, Das Bundesnetzwerk Bürgerschaftliches Engagement](#), December 3, 2019 ; Joint Committee on Justice, Defence and Equality, [Report on the Review of the Charities Act 2009](#) November 2015.

<sup>98</sup> See, for example, Breen, "Neighbouring Perspectives: Legal and Practical Implications of Charity Regulatory Reform in Ireland and Northern Ireland" (2008) 59 NILQ 223 and "Too Political to be Charitable? The Charities Act 2009 and the Future of Human Rights Organisations in Ireland" [2012] PL 268.

<sup>99</sup> ["25th Session of the Universal Periodic Review Working Group – Review of Ireland: Free Legal Advice Centres \(FLAC\)"](#) 1 May 2018.

<sup>100</sup> Human Dignity Trust v Charity Commission for England and Wales, Appeal Number CA/2013/0013

<sup>101</sup> Biehler, "The Political Purposes Exception - is there a Future for a Doctrine Built on Foundations of Sand?" (2015) 29 TLI 97.

<sup>102</sup> [2015] 1 NZLR 169, 194

“An organisation will be considered to have a political purpose if it [i.a.] is set up *exclusively* to promote a political cause such as bringing about a change in the law or policies of the Government or other public bodies.”<sup>103</sup>

In December 2021, the guidance had changed to:

“An organisation will be considered to have a political purpose if it ... is set up *primarily* to promote a political cause such as bringing about a change in the law or policies of the Government or other public bodies, whether in Ireland or another country.”

The change was twofold:

1. The substitution of the word “exclusively” in the 2018 guidance for the word “primarily” in the 2021 updated guidance.
2. The addition of the phrase “whether in Ireland or another country.”

The ICCL maintains that this change has:

“the potential to have a serious and negative impact on the ability of organisations to conduct legitimate advocacy work while maintaining, or indeed obtaining, charitable status. This could effectively prevent human rights organisations from registering as charities and nullify the impact of the amendment as proposed in the Bill.”<sup>104</sup>

### The Charities Regulator – The Charities Regulatory Authority

The 2009 Act allowed for the creation of the Regulator, an appeals tribunal, the transfer of powers from the Commissioners of Donations and Bequests and the dissolution of that body, the establishment of a public register of charities, and other matters.<sup>105</sup> The Regulator was not formally established however until October 2014.<sup>106</sup>

The functions of the Regulator are set out in section 14 of the 2009 Act. They include *inter alia*:

- The promotion of compliance by charity trustees in managing charitable trusts and organisations.
- Ensuring the accountability of charitable organisations to donors, beneficiaries, and the public.
- The establishment and maintenance of a register of charitable organisations,
- Ensuring and monitoring compliance by charitable organisations with this Act.
- Carrying out investigations in accordance with this Act.

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<sup>103</sup> Charities Regulator (2021), [Guidance on Charities and the Promotion of Political Causes](#), Dublin, September 2021.

<sup>104</sup> Civil Liberties Union for Ireland, [Rule of Law Report](#), 2023; Irish Council of Civil Liberties (2022), [Submission on the General Scheme of the Charities \(Amendment\) Bill \(2022\)](#), June 2022;

<sup>105</sup> 2009 Act Part 2

<sup>106</sup> Charities Act 2009 (Establishment Day) Order 2014 [Statutory Instrument No. 456 of 2014 Minister for Justice and Equality](#).

### Register of Charitable Organisations

Section 39 requires that a charitable organisation that intends to operate or carry on activities in the State must register with the Regulator. The Regulator maintains the Charities Register, and information on each registered charity can be viewed by the public.

Section 46(2) makes it an offence for a charitable organisation to carry out activities in advance of being granted registration.

### Refusal and Removal of Registration

Section 43 of the 2009 Act deals with the removal of charitable organisations from the Register and provides that the Regulator has the power to remove a registered body from the Register under several circumstances. These include if the body is involved in unlawful activities, activities against public morality or policy, supporting terrorism, or benefiting an unlawful organisation.

Other reasons for removal include if the organisation changes its name in violation of certain rules, if it's convicted of an offence, if it contravenes certain sections or fails to comply with a direction under certain sections.

The Regulator can also apply to the High Court for a declaration if it believes a registered body is not a charitable organisation or if a charity trustee becomes unqualified.

Once a body is removed from the Register, it cannot apply to be registered again until after a certain period. The Regulator will record in the Register that the body has ceased to be registered and the reasons for it.

### Accounting and Reporting

Section 47 provides for the duty of charity trustees to keep proper books of account that accurately record and explain the organisation's transactions, enable the determination of the organisation's financial position at any time, ensure compliance with regulations for preparing statements of account under section 48, and allow for proper auditing.

Subsection 11 provides that the section does not apply to charitable organisations which are companies. Although companies have a similar obligation to keep proper books of account under section 282 of Companies Act 2014, that provision is not enforceable by the Regulator. This means that, currently, it is not possible for the Regulator to remove a registered charity that is a company from the Register for failing to keep proper books of account or to impose an intermediate sanction on the company under section 73 of this Act.

The Committee recommended in its [Report on the Pre-Legislative scrutiny of the General Scheme of the Charities \(Amendment\) Bill, 2022](#) that charities that are also companies are held to the same set of rules as charities who are associations. In the proposed Bill, section 17(1) removes this exemption for charities that are companies.

Section 48 of the 2009 Act relates to the 'Annual Statement of Accounts' to be prepared in respect of each financial year by the charity trustees of a charitable organisation. Subsection (2) provides for a threshold of €100,000 annual gross income or expenditure, under which charity trustees may prepare an income and expenditure account and a statement of the organisation's assets and liabilities instead of an annual statement of accounts.

The proposed Bill updates this threshold from €100,000 to €250,000. The Explanatory Memorandum states that, “This has the effect of increasing the number of registered charities that would be permitted to meet their obligation under section 48 by way of a simplified income and expenditure account.” The Explanatory note to the General Scheme states that these amendments were required to facilitate the introduction of essential Charity Accounting and Reporting Regulations.

Above the €250,000 threshold, all charities – both unincorporated and incorporated charities – will be required to prepare their accounts in line with the Charities’ Statement of Recommended Practice (‘Charity SORP’). So, for the first time, charitable companies will be subject to Authority regulation when it comes to the preparation of their financial statement of accounts and additional obligations may now be imposed on charitable organisations regardless of whether they are companies entitled to avail of exemptions under the [Companies Act 2014](#) or not.

Section 50 concerns the audit and examination of accounts and provides that an audit of a charitable organisation must take place if the gross income or total expenditure of the organisation in the relevant financial period exceeds a prescribed amount. Subsection (12) provides that where there is a contravention of this section the charity trustee shall be guilty of an offense.

Subsection (13) provides that the following are exempt from the requirements of this section:

- A charitable organisation that is a company.
- An education body.
- A charitable organisation whose gross income or total expenditure in a financial year is less than €10,000, or a greater amount not exceeding €50,000, as may be prescribed.
- A centre for education designated by the Minister under section 10(4) of the Act of 1998.

The proposed Bill amends this section, removing the exemption for companies. Furthermore, it stipulates that for an organization to qualify for exemption, it must satisfy at least two conditions related to its total balance sheet, gross income, and number of employees.

Section 52 of the 2009 Act requires the charity trustees of a charitable organisation to prepare and submit an annual report to the Regulator which must contain information about the activities and accounts of the organisation and specifies the documents that must be attached to the annual report. The section imposes penalties for non-compliance by the organisation or its trustees.

Section 53 of the Act of 2009 deals with requirement to provide information and is an important compliance and enforcement tool for the Regulator as it provides that the Regulator can issue written directions to a charitable organisation to provide it with any information that the Regulator may reasonably require to enable it to perform its functions.

The proposed amendments in the Bill aim to enhance the Regulator’s ability to obtain necessary information from charitable organisations and relevant ministers and establish penalties for non-compliance.

### Investigations

Under Part IV Sections 64 – 74, the Regulator is empowered to carry out investigations into charities and for that purpose may appoint inspectors to conduct the investigations. On their application, the High Court may make orders to ensure the compliance of the trustees of charities

with their duties, including the removal from office of trustees and the appointment of additional trustees.

Section 66 provides the Regulator with the power to publish reports furnished to it by inspectors. However, other than applications to the High Court for certain orders under section 74 of the Act, Part 4 does not refer to any other specific compliance action deriving from the content of such reports. There are therefore limited options for the Regulator to follow-up with a charitable organisation to ensure compliance other than by way of recommendations, prosecution or applying for a High Court order under section 74 of the 2009 Act or section 43 of the Charities Act 1961.

The proposed Bill establishes offences where a direction under section 66A(3), or a plan under section 66A(6) is not complied with. New provisions are introduced concerning the appointment and powers of an authorised officer, independent from the Regulator in performing their functions. In addition, the powers under section 69 of the 2009 Act which pertains to the entry and search of premises under warrant, to encompass an authorised officer. Furthermore, it extends the offence provision under this section to include any individual who obstructs, interferes with, or impedes an authorised officer while they are exercising a power conferred by a warrant.

### **Intermediate sanctions**

Section 73 of the 2009 Act provides for the Regulator to impose intermediate sanctions on a charity if a registered charity contravenes sections 47, 48, 50, or 52 of the Act, including failure to comply with a condition of registration and failure to notify the regulator of a significant event.

Intermediate sanctions can only be imposed on a charity with their agreement. Ss(1) specifies that the Regulator can impose these sanctions if the charity's trustees agree to:

- Fix the violation within a specified time,
- Accept the sanctions, and
- Follow an agreed plan to prevent the violation from happening again.

Legal action won't be taken if the trustees agree to these conditions. However, if they refuse to agree, or if they fail to fix the violation or follow the agreed plan, legal action will be taken.

Intermediate sanctions can include:

- Removing the charity from the Register for a certain period, or
- Publishing details of the violation on the Regulator's website.

The proposed Bill amends Section 73 of the 2009 Act to expand the use of immediate sanctions. The General Scheme suggests that applying intermediate sanctions could be a more effective and balanced regulatory solution than prosecuting an offence. For instance, publicizing a violation by a charitable organization might be a more effective method of ensuring that the organization in question complies with regulatory duties. This approach could also have a stronger deterrent effect and offer increased transparency for donors, funders, volunteers, and the general public.

## Regulatory Impact Analysis (RIA)

The Regulatory Impact Statement (RIA) described the objectives underpinning the proposed legislation as per the text box below.

- Providing clarification and definition of a number of points which have arisen as part of the operations of the Regulator;
- Updating the definition of 'education body' under section 2 of the 2009 Act to remove subsection (g) [third level foundations];
- Extending exemptions from certain requirements on trustees to those charities falling under the revised definition of 'education bodies';
- Providing greater clarification and an expansion on the definition of a charitable purpose, including the addition of the 'advancement of human rights' as a charitable purpose;
- Clarification on the Regulator's capacity to disclose information to other Regulators as appropriate, for example, the Revenue Commissioners;
- Providing clarification on the principal place of business for both registered charities and those seeking registration, as well as the residency requirements of their trustees;
- Updating the definition of 'public body' to extend the scope of the Regulator to enter into administrative cooperation arrangements with other public bodies whose activities relate to charitable organisations;
- Establishing the Regulator's right to further information from charities upon registration;
- Provision to allow the Charities Regulator to draft non-statutory guidelines in relation to where a charity trustee forms the opinion that a significant event is occurring or has occurred;
- Streamlining the process of removing charities from the Register and keeping a record of such decisions;
- Establishing that it is an offence under the Act for individuals to mislead the public as to their representing a charitable cause and establishes uniform requirements for charities publishing materials, including their name as it appears on the Register and their registration number;
- Establishing a uniform requirement for charities with regard to accounting procedures and annual reports, and the provision of specific information in these reports;
- Extends the definition of 'charitable organisation' to include charities established in the United Kingdom;
- Allowing for publication on the internet of documents received from charities pending the completion of a privacy impact assessment before this provision is enacted;
- Removing the exemption to provide Annual Account Statements for charities over a defined threshold under section 48 of the 2009 Act;
- Removing the exemption from audit under section 50 of the 2009 Act, so as to include those charities constituted as companies;
- Inclusion of a statement of duties of charity trustees;
- Establishing a register of persons disqualified from acting as a charity trustee, where the Charities Regulator is the prosecuting or moving party, referred to in subsection (1) of section 55 of the 2009 Act;
- Increasing the timescale for retaining information obtained under warrant pertinent to ongoing proceedings, as detailed in section 69 of the 2009 Act;

- Establishing certain protections for charity trustees appointed by the courts under section 74 of the 2009 Act;
- Extending the disqualification to act as a trustee of a charity to those persons who are the subject of, or deemed to be the subject of, certain orders under the Companies Act 2014;
- Establishing the requirement for charities to comply with directions contained in reports from the Regulator’s inspectors;
- Establishes the requirement for all charitable organisations to maintain a register of members;
- Allowing for the expansion of offences under the Act to incur intermediate sanctions, including failure to comply with a condition of registration;
- Clarifying the ability of the Charities Appeals Tribunal to extend the period in which appeals may be brought;
- Clarifying the process for seeking the approval of the Authority in respect of any agreement or appointment;
- Extending the application of indemnity as provided under the Education Act, 1998;
- Expanding the range of charitable organisations which may benefit from sales, dispositions, etc., of the assets of a charity;
- Providing that persons discharged from bankruptcy are entitled to apply to sit as a charity trustee, as a member of the Charity Appeals Tribunal and as a member of the Authority respectively;
- Allowing for expanded grounds for leave to appeal to the Charity Appeals Tribunal;
- To provide for an increase in membership of the Charity Appeals Tribunal;
- To allow for the repeal of section 99 of the Charities Act, 2009;
- To allow for the repeal of sections 29(4), 53 and 54 respectively of the Charities Act, 1961.

Source: Derived from Department<sup>107</sup>

The summary of the RIA<sup>108</sup> contained three policy options, as per Table 9 below.

Table 9 Policy options identified (RIA)

Policy options	
<b>Option 1</b>	Do nothing. The “do nothing” option is primarily being included for benchmarking purposes.
<b>Option 2</b>	To amend the Charities Act, 2009 to provide greater clarity and provide additional functionality to the Charities Regulator to allow it to perform its duties in the intended manner.

<sup>107</sup> Department of Rural and Community Development (2023) Regulatory Impact Analysis: Charities (Amendment) Bill 2023 - Summary of Regulatory Impact Analysis (RIA). November 2023, p.4-6

<sup>108</sup> Department of Rural and Community Development (2023) Regulatory Impact Analysis: Charities (Amendment) Bill 2023 - Summary of Regulatory Impact Analysis (RIA). November 2023, p.6

<b>Option 3</b>	To repeal all relevant legislation and enact new legislation in order to provide the Charities Regulator to perform its intended duties. This includes elements of the Companies Acts and the Taxes Consolidation Act 1997 respectively.
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The options were assessed by the Department across three dimensions – cost, benefits and impacts (see Table 10 below), with Option 2 identified as the preferred option.<sup>109</sup>

Table 10 Assessment of policy options (RIA)

Option	Costs	Benefits	Impacts
1	No explicit costs.	No benefits.	Continue with legislation that disproportionately affects unincorporated charities and restricts the Regulator to a large degree in the effective regulation of the charity sector.
2	Non-prohibitive monetary costs as it would build on and update the existing operations of the Regulator	Provide a significant update of the current provisions concerning the governance of the charity sector, in conjunction with additional provisions to improve the operational effectiveness of the Charities Regulator.	It would provide the Charities Regulator with clarity and assistance to operate as envisaged, facilitating and engendering improved trust and confidence in the charities sector.
3	Costs have not been fully determined, but are likely to be sizeable in terms of financial and staff resources.	This would provide clarity but large sections of the Act are currently operating appropriately	This would involve a significant cost in terms of working hours and monetary cost, and would involve re-establishing the Charities Regulator and Charity Appeals Tribunal

Source: Derived from the Department<sup>110</sup>

In assessing the various options, the RIA noted, for instance, that if nothing changed (i.e. Option 1) the 41% of charities that are incorporated companies would continue to not be required to provide

<sup>109</sup> Department of Rural and Community Development (2023) Regulatory Impact Analysis: Charities (Amendment) Bill 2023 - Summary of Regulatory Impact Analysis (RIA). November 2023, p.1

<sup>110</sup> Department of Rural and Community Development (2023) Regulatory Impact Analysis: Charities (Amendment) Bill 2023 - Summary of Regulatory Impact Analysis (RIA). November 2023, p.1-2

the same financial information as small unincorporated charities. Further, it asserted that there was a “reputational cost” to the State of maintaining a system which “compares unfavourably” with practices across other EU Member States. In the context of Option 3 (repeal the 2009 Act and enact new legislation), the RIA noted a range of matters, including that this would likely have sizeable costs, both financially and in terms of staff resources, as well as requiring the re-establishment of the Charities Regulator – an entity which the RIA indicated is “currently operating successfully”.<sup>111</sup> Further, it advised that:

The nature of the amendments do not require repealing the 2009 Act in its entirety. The proposed amendments are aimed at improving the efficiency and effectiveness of the legislation governing the charities sector and are being proposed on foot of the practical operational experience of the Regulator over the past five years.<sup>112</sup>

In respect of Option 2 – the preferred option of amending the 2009 Act – the RIA notes that this will involve a range of specific reforms including both updating sections of the 2009 Act, as well as sections of the [Companies Act 2014](#) and the [Taxes Consolidation Act 1997](#), plus introducing new sections concerning the duties of trustees, implementation of inspector reports and the keeping of records of members of charities. In respect of this approach, the RIA advises that:

These amendments are required in order to remove some existing anomalies and bring a measure of consistency in relation to the accounting requirements of charities, and the responsibilities of trustees. It will also provide for better and more proportionate regulation of the sector.<sup>113</sup>

For instance, it indicates that the proposed legislation:

.. provides for a number of amendments to Annual Statement of Accounts requirements, which are intended to increase transparency and accountability of charities thereby leading to increased trust and confidence by the public in charities in line with the Charities Regulator’s general statutory functions under section 14 of the Act of 2009. These amendments are particularly important as they will require charities to provide a level of detail in their accounts that is proportionate to their size.<sup>114</sup>

Whilst the RIA notes that additional governance requirements have been cited as increasing the burden on charities, it advises that the Regulator has issued guidance documents and held information sessions to assist charities in enhancing their capacity to meet these requirements.<sup>115</sup>

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<sup>111</sup> Department of Rural and Community Development (2023) Regulatory Impact Analysis: Charities (Amendment) Bill 2023 - Summary of Regulatory Impact Analysis (RIA). November 2023, p.6

<sup>112</sup> Department of Rural and Community Development (2023) Regulatory Impact Analysis: Charities (Amendment) Bill 2023 - Summary of Regulatory Impact Analysis (RIA). November 2023, p.7

<sup>113</sup> Department of Rural and Community Development (2023) Regulatory Impact Analysis: Charities (Amendment) Bill 2023 - Summary of Regulatory Impact Analysis (RIA). November 2023, p.7

<sup>114</sup> Department of Rural and Community Development (2023) Regulatory Impact Analysis: Charities (Amendment) Bill 2023 - Summary of Regulatory Impact Analysis (RIA). November 2023, p.7

<sup>115</sup> Department of Rural and Community Development (2023) Regulatory Impact Analysis: Charities (Amendment) Bill 2023 - Summary of Regulatory Impact Analysis (RIA). November 2023, p.7

## Pre-legislative scrutiny of the General Scheme of the Bill

The General Scheme of the Bill was published on 29 April 2022 and submitted to the Joint Committee on Social Protection, Community and Rural Development and the Islands ('the Committee') for Pre-Legislative Scrutiny (PLS) on 12 May 2022.<sup>116</sup> The Committee conducted its PLS over the course of 4 meetings, as outlined in Table 11 below, with its [PLS report](#) published in November 2022 and made 9 recommendations.

Table 11 Overview of the Committee's PLS meetings (dates/witnesses)

Committee Meeting	Witnesses
6 July 2022	Department of Community and Rural Development
21 September 2022	Mason, Hayes and Curran LLP Charities Institute Ireland (CII) The Wheel
5 October 2022	Charities Regulator Irish Council for Civil Liberties (ICCL)
12 October 2022	Department of Community and Rural Development

Source: Derived from PLS report<sup>117</sup>

The Committee raised 6 key issues in their PLS report (with related recommendations noted in the next section):

- Changes to the Annual Statement of Accounts
- Intermediate Sanctions
- Charitable Purpose
- Guidelines introduced for the Regulator
- Definition of 'significant event'
- Changes to the Charities Register without prior engagement

## L&RS traffic light analysis of PLS recommendations versus published Bill

This section of the Digest seeks to assess the extent to which the Committee's recommendations have been addressed in the Bill, as presented for Second Stage. To do this, a traffic light system is used by the L&RS, indicating whether a key issue is accepted and reflected in the Bill, whether a consistent or unclear approach is used, or whether the recommendation has not been accepted or is not reflected in the Bill (as per Table 12 overleaf). This traffic light approach represents the

<sup>116</sup> [Proposed Legislation – Wednesday, 4 Oct 2023 – Parliamentary Questions \(33rd Dáil\)](#)

<sup>117</sup> Joint Committee on Social Protection, Community and Rural Development and the Islands, 2022, [Report on the Pre-Legislative scrutiny of the General Scheme of the Charities \(Amendment\) Bill, 2022](#), November 2022, p.5-6

L&RS' own, independent analysis of the Bill (see Table 13 below). The L&RS is grateful to the Departmental officials for providing their assessment of the actions taken and comments in relation to the PLS recommendations. These are replicated in the right-hand column of the table.

Table 12 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Table 13 to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	

Table 13 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

Commentary as per Committee report / Joint Committee's recommendations	Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)
1. The Committee recommends that charities that are also companies are held to the same set as rules as charities who are associations.	 <p>Accepted by the Department.</p> <p>There is an identified need for proportionate regulation and governance requirements for our charities.</p> <p>This Bill is a key step that needs to be implemented in order to allow for the appropriate regulation, particularly financial regulation, of the sector. Among the key amendments, are provisions that will ensure that registered charities that are companies will be subject to the same regulatory requirements and rules as all other registered charities.</p> <p>By way of example, the amendment to section 48 of the Charities Act 2009 will enable the Minister, in consultation with the Minister for Enterprise, Trade and Employment, to make regulations requiring charities that are companies to comply with information requirements,</p>

Commentary as per Committee report / Joint Committee's recommendations	Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)	
		<p>additional to those that are already required under the Companies Acts. This specifically relates to the requirement that their annual statement of accounts be prepared in accordance with the methods and the principles of the Charity Statement of Recommended Practice (SORP).</p> <p>In tandem, the Bill intends to clarify that an annual audit or examination of accounts as provided for under section 50 of the Principal Act, will also apply to those charities that are companies.</p> <p>Separately, as charities that are companies are required to keep a record of members under the Companies Acts, associations will now be required to also keep a record of their members who have voting rights.</p>
<p>2. The Committee recommends that the Department accept the amendment put forward by the Charities Regulator which has sought to increase both the threshold at which registered charities have to produce accounts and the point at which they have to get their accounts audited.</p> <p>As it stands, charities with expenditure below €10,000 are exempt from having to submit accounts to the Charities Regulator.</p> <p>a. The Committee recommends that this threshold is raised to €25,000. This would benefit 744 charities.</p> <p>b. At the other end of the scale, the Committee recommends that the threshold for having an audit is raised from €100,000 to €250,000, which means 1000 charities would benefit from this.</p>	<p></p>	<p>Accepted by the Department.</p> <p>The Bill will increase the existing threshold for providing an income and expenditure account and a statement of the assets and liabilities of the charitable organisation ("simplified income and expenditure account") rather than an annual statement of accounts, from €100,000 to €250,000.</p> <p>The amendments to section 48 of the Charities Act 2009 will facilitate the introduction of essential Charity Accounting and Reporting Regulations and the implementation of Charity Statement of Recommended Practice (SORP).</p> <p>These regulations will increase the financial thresholds which currently apply for the regulation of charities to ensure more appropriate reporting requirements that are reflective of a charity's size.</p> <p>In line with the Committee</p>

Commentary as per Committee report / Joint Committee's recommendations	Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)	
		<p>recommendation, the regulations will provide that where two of the following are met, there will be no requirement to submit an annual statement of accounts: (1) where gross income does not exceed €25,000, (2) the balance sheet total does not exceed €25,000, (3) the charity has no employees.</p> <p>The amendments to section 50 will include clarification that companies will no longer be exempt from audit requirements.</p> <p>The regulations will provide that charities with a gross income, or total expenditure, exceeding €250,000 will be required to conduct an annual audit.</p> <p>Furthermore, the Bill will facilitate the introduction of much needed financial regulations for the sector, which will assist in addressing current deficiencies within existing anti-money laundering / financial terrorism frameworks.</p>
<p>3. The Committee recommends that more provisions should be linked into the intermediate sanctions. The intermediate sanctions are already in place but are limited in what they can be applied to. The main focus of intermediate sanctions is on financial breaches, for example if a proper book of accounts is not kept, that could lead to an intermediate sanction. Whereas if a charity fails to respond to a direction from the Regulator, the charity would be automatically brought in under the enforcement process. The Committee is of the view that the gap needs to be bridged. Incremental steps that should be brought in in line with the Enforcement Pyramid set out in the Law Reform Commission Report on Regulation 2006 which refers to steps of</p>	<p></p>	<p>Accepted by the Department.</p> <p>It is important to highlight that the existing engagement process employed by the Charities Regulator is one that is based on proactive engagement, persuasion and education respectively.</p> <p>It must be noted that the Charities Regulator will only move to enforcement action in a small number of cases where voluntary engagement has not worked.</p> <p>The Bill will not change this adopted approach, on the contrary, it seeks to further develop proportionality within the process.</p> <p>The Bill will expand the range of circumstances in which the Charities Regulator can utilize intermediate sanctions for certain breaches.</p>

Commentary as per Committee report / Joint Committee's recommendations		Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)
persuasion, codes of practices, inspections and advice, before enforcement is applied.		Where warranted, these sanctions may provide a more effective and balanced regulatory remedy, as an alternative to prosecution.
<p>4. The Committee recommends that the Regulator revert to the original 2018 wording on political advocacy to provide clarity to the law. This will address an irregularity in the original Act and will provide for greater oversight and transparency in the sector. This change would mean organisations that are solely set up to promote a political cause would not be considered charities, however organisations should be able to conduct legitimate political advocacy as part of their charitable work. This recommendation is necessary for the progression of human rights to have a meaningful influence on Irish charities law.</p>		<p>Not accepted by the Department.</p> <p>This recommendation relates to guidance material produced by the Charities Regulator.</p> <p>The Department would highlight that the wording referred to in respect of political advocacy is contained in a guidance document and that this document in the first instance is not a definitive statement of law.</p> <p>The Minister of Rural and Community Development has responsibility for the Charities Regulator, however, it is important to note that the Regulator is fully independent in the performance of its statutory functions.</p> <p>The contents of guidelines are a matter for the Charities Regulator, as part of their statutory functions.</p> <p>This includes encouraging and facilitating the better administration and management of charitable organisations by the provision of information or advice, including by way of issuing guidelines, codes of conduct, and model constitutional documents.</p> <p>The Department note that under the provisions of the Charities Act 2009, a registered charity can already conduct political advocacy as part of their work, once it meets all of the following three requirements:</p> <ol style="list-style-type: none"> <li>(1) it relates directly to the advancement of their charitable purpose;</li> <li>(2) it does not promote a political party or candidate; and</li> <li>(3) it is not contrary to the charity's</li> </ol>

Commentary as per Committee report / Joint Committee's recommendations	Addressed (either in whole/in part) in the Bill?	L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)
		<p>governing document.</p> <p>Those organisations who may successfully register as a charity under the proposed new charitable purpose of 'the advancement of human rights' (as contained in this Bill), would be able to carry out political advocacy directly related to their charitable purpose, if they meet these same three requirements.</p>
<p>5. The Committee recommends that the Regulator and the Revenue Commissioners agree a 'memorandum of understanding' to ensure consistency between decisions and approaches taken by the Regulator and the Revenue Commissioners when evaluating bodies under the Statutory remit of both organisations.</p>		<p>Accepted by the Department.</p> <p>Outside of this Bill, a Memorandum of Understanding has been established between the Charities Regulator and the Revenue Commissioners, which can be viewed at the following link: <a href="#">MoU between the Charities Regulator and the Revenue Commissioners</a></p>
<p>6. The Committee recommends that a requirement be imposed on the Regulator to share information with the appropriate authorities where a suspected offence has occurred. For example, where the Regulator becomes aware of a potential criminal act then they must be obligated to share such information with An Garda Síochána.</p>		<p>Accepted by the Department.</p> <p>There are already existing obligations on the Charities Regulator regarding the sharing of information on suspected offences to other public bodies responsible for the investigation and prosecution under other legislation.</p> <p>These are provided for under sections 27, 28 and 32 of the Charities Act 2009.</p> <p>The Department highlights that the Charities Regulator regularly notifies other public bodies responsible for the investigation and prosecution of offences under other legislation, such as Revenue and An Garda Síochána, where it suspects offences may have been committed.</p> <p>The Bill will clarify that the Charities Regulator may disclose information regarding suspected offences under the Charities Act 2009 where appropriate.</p>

Commentary as per Committee report / Joint Committee's recommendations	Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)	
<p>7. The Committee recommends that a clear definition is set out in this Bill as to what is a 'significant event' that must be reported by charity trustees to the Regulator. The General Scheme sets down an obligation for charity trustees to notify the Regulator as soon as possible where there are reasonable grounds to believe a significant event has occurred or is likely to occur. As it stands, the wording is ambiguous and is likely to place a disproportionate burden on charity trustees who must decide in the abstract on whether a potential set of circumstances qualifies as a serious incident.</p>		<p>Accepted by the Department.</p> <p>On consideration of observations raised during Pre-Legislative scrutiny, and in line with other common law jurisdictions, the proposed statutory requirement to report significant events, as contained in the published General Scheme, has been removed.</p> <p>Instead, a revised provision is included in the Bill to allow the Charities Regulator to draft non-statutory guidelines / codes of conduct in relation to the occurrence of a significant event. A definition of 'significant event' has also been introduced.</p> <p>These guidelines / codes will be in respect of where a charity trustee forms the opinion that a significant event is occurring or has occurred.</p>
<p>8. The Committee recommends that guidelines are laid down ensuring that the Regulator engage with charity trustees in relation to any proposed changes to the information on the Charities Register and that such trustees are afforded the opportunity to comment on the draft changes. As it stands this Bill does not provide charity trustees with an opportunity to comment on, object to or agree to changes to their entry on the Charities Register.</p>		<p>Accepted by the Department.</p> <p>As highlighted, the existing engagement process adopted by the Charities Regulator is one that is based on proactive engagement, persuasion and education respectively.</p> <p>A graduated approach is already observed, where the Charities Regulator will only move to enforcement action in a small number of cases where voluntary engagement has not worked.</p> <p>The amendments contained in the Bill adheres to the principles of natural justice and due process.</p> <p>In this context, the Department notes the Bill contains updated removal procedures related to sections 43 and 44</p>

Commentary as per Committee report / Joint Committee's recommendations	Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)	
		<p>(removal of charities from the Register) of the Charities Act 2009 respectively.</p> <p>The new procedures include recourse to appeal to the Charity Appeals Tribunal in the first instance, any decision to remove a charity from the Register under these sections, and that the decision is also subject to confirmation from the High Court.</p>
<p>9. The Committee recommends that more work needs to be done in relation to Crowd Funding in advance of the publication of this Bill.</p>		<p>Not accepted by the Department.</p> <p>The provisions contained within the Charities (Amendment) Bill, 2023 are a key step to ensuring the appropriate regulation, particularly financial regulation, of the charities sector.</p> <p>However, the Charities Regulator operates under the auspices of the Charities Act 2009, and therefore can only regulate charitable organisations as defined under the 2009 Act.</p> <p>Under Irish law, a purpose shall not be a charitable purpose unless it is of public benefit. Therefore, any crowd fund established to help or assist one individual cannot be considered as a charity and would also fall outside of the scope of this legislation.</p> <p>The Department understands that crowdfunding currently forms a small part of fundraising for the charity sector as a whole, while acknowledging that this may change over time as registered charities seek alternative ways of raising donations to fund their activities.</p> <p>The Department would highlight that policy responsibility for anti-money laundering and financial terrorism respectively falls under the remit of the Department of Finance. This includes overseeing the implementation of EU</p>

Commentary as per Committee report / Joint Committee's recommendations	Addressed (either in whole/in part) in the Bill? L&RS Traffic Light Assessment (centre) and Commentary from the Department (right)
	<p>legislation on the matter.</p> <p>Notwithstanding this context, among the amendments proposed in this Bill, is facilitating the implementation of standardized accounting and reporting requirements. This will serve to improve our existing anti-money laundering framework and further strengthen it in relation to the risk of registered charities being misused for the purposes of money laundering, or the financing of terrorism.</p> <p>In addition, the Bill seeks to consolidate existing legislation in relation to offences whereby an individual, or an organisation, through any notice, advertisement, or any other published material or through its activities, causes members of the public to reasonably believe that it is a registered charity when it is not.</p> <p>The Charities Regulator has no role in relation to fundraising by persons or groups that are not charities, other than to ensure that such persons or groups do not hold themselves out as charities in contravention of the Act.</p> <p>The Bill also includes an additional requirement on charities relating to the publication of a charitable organisation's registration number and the charity's name, as it appears on the Register of charities.</p>

*Source: The L&RS is grateful to the Department of Rural and Community Development for providing its analysis of how PLS recommendations impacted on the Bill. The traffic light assessment represents the analysis of the L&RS.*

## Principal provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill, which contains 3 Parts and 40 Sections. An overview of the principal provisions of the Bill is provided below, which is not exhaustive.

*Please note that, on a number of occasions throughout the Bill, the numbering appears to be irregular. For instance, section 11(h) provides for the deletion of subsections 44(6), 44(7) and 44(8) but these do not appear to be replaced, with amendment resulting in the subsection numbering moving from 44(5) to 44(9). Such occasions are not further highlighted/referenced below.*

### Part 1 Preliminary and General

Part 1 contains 2 Sections. **Section 1** provides for the short title of the Act and commencement of the Bill (including that different provisions may be commenced on different days). **Section 2** is a short provision which sets out that, within the Act, the “Principal Act” refers to the [Charities Act 2009](#).

### Part 2 Amendment of Principal Act

Part 2 contains 36 Sections dealing with amendments to the Principal Act.

**Section 3** concerns amendments of Section 2 of the Principal Act, which sets out the relevant interpretations within that Act.

Section 3(a) amends subsection 2(1) of the Principal Act, updating existing definitions with the Principal Act. For instance, Sections 3(a)(i) and (ii) update the definitions of ‘charitable organisation’ and ‘charitable trust’ respectively to incorporate amendments to Section 88B – a new section under this Bill.

Section 3(a)(iii) amends the definition of ‘charity trustee’ by substituting a new definition (as set out below), which the Explanatory Memorandum states will “provide greater clarity on those persons to whom the term applies”<sup>118</sup>, whilst Sections 3(a)(iv) and (v) amend the definitions of ‘constitution’ and ‘education body’ respectively.

Current definition (Principal Act)	Proposed amendment: Section 3(a)(iii)
<p><b>Delete:</b></p> <p>“charity trustee” includes —</p> <p>(a) in the case of a charitable organisation that is a company, the directors and other officers of the company, and</p> <p>(b) in the case of a charitable organisation that is a body corporate (other than a company) or an unincorporated body of persons, any officer of</p>	<p><b>Insert:</b></p> <p>‘charity trustee’ includes —</p> <p>(a) in the case of a charitable organisation that is a company—</p> <p style="padding-left: 40px;">(i) any director or officer of the company, and</p> <p style="padding-left: 40px;">(ii) any other person in accordance with whose directions or instructions the</p>

<sup>118</sup> [Explanatory Memorandum](#), p.2

<p>the body or any person for the time being performing the functions of an officer of the body, and references to a charity trustee of a charitable organisation shall be construed as including references to a trustee of a charitable trust;</p>	<p>directors of the company are accustomed to act, unless the directors are accustomed so to act by reason only that they do so on advice given by the person in a professional capacity,</p> <p>but does not include a person who is the company secretary, where he or she holds no other office in the company,</p> <p>(b) in the case of a charitable organisation that is a body corporate (other than a company) or an unincorporated body of persons—</p> <p>(i) any person who, in relation to that body, is—</p> <ul style="list-style-type: none"><li>(I) a member of the board,</li><li>(II) a member of the governing body,</li><li>(III) an officer, or</li><li>(IV) a person who performs the functions of a person specified in clause (I), (II) or (III),</li></ul> <p>and</p> <p>(ii) any other person in accordance with whose directions or instructions a person referred to in subparagraph (i) is accustomed to act, unless such person is accustomed so to act by reason only that they do so on advice given by that person in a professional capacity,</p> <p>but does not include a person who performs the functions of a secretary to the board or to the governing body, where he or she performs no other functions relating to the management and control of the body, and</p> <p>(c) in the case of a charitable trust to which section 54A(2) applies, the body corporate and the directors of that body corporate,</p> <p>and references to a charity trustee of a charitable organisation shall be construed as including references to a trustee of a charitable trust;”</p>
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In the equitable sense, a charity trustee in Ireland is bound by an obligation to manage and deal with the charity's property separately from their own, for the benefit of the charity's beneficiaries. This obligation is rooted in the principles of trust law, which require trustees to act in the best interests of the charity and its intended purposes, rather than for personal gain.

The proposed Bill provides a more detailed and specific definition of “charity trustee”, but also excludes a person who is the company secretary. The explanatory note in the General Scheme explained that charitable organisations may in the past have appointed a paid member of staff to the position of company secretary or entered into a contract with a third party provider of company secretarial services. This raises a difficulty as charity trustees should not be in receipt of remuneration from the charitable organisation and thus should not be employed by the charitable organisation of which they are a trustee. The proposed amendment of the definition therefore clarifies that the term “charity trustee” does not cover such persons.

Section 3(a)(vii) inserts a number of definitions, including: ‘authorised officer’, ‘balance sheet total’, ‘insolvency arrangements’ and removal notice’. It also inserts a definition of ‘member of the charitable organisation’ to mean:

- (a) In case of a charitable organisation that is a company, a member of the company as per section 168 of the Companies Act 2014; and
- (b) In the case of a charitable organisation that is a body corporate (other than a company) or an unincorporated body, a person who is entitled to appoint, nominate or vote for the appointment of a charity trustee of the organisation.

Section 3(b)(i) amends subsection 2(2)(a) of the Principal Act by substituting new provisions in respect of personal connections. Specifically, it extends the parameters of personal connection to include, amongst others: child, step-child, civil partner, cohabitant, or a child of the person's civil partner/cohabitant. Section 3(b)(ii) establishes that the certain meanings (e.g. ‘civil partner’, cohabitant’) will be as per the specified Acts.

**Section 4** seeks to amend section 3 of the Principal Act, which concerns charitable purpose. Section 4(a)(i) removes section 3(1)(d) which states “any other purpose that is of benefit to the community.”, whilst section 4(b) deletes the corresponding section 3(11) which sets out what constitutes “purpose that is of benefit to the community. Section 4(a)(ii) inserts new provisions that add a range of new charitable purposes to the existing ones<sup>119</sup>. These new charitable purposes are set out in the text box below and include ‘the advancement of human rights’ as a new charitable purpose under section 3(1)(q). The combined effect of these amendments would remove 3(1)(d) from the Act as it currently stands and insert a new list after 3(1)(c) that would start from (e).

#### Additional charitable purposes provided for in the Bill

- (e) the advancement of community welfare including the relief of those in need by reason of youth, age, ill-health or disability;

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<sup>119</sup> These are: (a) the prevention or relief of poverty or economic hardship; (b) the advancement of education; (c) the advancement of religion.

- (f) the advancement of community development, including rural or urban regeneration;
- (g) the promotion of civic responsibility or voluntary work;
- (h) the promotion of health, including the prevention or relief of sickness, disease or human suffering;
- (i) the advancement of conflict resolution or reconciliation;
- (j) the promotion of religious or racial harmony and harmonious community relations;
- (k) the protection of the natural environment;
- (l) the advancement of environmental sustainability;
- (m) the advancement of the efficient and effective use of the property of charitable organisations;
- (n) the prevention or relief of suffering of animals;
- (o) the advancement of the arts, culture, heritage or sciences;
- (p) the integration of those who are disadvantaged, and the promotion of their full participation, in society;
- (q) the advancement of human rights.

While the proposed bill expands charitable purposes to include Human Rights it does not follow the recommendation of the Committee regarding the wording on political advocacy. Concerns have been raised about the difficulty in differentiating between charities with political purposes and those advocating politically as part of their work. The Irish Council for Civil Liberties (ICCL) notes a shift in the Charities Regulator's advice, with changes in language and scope of political purpose. ICCL warns this could hinder advocacy work and prevent human rights organisations from registering as charities.<sup>120</sup>

**Section 5** seeks to amend section 28 of the Principal Act, which concerns disclosure of information by the Charities Regulatory Authority ('the Authority')<sup>121</sup> where it suspects the commission of offence.

Section 28 is amended in subsection (1) by the substitution of "that an offence, other than an offence under this Act, has been" for "that an offence has been",

According to the General scheme this is intended to clarify that where the Charities Regulator suspects that offences may have been committed under the Charities Act 2009, it is **not obliged** to notify those offences to the Garda Síochána for example.

Subsection (1A) is inserted that the Authority **may** disclose any information regarding suspected offences by a charity trustee or a charitable organisation to other parties, including:

- An Garda Síochána
- the Revenue Commissioners
- the Director of Corporate Enforcement,

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<sup>120</sup> Civil Liberties Union for Ireland, [Rule of Law Report](#), 2023; Irish Council of Civil Liberties (2022), [Submission on the General Scheme of the Charities \(Amendment\) Bill \(2022\)](#), June 2022;

<sup>121</sup> The Charities Regulator is the operational name of the Charities Regulatory Authority, the statutory authority responsible for the regulation of charities in Ireland. [Source: [Charities Regulatory Authority \(citizensinformation.ie\)](#)]

- the Competition Authority
- or other competent entities charged with the detection, investigation or prosecution of offences.

This does not follow recommendation 6 of the Committee that a requirement be imposed on the Regulator to share information with the appropriate authorities where a suspected offence has occurred.

**Section 6** seeks to amend section 33 of the Principal Act, which concerns administrative cooperation on regulatory matters. Sections 6(a) and (b) substitute each reference to ‘relevant regulator’ with ‘relevant body’/‘relevant bodies’, whilst section 6(c) inserts a definition for ‘relevant body’. According to the Explanatory Memorandum:

This will enable the Authority to enter into administrative cooperation arrangements with relevant bodies, including relevant regulators, whose activities relate to charitable organisations. This will enable the sharing of information and appropriate collaboration on matters relevant to the regulation of charities in Ireland.<sup>122</sup>

**Section 7** seeks to amend section 39 of the Principal Act, which concerns the Register of charitable organisations. Section 7(a) inserts a new subsection after section 39(4) of the Principal Act stipulating that an organisation that will become a charitable organisation by way of 3(1)(1) (i.e. the advancement of human rights) must adhere to certain timeframe for registration if it wishes to operate or conduct activities in the State following commencement of the proposed Act. It stipulates that this time period is 6 months (or longer if the Minister specifies) after such commencement.

Sections 7(b)(i), 7(b)(ii) and 7(e) provides that charitable organisations established in the UK do not need a principal place of business in the State and establishes them on the same legal footing as charities established in an EEA State. Section 7(b)(iii) establishes that an application to the Register will also include the email address and telephone number of each charity trustees (as opposed to just names and addresses), whilst section 7(b)(iv) inserts a new subsection that an application must be accompanied by (a) proof of address for each charity trustee and (b) a written declaration by each charity trustee that he/she is not disqualified from holding the position of charity trustee (as per section 55 of the Principal Act). Section 7(b) (v) substitutes references to “vulnerable people (including the aged, children and young people, the sick, disabled and handicapped)” with the following: “children or vulnerable persons (within the meaning of the National Vetting Bureau (Children and Vulnerable Persons) Act 2012)”.

Section 7(c) provides for the deletion of subsection 39(6) of the Principal Act, which currently empowers the Authority to exempt an application for registration from the requirements of subsection 39(5) as it considers appropriate if it is of the opinion that compliance would be “unduly onerous having regard to his or her circumstances”.

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<sup>122</sup> [Explanatory Memorandum](#), p.2

Section 7(d) seeks to insert two subsections – 39(6A) and 39(6B). Subsection 39(6A) would enable the Authority to require (via written notice) an applicant to provide specified information or documents within a specified time period (no later than 21 days after the date of the notice, or later if specified by the Authority) if it is of the view that the application does not satisfy the requirements of subsection 39(5) of the Principal Act. Subsection 39(6B) provides that if this information is not provided by the applicant within the required time period, the application would be deemed withdrawn.

Section 7(e)(v) establishes that the constitution of a charity is to be included in the information entered into the Register by the Authority.

Section 7(f) inserts a new version of subsection 39(9) which provides that where the Authority decides to grant an application, it shall notify the applicant in writing of:

- the decision, and
- any condition attached to registration, including the reason for the condition, the date by which such condition must be complied with, if applicable; and confirming the ability to appeal the attachment of a condition to the Charities Appeal Tribunal).

Section 7(g) provides for the deletion of subsection 39(11), whilst section 7(h) provides for the insertion of three new subsections, as outlined below.

- Subsection 39(11A) obliges a registered charitable organisation to inform the Authority, in writing, if:
  - (a) it breaches/fails to comply with a condition attached to its registration;
  - (b) information entered into the Register ceases to be correct;
  - (c) information provided in an application in respect of a charity trustee ceases to be correct;
  - (d) it is proposed to wind up/cease operations of the charitable organisation; or
  - (e) there is a resignation/appointment of a charity trustee.
- Subsection 39(11B) establishes that a notification under subsection 39(11A) is to be in the format specified by the Authority and is to be accompanied by certain specified details. For instance, in respect of a notification regarding the wind up/ceasing of operations of a charitable organisation, the notification is to be accompanied by (a) a statement of the assets and liability of the charitable organisation and (b) details of any proposed transfer of the assets of the charitable organisation.
- Subsection 39(11C) provides that, notwithstanding the provisions under subsection 39(11B), the Authority may require specified information or documents within a specified time period following a notification under subsection 39(11A)

Section 7(l) inserts new subsections – 39(18) and 39(19) – which establish that it is an offence to contravene subsections 39(3) and (11A) of the Principal Act. They further establish that in respect of a charitable organisation that is a body corporate, the body corporate will be guilty of an offence; whilst in the case of a charitable organisation, each of the charity trustees will be guilty of an offence.

**Section 8** seeks to amend section 40 of the Principal Act, which concerns charitable organisations “deemed registered”<sup>123</sup>.

Section 8(b) seeks to amend section 40(4) by replacing it with a new version. This section empowers the Authority to require a charitable organisation that is deemed registered to furnish it with any and all of the information, particulars or documents that would be required if it was applying under section 39 of the Principal Act. It also provides for (a) the manner in which this may be required (i.e. written notice) and (b) includes a timeframe (not later than 14 days after the date of the notice, or longer if specified by the Authority).

Section 8(c) seeks to place charitable organisation established in the UK on the same legal footing as those established in an EEA state, as well as providing that such organisation do not need to have a principal place of business in the State, whilst section 8(c)(v) establishes that the constitution of such a charity is to be included in the information entered into the Register by the Authority.

Section 8(d) inserts a number of subsections after 40(6) in the Principal Act.

- Subsection 40(7) obliges a charitable organisation that is deemed registered to inform the Authority, in writing, if:
  - (a) Information/particulars entered into the Register cease to be correct;
  - (b) information provided in respect of a charity trustee ceases to be correct;
  - (c) it is proposed to wind up/cease operations of the charitable organisation; or
  - (d) there is a resignation/appointment of a charity trustee.
- Subsection 40(8) establishes that a notification under subsection 40(7) is to be in the format specified by the Authority and is to be accompanied by certain specified details. For instance, in respect of a notification regarding the wind up/ceasing of operations of a charitable organisation, the notification is to be accompanied by (a) a statement of the assets and liability of the charitable organisation and (b) details of any proposed transfer of the assets of the charitable organisation.
- Subsection 40(9) provides that, notwithstanding the provisions under subsection 40(8), the Authority may require specified information or documents within a specified time period following a notification under subsection 39(7).
- Subsection 40(10) establishes that a person who knowingly or recklessly provides false/misleading information/particulars (or who believes any such information when provided by him/her not to be true) to the Authority will be guilty of an offence.
- Subsections 40(11) and (12) establish that it is an offence to contravene subsections 40(4) and (7) of the Principal Act. They further establish that in respect of a charitable organisation that is a body corporate, the body corporate will be guilty of an offence; whilst in the case of a charitable organisation, each of the charity trustees will be guilty of an offence.

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<sup>123</sup> The [Explanatory Memorandum](#) (p.3) explains that these are organisation that were automatically added to the Register as they had a Charitable Tax (CHY) Exemption number prior to the formation of the Register.

## Section 9

This section seeks to insert a new subsection 42A to establish a statutory requirement on a charitable organisation to make an application to the Authority for consent to amend its constitution, specifically in relation to:

- Changing its charitable purpose or
- Amending a specified clauses.

The proposed Bill has been changed from the General Scheme which had required the prior approval of the Authority to any change to a charity's constitution, however minor or inconsequential. That wording had been criticised as "a recipe for disaster and goes beyond what is required for good charity regulation."<sup>124</sup>

Section 9(2) establishes that such an application must be:

- Written as the Authority directs.
- Include all the information the Authority needs.

Section 9(3) establishes that a charity cannot make these changes without the Authority's approval, and that the Authority won't approve such changes if:

- The new purpose isn't charitable.
- The charity lacks the structure or skills for the new purpose or
- The new constitution part goes against the proposed Bill.

Section 9(4) concerns the Authority's response and provides that the Authority will quickly tell the charity its decision in writing. If it's a 'no', they'll explain why and how the charity can appeal.

Section 9(5) establishes that a charity that makes changes without approval is guilty of an offense, whilst section 9(6) provides that if a charity contravenes section 9(3), each of the trustees shall be guilty of an offense.

Section 8(7) establishes that this section does not apply to educational institutions.

Section 9(8) provides that 'specified clause' refers to parts of the charity's constitution about its:

- (a) the objects,
- (b) the income and property, or
- (c) the winding up of the charitable organisation.

**Section 10** seeks to amend section 43 of the Principal Act, to provide for additional circumstances for the removal of charitable organisation from the Register, including:

- If it fails to comply with conditions attached to its registration under section 39(9)(b),
- If it changes its charitable purpose or a specified clause in contravention of section 43A(3),

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<sup>124</sup> O Breen, ['The Charities \(Amendment\) Bill 2022 – A Commentary on the General Scheme of Bill'](#)  
Carmichael Centre June 2022

- where the Authority is of the opinion that it is not a charitable organisation or has wound up or otherwise ceased to operate;
- where the Authority is satisfied that there has been a contravention of section 39(11A) [other than paragraph (a) of that subsection].

Section 10(j) inserts a number of subsections:

- Subsection 43(12) provides that when an organisation ceases to be registered, the Authority shall enter a statement in the register to this effect,
- Subsection 43(13) empowers the Authority to publish a list of such bodies no longer deemed to be registered.
- Subsection 43(14) specifies that the timings associated with such actions (i.e. the ‘specified date’) is the date of the Court’s decision (or a later date as may be specified by the Court) in accordance with the proposed Section 45(A).

**Section 11** seeks to amend section 44 of the Principal Act, which concerns the determination that charitable organisations to which section 40 applies (i.e. charities ‘deemed registered’) are no longer deemed to be registered.

Section 11(a) amends subsection 44(1) with the provision that if the Authority is of the view that an organisation deemed registered is/has become an “excluded body”, the Authority will remove it from the Register and it will cease to be considered registered.

Section 11(b) inserts a new subsection – subsection 44(1A) – that provides that if the Revenue Commissioners notify the Authority that a charitable organisation deemed registered is no longer entitled to an exemption under section 40(1)(a)<sup>125</sup>, the Authority will remove it from the Register and it will cease to be considered registered.

Section 11(c) establishes that where the name of charitable organisation deemed registered is changed in contravention of section 42(2), the Authority will remove it from the Register and it will cease to be considered registered.

Section 11(d) inserts a new subsection – subsection 42(2A) – that provides that if an organisation’s charitable purpose is changed, or if a specified clause is amended (in contravention of section 42A(3)), the Authority will remove it from the Register and it will cease to be considered registered.

Section 11(e) provides that if a body corporate is convicted of an offence, the Authority will remove it from the Register and it will cease to be considered registered.

Section 11(f) inserts two new subsections in respect of subsections 44(4) and (5), both of which establish where there is a contravention of specified subsections, or a direction under specified subsections, the Authority will remove the organisation from the Register and it will cease to be considered registered.

Section 11(g) inserts a new subsection – subsection 5(A) – which establishes that where the Authority is of the view that a body deemed registered is either (a) not a charitable organisation or

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<sup>125</sup> This is an entitlement to an exemption under [section 207/208](#) of the [Taxes Consolidation Act 1997](#).

(b) has been wound up/has ceased to operate, the Authority will remove it from the Register and it will cease to be considered registered.

Section 11(h) provides for the deletion of subsections 44(6), 44(7) and 44(8).

Section 11(j) replaces subsection 44(12) with a new subsection which establishes that if a body ceases to be deemed register, the Authority will enter a statement reflecting this in the Register (as well as the reasons for this).

Section 11(k) inserts three new subsections:

- Subsection 44(13) establishes that a statement by the Authority entered into the Register that a body has ceased to be registered (along with a statement of the reasons for this) as per subsection 44(12), will remain in the Register for a length of time as considered appropriate by the Authority.
- Subsection 44(14) empowers the Authority to publish a list of such bodies no longer deemed to be registered.
- Subsection 43(15) specifies that the timings associated with such actions (i.e. the 'specified date') is the date of the Court's decision (or a later date as may be specified by the Court) in accordance with the proposed section 45(A).

**Section 12** introduces a new section – section 44A – to the Principal Act, which the Explanatory Memorandum advises sets out the process to be undertaken by the Authority where it is of the opinion, further to an enquiry, that a charitable organisation should be removed from the register under a reason specified in sections 43 or 44 of the Principal Act<sup>126</sup>.

The proposed section 44(1) establishes that where the Authority is of the view that a charitable organisation should be removed as per specified sections, it will provide written notice to the organisation. Section 44(2) stipulates that this notice will include, amongst other things:

- the reasons for the proposed removal;
- the reasons for the opinion of the Authority [as per subsection 44(1)], as well as the inclusion of a report where an authorised officer had conducted an examination;
- direct the charitable organisation to take such actions, by a specified date, as the Authority considers appropriate to remedy the contravention; and
- advise that the charitable organisation may make written representation to the Authority in respect not later than 21 days from the date of the notice.

Following on from this, the proposed subsection 44(4) stipulates that the Authority will determine if the charitable organisation has complied with any such directions and will consider any representations made.

The proposed subsection 44(3) stipulates that the Authority will notify the Minister for Education or the Minister for Further and Higher Education, Research, Innovation and Science if such a notice is serviced on a charitable organisation this is an educational body.

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<sup>126</sup> [Explanatory Memorandum](#), p.5

The proposed subsection 44(5) stipulates that not later than 6 months after the service of the written removal notice, the Authority will by written notice either (a) withdraw the removal notice, or (b) inform the organisation (where it is satisfied that there is good reason to do so) of the Authority's decision to remove the organisation from the Register (i.e. a 'removal notice'). However, subsection 44(6) provides that this period of 6 months may be extended by the Authority on one occasion, by a period of not more than 12 weeks.

The proposed subsection 44(7) sets out what is to be contained in such a removal notice, including:

- the reason for the removal;
- the reasons for the Authority's decision to remove the organisation from the Register;
- that an appeal may be brought to the Charity Appeals Tribunal;
- that the Authority will, as soon as practicable following the expiration of the specified period, make an application under the proposed section 45A(1) for confirmation of the decision to remove the organisation from the Register if no such appeal is brought; and
- that the removal of the organisation from the Register will not take place unless the Authority's decision is confirmed by the High Court (as per subsection section 45A(3)).

The proposed subsection 44(8) empowers the Authority to withdraw a removal notice (via a written notice) at any point prior to confirmation of the decision by the High Court.

**Section 13** seeks to amend section 45 of the Principal Act, which concerns appeals to the Charity Appeals Tribunal ('the Tribunal') against decisions of Authority.

Section 13(a) inserts three new subsections:

- Section 45(1A) provides that where registration is granted subject to a condition (under section 39), the organisation may appeal this decision to the Tribunal within a specified timeframe.
- Section 45(1B) provides that where an application is refused by the Authority under section 42A(1), the organisation may appeal this to the Tribunal within a specified timeframe.
- Section 45(1C) establishes that an organisation may appeal a direction of the Authority (under section 66A(3)) within a specified timeframe.

Section 13(b) provides for the deletion of subsections 45(2) and (3), whilst section 13(c) provides for the insertion of a new subsection – section 45(3A). The proposed new subsection 45(3A) provides that a charitable organisation served with a removal notice may appeal this within a specified timeframe.

Sections 13(d) and (f) provides for the insertion of four new sections:

- Section 45(5A) establishes that following an appeal under the proposed section 45(1A), the Tribunal may either (a) remove the condition, (b) vary the condition, or (c) affirm the condition.
- Section 45(5B) establishes that following an appeal under the proposed section 45(1B), the Tribunal may either (a) require the Authority to give consent to the change in charitable purpose or the management of the specified clause or (b) affirm the Authority's decision.

- Section 45(5C) establishes that following an appeal under the proposed section 45(1C), the Tribunal may either (a) revoke the direction, (b) vary the direction, or (c) affirm the direction.
- Section 45(7A) establishes that following an appeal under the proposed section 45(3A), the Tribunal may either (a) revoke the removal notice, (b) revoke the removal notice and impose specified conditions on the organisation, and (c) affirm the Authority's decision.

**Section 14** introduces a new section 45A into the Principal Act.

This section provides that, where a removal notice has been served by the Authority, the Authority can apply to the High Court for confirmation of its decision where:

- (1) the organisation did not appeal the removal notice to the Charity Appeals Tribunal, or
- (2) the Charity Appeals Tribunal upholds the decision of the Authority.

If the High Court does not confirm the decision, it can either annul the decision, or send the issue back to the Authority for reconsideration.

It also sets out the process which shall apply for the hearing of the application by the High Court and the determinations that the High Court may make.

**Section 15** updates section 46 of the Principal Act, titled, "References to charitable status",

The Explanatory Memorandum to the Bill claims that the amendment to subsection 2 provides clarity that an *individual* (as opposed to a body) who is not acting on behalf of a registered charity, who describes themselves or their activities in any published material in such a manner that members of the public would reasonably believe they were a registered charity shall, subject to subsection 46(6), be guilty of an offence. It goes on to states that the new subsection 7(c) will provide greater uniformity in respect of the information to be included in all public documents and other publications issued by charities.

Principal Act	Proposed Amendment
<p><b>46.(2)</b> A <i>body</i> (other than a registered charitable organisation) that, in any notice, advertisement, promotional literature or any other published material, describes itself or its activities in such terms as would cause members of the public to reasonably believe that it is a charitable organisation shall, subject to <i>subsection (6)</i>, be guilty of an offence.</p>	<p>"(2) A <i>person</i> (other than a registered charitable organisation or a person who is acting on behalf of a registered charitable organisation) who, in any notice, advertisement, promotional literature or any other published material, describes himself, herself or itself or his, her or its activities, in such terms as would cause members of the public to reasonably believe that he, she or it is a charitable organisation shall, subject to subsection (6), be guilty of an offence.</p>
<p><b>Delete:</b></p> <p>(6) It shall be a defence to proceedings for an offence under subsection (2) for the defendant to prove that</p>	<p><b>Insert:</b></p> <p>(6) Where the defendant is a body or a person acting on behalf of a body, it shall be a defence to proceedings for an offence under subsection (2) for the defendant to prove, in respect of the body, that</p>

<p>(7) A registered charitable organisation shall, in all public documents and such other publications as may be prescribed, including on television or the internet, state in legible characters—</p> <p>(a) that it is a registered charitable organisation, and</p> <p>(b) provide such other information as may be prescribed, including the names of the charity trustees and the address of its principal office.</p>	<p>Insert after (b)</p> <p>“(c) the name of the charitable organisation as it appears on the register,</p> <p>(d) its registration number, and</p> <p>(e) such other information, including the names of the charity trustees and the address of its principal office, as may be prescribed</p>
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**Section 16** updates section 47 of the Principal Act, “Duty to keep proper books of account to remove the exception to charitable organisations that are companies as detailed in the recommendation the Committee in their PLS report.

Principal Act	Proposed amendment
<p><b>Delete:</b></p> <p>(11) This section does not apply to charitable organisations that are companies.</p>	<p><b>Insert:</b></p> <p>(12) This section shall apply to a charitable organisation that is a company from the commencement of the first financial year of the company that occurs after the coming into operation of section 16 of the Charities (Amendment) Act 2023.”.</p>

**Section 17** updates section 48 of the Principal Act, “Annual statement of accounts” to “facilitate the introduction of essential Charity Accounting and Reporting Regulations.”<sup>127</sup>

Subsection 3(a) concerns the preparation of income and expenditure accounts by charities and is updated to provide for an increase in the income or expenditure threshold from €100,000 to €250,000.

The Explanatory Memorandum asserts that this will increase the number of registered charities that would be permitted to meet their obligation under section 48 by way of a simplified income and expenditure account. It goes on to state that the new subsections 3A and 3B (note the issue with numbering) will enable the Minister, in consultation with the Minister for Enterprise, Trade and Employment, to make regulations requiring charities that are companies to comply with information requirements additional to those that are already required under the Companies Acts. This specifically relates to the requirement that their annual statement of accounts be prepared in accordance with the methods and the principles of the Charity Statement of Recommended Practice (SORP).

<sup>127</sup> [Explanatory Memorandum](#), p.6

However, the recommendation by the Committee to raise the threshold from €10,000 to €25,000, at which registered Charities have to produce accounts and be audited was not followed.

The provisions in subsection 6(c) update the conditions under which a charity is exempt from the requirement to prepare an annual statement of accounts, including removing the exemption for charitable organisations that are companies. Education bodies are still exempt.

Principal Act	Proposed Amendment
<p><b>48.</b> (1) Subject to <i>subsection (3)</i>, the charity trustees of a <b>charitable organisation</b> shall, in respect of each financial year, prepare a statement of accounts (in this section referred to as the “annual statement of accounts”) in such form and containing information relating to such matters as may be prescribed by regulations made by the Minister.</p>	<p>Substitute: “charitable organisation, that is not a company,”</p>
<p>(3) (a) Where the gross income or expenditure of a <b>charitable organisation in a financial year does not exceed €100,000</b>, the charity trustees may, instead of preparing an annual statement of accounts in respect of that year, prepare an income and expenditure account in respect of, and a statement of the assets and liabilities of, the charitable organisation.</p>	<p>Substitute: “a charitable organisation, referred to in subsection (1), in a financial year does not exceed €250,000”</p>
<p>Inserting after subsection (3)</p>	<p>“(3A) A charitable organisation that is a company shall prepare financial statements in accordance with—</p> <p>(a) the requirements of Part 6 of the Act of 2014, and</p> <p>(b) regulations made under subsection (3B).</p> <p>(3B) The Minister may, having regard to the requirements of Part 6 of the Act of 2014 and after consultation with the Minister for Enterprise, Trade and Employment, prescribe the form and content of financial statements, additional to the requirements contained in Part 6 of the Act of 2014, to be prepared by a charitable organisation referred to in subsection (3A).”</p>

<p>6) This section does not apply—</p> <p><b>Delete:</b></p> <p>(a) to a charitable organisation that is a company,</p> <p><b>Substitute:</b></p> <p>(c) to a charitable organisation in respect of a financial year in which its gross income or total expenditure is less than—(i) €10,000, or (ii) such greater amount, not exceeding €50,000, as may be prescribed,</p> <p>or</p> <p>(d) in relation to a centre for education designated by <b>the Minister</b> under section 10(4) of the Act of 1998.</p>	<p><b>Replace:</b></p> <p>“(c) to a charitable organisation in respect of a financial year in which 2 or more of the following conditions are met:</p> <p>(i) its balance sheet total does not exceed €10,000, or such greater amount not exceeding €50,000 as may be prescribed;</p> <p>(ii) its gross income does not exceed €10,000, or such greater amount not exceeding €50,000 as may be prescribed;</p> <p>(iii) it has no employees,”</p> <p>And</p> <p>(d) “Minister for Education”</p>
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**Section 18** amends section 50 of the Principal Act, titled “audit or examination of accounts.”

The explanatory memo states that the deletion of subsection 13(a) clarifies that annual audit or examination of accounts as provided for under section 50 of the Principal Act also applies to those charities that are companies.

Furthermore, the provisions in subsection 13(c) update the conditions under which a charity is exempt from the requirements in respect of annual audits.

The amendment to subsection 14(b) clarifies that the definition of ‘charitable organisation’ as referred to in section 50 also includes charitable organisations established in the United Kingdom.

**Section 19** amends section 52 of the Principal Act, which requires the charity trustees of a charitable organisation to submit an ‘annual report’ to the Authority, regarding the charitable organisation’s activities in the previous financial year.

The primary purpose of the amendment is to replace the term ‘annual return’ to describe the information required to be submitted to the Authority under section 52 of the Principal Act, rather than the term ‘annual report’.

**Section 20** updates section 53 of the Principal Act titled ‘Requirement to provide information’.

Subsection 1 is amended to provide that the Authority can issue written directions to a charitable organisation, to provide it with information that it may reasonably require to enable it to perform its functions, within a specified period and in a specified manner.

New subsection 3 provides that the Authority may request the Minister for Education or the Minister for Further and Higher Education, Research, Innovation and Science, to provide it with information, relating to a charitable organisation that is an education body, as the Authority may reasonably require to enable it to perform its functions.

New subsections 4, 5 and 6 establish offences for failure to comply with a direction under subsection 1 of this section.

**Section 21** updates section 54 of the Principal Act titled “Public inspection of annual reports, etc.”

- Subsection 1 is updated which states that the Authority is required to publish all annual returns and related documents online or through other suitable means, unless there’s a law or rule that prevents sharing this information.
- A new subsection (2) is introduced, specifying that this section does not apply to private charitable trusts or certain types of educational bodies outlined in paragraphs (a) to (e) of the definition of an education body.

**Section 22** introduces four new sections into the Principal Act, sections 54A, 54B, 54C and 54D respectively regarding Charity Trustees

New section 54A of the Principal Act requires a charitable organisation to have at least three charity trustees and sets out residency and personal connection requirements. This section does not apply to educational bodies. Definitions within this section include:

- ‘Civil partner’ is defined as in section 2(2).
- ‘Cohabitant’ is defined as in section 2(2).
- ‘Connected relative’ refers to a family member such as a child, step-child, parent, step-parent, sibling, spouse, civil partner, cohabitant, grandparent, grandchild, or a child of the person’s civil partner or cohabitant.

The Charities Act 2009 currently does not mandate a minimum number of charity trustees. However, according to the [General Scheme](#), the Revenue requires at least three unrelated trustees to grant a charitable tax exception. The Law Reform Commission’s 2006 report recommended a minimum of three trustees for a charitable trust<sup>128</sup>.

New section 54B of the Principal Act titled Principal Duties of Charity Trustees codifies the principal duties of trustees. According to the explanatory memo, these duties reflect what are generally understood to be the fiduciary duties of trustees and the duties of directors under the Companies Act 2014. They are:

- (a) To act in good faith according to what they believe are the best interests of the charitable organisation.
- (b) To conduct themselves honestly and responsibly in promoting the charitable purpose of the organisation.
- (c) To prevent any conflicts between their duties to the organisation and their personal interests.
- (d) To apply the care, skill, and diligence that a reasonable person with both the expected knowledge and experience of a trustee in their position, and their actual knowledge and experience, would exercise in the same situation.

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<sup>128</sup> LRC, [Report on Charitable Trusts and Legal Structures for Charities](#) (LRC 80-2006),

The 2009 Act sets out the function of the Authority in section 14 which includes promoting compliance by charity trustees with their *duties* in the control and management of charitable trusts and charitable organisations. However, these duties are not set out in the Act. Charity trustees who are directors of charities that are companies are regulated by the duties set out in section 228 of the Companies Act 2014. Therefore currently, a charity trustee may not have specific fiduciary duties under common law or statutory duties under section 228 of the Companies Act 2014 or both, depending on the particular form that his or her charitable organisation takes.

The fiduciary duties which charity trustees are obliged to comply with are derived from case law, much of which is historical. It follows that the duties are enunciated on a case by case basis and are not set out in codified form. The General Scheme notes that this makes it difficult for charity trustees to understand their legal obligations.<sup>129</sup>

The proposed bill provides that if a charitable organisation is aware that a trustee has violated a duty under subsection (1), it must act to correct the consequences of this breach as soon as possible. While a trustee's breach of duty doesn't cancel contracts or prevent their enforcement by others, a third party involved in the breach or benefiting from it may still be liable.

Subsection (4) provides that the duties of a charity trustee should be interpreted in line with similar principles and duties under common law while ss 5 provides that the Authority can take a suspected breach of duty to the High Court, as outlined in section 74(1)(b) or (e).

New section 54C of the Principal Act provides for the Authority to issue guidelines or codes of conduct for the purpose of the performance of its functions under the Principal Act. Subsection (1) provides the Authority can issue and revise guidelines or codes for its functions under this Act and charities and trustees should adhere to these guidelines or codes. These may address:

- Charity trustee duties.
- Administration and management standards for charities.
- Procedures for "significant events".
- Constitution content of charities.
- Agreements or appointments as per Part 6A.

The Authority must publish these guidelines or codes appropriately. 'Significant event' includes major property damage, asset loss, or risk to the charity's reputation, excluding matters for section 59(1) reporting.

New section 54D of the Principal Act establishes the requirement for all charitable organisations to maintain a register of its members and details of what information to be included. This section does not apply to an education body.

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<sup>129</sup> [General Scheme](#)

**Section 23** provides for amendments to section 55 of the Principal Act titled Persons disqualified for being trustees of a charitable organisation includes updating certain eligibility criteria for a person to act as a charity trustee. Changes to disqualification criteria include:

- providing that persons who have been discharged from bankruptcy will be eligible to hold the position of charity trustee.
- Subsection 1 is amended to extend the conditions under which a person is excluded from holding the position of charity trustee. These are:
  - Those convicted of summary offences under identified sections of the Principal Act;
  - Those subject to, or deemed to be subject to, a declaration under s.819 of the Companies Act 2014;
  - Those subject to, or deemed to be subject to, an order under section 160 of the Companies Act 1990 or disqualification under Chapter 4 of Part 14 of the Companies Act 2014.

New subsection 55(1A) establishes a mandatory requirement for self-reporting where a charity trustee is ineligible to hold the position by virtue of section 55(1) of the Principal Act.

New subsection 55(2A) requires that the Authority must be provided with a copy of an order made by the High Court, in respect of an application under section 55(2).

This amendment clarifies and updates the conditions under which a person is disqualified from being a charity trustee, the procedure for notification of disqualification, and the process for seeking reinstatement. It also specifies the information to be included in the Authority's register of disqualified trustees.

**Section 24** amends section 59(3)(d) of the Principal Act, by substituting the term 'annual report' with 'annual return' to align with the amendments made to sections 52 and 54 of the Principal Act.

**Section 25** amends section 64 of the Principal Act, titled "Investigation of affairs of charitable organisation" provides that an inspector appointed under this section shall be furnished with a warrant of appointment, which can be produced for inspection.

New subsection 64(3) sets out that the Authority shall notify the Minister for Education or the Minister for Further and Higher Education, Research, Innovation and Science, as appropriate, where the Authority appoints an inspector to investigate the affairs of a charitable organisation that is an education body.

**Section 26** introduces a new section 66A to the Principal Act regarding Inspector's reports. This new section grants a statutory power to the Authority to direct that any concerns identified in a report under section 66 be addressed (1) in a specified manner, or (2) by way of a specified plan drafted by the charitable organisation, or both. This section provides a streamlined process for the Authority to instruct charities on corrective actions following an inspector's report, with provisions for communication, compliance, and appeals.

If needed, the Authority may direct a charity on its affairs through written notice, explaining the opinion, proposed measures, and allowing a response period. Notices served to educational bodies will be communicated to the relevant Minister.

Subsection 66A(2) provides that the Authority shall, as soon as practicable after service of a notice under subsection (1), notify the Minister for Education or the Minister for Further and Higher Education, Research, Innovation and Science, as appropriate, where the notice is served on a charitable organisation that is an education body. The section establishes offences where a direction under section 66A(3), or a plan under section 66A(6) is not complied with by the relevant date. A charitable organisation may appeal a direction of the Authority made under section 66A(3) to the Charity Appeals Tribunal.

**Section 27** introduces new sections 68A and 68B to the Principal Act in respect of the appointment and powers of an authorised officer.

New section 68A sets out the appointment process for an authorised officer. The Authority has the power to appoint individuals as ‘authorised officers’ to ensure charities comply with legal standards. These appointments can be revoked or may expire. Authorised officers are issued a warrant and must show it upon request while performing their duties. When an officer is assigned to inspect a charity that is an educational body, the relevant Minister is notified. This ensures proper oversight and adherence to the Act by charitable organisations.

New section 68B defines the powers of an authorised officer, and clarifies that the officer will be independent of the Authority in the performance of his or her functions.

**Section 28** extends the powers under section 69 of the Principal Act, regarding the entry and searching of premises under warrant and provides that the offence provision under this section is extended to include any person who obstructs, interferes or impedes an authorised officer in the course of exercising a power conferred by a warrant. It also extends the timeframe for the retention of any books or documents obtained in accordance with a warrant, from 3 months to a period of up to 2 years.

**Section 29** clarifies that section 72(1) of the Principal Act will apply to both inspectors and authorised officers appointed by the Authority.

**Section 30** amends section 73 of the Principal Act, which relates to intermediate sanctions. Recommendation 3 of the Pre-Legislative Report recommended that more provisions should be linked into the intermediate sanctions.

The amendment expands the range of circumstances in which the Authority can impose intermediate sanctions and provides for intermediate sanctions to apply to contraventions under sections 39 ( Register of charitable organisations), 40 ( Removal of charitable organisation from register), 88D ( Removal of agreements and appointments), a direction under section 51(2) ( related to audits) , 53(1)( requirements to provide information) or 66A(3) (Inspector’s reports) or an approved plan under section 66A(6) of the Principal Act respectively.

New subsection 73(2A) provides that the Authority shall, as soon as practicable after service of a notice under subsection (2), notify the Minister for Education or the Minister for Further and Higher Education, Research, Innovation and Science, as appropriate, where the proposal concerns a charitable organisation that is an education body.

In addition, the mandatory wording of 73(4) is changed from “shall” to “may” allowing the Authority the discretion as to the regulatory action they may take. However, the recommendation of the Commission to introduce incremental steps into the Bill was not followed.

**Section 31** amends section 74 of the Principal Act, titled “Protection of charitable organisations”, and provides that the Authority can apply to the High Court to make an order to protect a charitable organisation.

- A new subsection (2A) specifies that the High Court cannot order the winding up or dissolution of a charitable organisation that is an education body as referred to in subsection (4)(g).
- New subsections (3A) and (3B) have also been added:
  - The Authority must inform the Minister for Education or the Minister for Further and Higher Education, Research, Innovation and Science when it intends to apply to the High Court regarding a charitable organisation that is an education body.
  - A person acting as a charity trustee based on a High Court order will not be liable for damages for any actions or omissions made by the charitable organisation or any related person before their appointment, unless it is proven to be done in bad faith or due to negligence or misconduct on their part.
  - A new paragraph (g) has been added, allowing for an order directing that the charitable organisation be wound up or dissolved in accordance with its constitution or as specified in the order.

This amendment, section 74(4)(g), does not apply to an education body.

It also provides that a High Court appointed charity trustee is indemnified from liability for damages in respect of matters which occurred prior to the date of his or her appointment and for his or her own acts or omissions, provided they are not shown to have been made in bad faith, are not negligent and do not constitute misconduct.

New subsection 74(3A) provides that the Authority shall notify the Minister for Education or the Minister for Further and Higher Education, Research, Innovation and Science, as appropriate, where the Authority proposes to make an application under subsection (1) in relation to a charitable organisation that is an education body.

**Section 32** amends section 75 of the Principal Act to provide for an increase in the membership of the Charity Appeals Tribunal from five to seven persons.

It also updates section 75(9) to provide that persons discharged from bankruptcy are qualified to hold office as a member of the Charity Appeals Tribunal.

**Section 33** amends section 77 to align with section 45 of the Principal Act, to allow for the 21-day period to appeal to the Charity Appeals Tribunal to be extended in certain circumstances.

**Section 34** introduces a new Part 6A, titled Approval of certain agreements and appointments, which replaces section 89 within the Principal Act. It consists of five new sections 88A, 88B, 88C, 88D and 88E.

New section 88A sets out definitions for terms used in Part 6A, including:

- ‘relevant person’ meaning in relation to a charitable organisation, a member of the charitable organisation, a charity trustee of the charitable organisation, or a person with whom a charity trustee of the charitable organisation has a personal connection;

- ‘service’ includes the provision of a good, but does not include a function ordinarily carried out by a charity trustee of a charitable organisation.

New section 88B details the specific instances where a charitable organisation may provide remuneration to, or on behalf of, a relevant person.

New section 88C provides that a charity may enter into agreements and make appointments subject to the prior approval of the Authority. Subsection 88C(2) provides that remuneration provided under an agreement shall not exceed what is reasonable and proportionate, having regard to the service being provided. Subsection 88C(3) allows charities to appoint an employee as a trustee. Subsection 88C(7) clarifies that education bodies and public bodies are not required to seek approval from the Authority to enter into an agreement or to make an appointment.

New section 88D details the process for seeking approval from the Authority for entering into agreements and making appointments. It also sets out where an agreement or appointment is null and void, and provides clarification in respect of the recovery of damages by a charitable organisation or a relevant person.

New subsections 88D(9) and 88D(10) establish offences where a person knowingly provides false information or a particular in purported compliance with the section, and where charity trustees contravene Part 6A.

New section 88E provides for an appeal mechanism to the District Court against a decision of the Authority under Part 6.

**Section 35** repeals section 89 of the Principal Act, the provisions of which are replaced by corresponding provisions under Part 6A.

**Section 36** introduces a new section into the Principal Act titled, “Exclusion of liability for certain charity trustees.” Under section 90A, individuals who are acting in good faith and in accordance with this Act or its regulations are not personally liable in civil proceedings for their actions. This protection applies specifically to board members who are charity trustees of an educational body charity, as defined in the Act of 1998. This ensures that those who are serving charities in compliance with the law can carry out their duties without fear of personal legal repercussions for their lawful actions.

**Section 37** repeals section 99 of the Principal Act.

**Section 38** amends Schedule 1 paragraph (3)(3) of the Principal Act, to allow persons discharged from bankruptcy to be eligible to hold office as a member of the Authority.

### Part 3 Amendment of Other Acts

**Section 39** contains four amendments to the Charities Act, 1961.

by the deletion, in section 34(2), of “other than a purpose of the charity of which they are trustees”, this section is concerned with the power of the board to authorise or make sale, exchange or surrender lease of charity land. It is stated in the explanatory memo that section 34(2) is updated to allow for the sale of charity land for less than market value to a charity that has the same charitable purpose.

The section also repeals sections 29(4), 53 and 54.

**Section 40** amends section 851A(8) of the Taxes Consolidation Act 1997 to specifically refer to the provision of information, including taxpayer information, by the Revenue Commissioners to the Authority for the purposes of the latter carrying out its functions under the Act of 2009.

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