



## **The Consultative Committee of Accountancy Bodies-Ireland**

The Institute of Chartered Accountants in Ireland  
The Association of Chartered Certified Accountants  
The Chartered Institute of Management Accountants  
The Institute of Certified Public Accountants in Ireland

### **CHARITIES ACT 2009**

*This Memorandum has been prepared by the Consultative Committee of Accountancy Bodies – Ireland (“CCAB-I”) to alert members of the profession to the new statutory framework applicable to charities, introduced by the Charities Act, 2009.*

*This Memorandum is not a comprehensive guide to the Act’s detailed requirements. It should be read in conjunction with, and not as a substitute for, the Act. Members are advised that it may be appropriate, in considering the application of the Act’s provisions in particular circumstances, to seek legal advice.*

*No responsibility for loss occasioned to any person acting, or refraining from action, as a result of material in this publication can be accepted by the CCAB-I.*

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## INTRODUCTION

1. The Charities Act 2009 has been passed by the Houses of the Oireachtas. The Act establishes a new statutory framework for charities operating in the Republic of Ireland whether or not the charity is established in this jurisdiction. The detailed provisions of the Act will come into force on date(s) to be specified by Commencement Orders to be made in due course by the Minister for Community, Rural and Gaeltacht Affairs.
2. Significant matters addressed by this Act include:
  - Definition of “charitable purpose”
  - Establishment of the Charities Regulatory Authority
  - Establishment of the Register of Charitable Organisations
  - Obligation on every charity operating, or proposing to operate, in the Republic of Ireland to apply for registration.
  - Statutory accounting and audit (or independent examination) obligations imposed on all charities which are not incorporated under the Companies Acts. *The Companies Acts continue to apply to charities incorporated under those Acts.*
  - Annual Report to the Authority by every charity
  - Direct reporting to the Authority by “relevant person” if of opinion offence committed under this Act
  - Establishment of the Charity Appeals Tribunal
  - Changes to the Street and House to House Collections Act, 1962, to take account of changes in fund-raising activities and methods.

## PRELIMINARY AND GENERAL

3. *Section 2* of the Act defines various terms. Members’ attention is drawn particularly to the following, the full text of which is reproduced in *Appendix 1*:
  - Charitable organisation
  - Charitable trust
  - Constitution
  - Excluded body
  - Personal connection
  - Record

For ease of reference the term “charity” is used in this Memorandum to cover both charitable organisations and charitable trusts.

4. A charitable purpose must be of public benefit. Provided this is the case, *Section 3* specifies each of the following is a charitable purpose:
  - The prevention or relief of poverty or economic hardship.
  - The advancement of education.
  - The advancement of religion.
  - Another purpose that is of benefit to the community.
  
5. *Section 3(11)*, the text of which is reproduced in *Appendix 1*, lists the categories which are considered to be “purpose that is of benefit to the community”.
  
6. A decision by the Charities Regulatory Authority as to whether or not an organisation’s purpose is of public benefit is not binding on the Revenue Commissioners’ determination as to that organisation’s entitlement to tax exemption (*Section 7*).
  
7. The Act does not apply to certain categories of entities using the trust structure – for example, a business solely leasing plant and machinery (*Section 8*).
  
8. *Section 10* provides that penalties for an offence under this Act can amount:
  - (i) on summary conviction, to a fine of €5,000 and/or imprisonment for 12 months;  
or
  - (ii) on conviction on indictment, to a fine of €300,000 or/and 10 years imprisonment.

## **CHARITIES REGULATORY AUTHORITY**

9. The functions of the Charities Regulatory Authority (“the Authority”) include (*Section 14*):
  - 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,
  - establish and maintain a register of charitable organisations,
  - ensure and monitor compliance by charitable organisations with this 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.

10. The Authority shall have between nine and twenty members, including the Chairman (*Section 13/Schedule 1*). At least three members must be barristers or solicitors of at least 10 years standing, or hold (formerly held) judicial office in the Superior Courts.
11. In appointing the members of the Authority, the Minister for Community, Rural and Gaelteacht Affairs, (“the Minister”) must ensure they include persons with knowledge of, and experience in,
  - “(a) The law relating to charities,
  - (b) The keeping of accounts by, and the funding of, charitable organisations and
  - (c) The management of charitable organisations.”
12. A member can be appointed to the Authority for up to 5 years and be reappointed – provided the aggregate membership period does not exceed 10 years.
13. The Minister, subject to the consent of the Minister for Finance, will provide funds to the Authority (*Section 16*). However, the costs of dealing with any property vested in the Authority in compliance with this Act may be recovered from the estate and funds of the particular charitable organisation in respect of which those costs were incurred (*Section 18*).
14. The Chief Executive of the Authority can be required to appear before the Public Accounts Committee of Dáil Eireann to give evidence in relation to, inter alia, the economy and efficiency of the Authority’s use of resources. However, he/she is prohibited from opining on the merits of any Government policy, or the objectives of such policy (*Section 22*).
15. If, in the opinion of a member of the Garda Siochana , the Director of Corporate Enforcement, or “such other person as may...be prescribed” (*Section 27*), an offence under this Act may have occurred, he/she may give that information to the Authority.
16. Where “any information obtained by it in the performance of the function” leads the Authority to suspect a charity trustee or a charitable organisation has committed an offence, *Section 28* obliges the Authority to report to one or more, as appropriate, of
  - The Garda Siochana
  - The Revenue Commissioners
  - The Director of Corporate Enforcement
  - The Competition Authority

“Any other person charged with the detection/investigation or prosecution of  
.....”.

17. The Authority’s Annual Report, as well as a triennial Strategy Statement, are to be submitted to the Minister within 6 months of the end of the relevant period. The Minister shall “as soon as may be” lay copies of the Report or Statement before the Dáil and Seanad. Thereafter, the Report or Statement will be published “as soon as practicable” on the internet.
18. *Section 36* empowers the Authority to establish one or more consultative panels. Matters which may form part of the terms of reference of such a panel include:
  - (i) EU or other international developments which have implications for the performance by the Authority of its functions;
  - (ii) A policy, document, or guidance issued, or proposed to be issued, by the Authority.
  - (iii) Assessment of the effectiveness of the regulation of the administration and operation of charitable fundraising through codes of conduct.

## **REGULATION OF CHARITABLE ORGANISATIONS**

19. Each charity, which operates or carries on activities in the Republic of Ireland, or proposes to do so, must apply to the Authority to be included in the Register of Charitable Organisations (“the Register”). Its formal application shall include, inter alia (*Section 39*):
  - The charity’s name and principal places of business
  - Particulars of all bank accounts held
  - Particulars of current or proposed activity
  - Manner in which the charity raises, or proposes to raise, funds
  - Details of monies raised in the 12 months prior to the application
  - Gross income in the financial year ending immediately before the making of the application
  - Copy of the most recent “financial accounts” and the constitution.

20. The Register may be inspected “at all reasonable times” at the Authority’s offices and can be accessed via the internet.
21. *Section 40* grants automatic registration to an existing charity which obtained tax exemption status prior to commencement of *Section 39* so long as that exemption continues.
22. The Authority may refuse to register a charity if its name is unacceptable as specified in *Section 42*. If a charity proposes to change its name, it must obtain prior consent from the Authority.
23. Should the Authority consider a charity is promoting purposes that are;
  - Unlawful,
  - Contrary to public morality,
  - Contrary to public policy,
  - In support of terrorism or terrorist activities, or
  - For the benefit of an organisation, membership of which is unlawful

it can remove that charity from the Register. *Section 43* also entitles the Authority to apply to the High Court for a declaration that a body is no longer a charity and, therefore, should be removed from the Register.

24. A body whose application for registration is rejected, or which is removed from the Register, can appeal (*Section 45*) that decision to the Charity Appeals Tribunal.
25. A charity which is not incorporated under the Companies Acts is obliged by *Section 47* to keep “proper books of account...on a continuous and consistent basis...”. Those records are to be retained for at least 6 years from the end of the financial year to which the records relate.
26. The Minister, by regulations under *Section 48*, will prescribe the format and content of the “annual statement of accounts” required of a charity which is not incorporated under the Companies Acts.
27. The Minister, when making those regulations, can prescribe a simpler income and expenditure account and statement of assets and liabilities for charities with gross annual income or expenditure not exceeding €100,000.

*Further CCAB-I guidance will issue when the relevant regulations are signed by the Minister.*

28. *Section 49* obliges the Registrar of Companies to forward a copy of the annual return (and documents attached thereto) of each charity incorporated under the Companies Acts to the Authority.
29. Charities, which are not companies, must have the annual statement of accounts audited by a “qualified person” (*Section 50*). Charities with gross income or expenditure less than an amount to be prescribed by the Minister (which cannot be greater than €500,000) will have the option of an audit or an examination by an “independent person approved by the Authority”. However, the Authority can oblige such smaller charity to have an audit.
30. The Minister, by regulation, can make provision “...in relation to the duties of an auditor or independent person”. (*Section 51*).

*Further CCAB-I guidance will issue when the relevant regulations are signed by the Minister.*

31. *Section 52* requires each charity to submit an annual report to the Authority no later than 10 months after the end of the charity’s financial year. Copies of the annual statement of accounts (or simplified accounts for smaller charities), together with a copy of the audit report or report by the independent person, must be attached to the annual report.
32. *Section 52* also applies to a company which is not required to annex its accounts to the annual return submitted to the Registrar of Companies.
33. The annual reports (and documents annexed thereto) are available for inspection by the public (*Section 54*), except for reports submitted by a private charitable trust.
34. *Section 55* specifies the circumstances in which a person ceases to be qualified to hold the position of charity trustee. The Authority will keep a register of disqualified persons which will be available for inspection by the public.
35. The High Court may, if it considers it appropriate, make a person convicted of an offence under *Section 56* or *57* personally liable, in whole or in part, for the debts incurred by the charity as a result of the offence.
36. *Section 59* obliges a “relevant person”, which category includes an auditor (but not an “independent person”), who forms the opinion “...that there are reasonable grounds for believing that an offence under the Act of 2001 has been or is being committed...”, to notify the Authority in writing of that opinion.
37. *Section 61* provides protection to a person reporting under *Section 59* from liability for “any breach of duty” towards the charity “...unless he or she has acted in bad faith”.



*Appropriate guidance for reporting in such circumstances is contained in the October 2002 CCAB-I Memorandum “Section 59, Criminal Justice (Theft and Fraud Offences) Act, 2001.”.*

38. Where a charity employee has reported, in good faith, “...an opinion of the kind referred to in *Section 61*...” to the Authority, *Section 62* protects the employee from penalisation by the employer. It will be a rebuttable presumption, in proceedings before a Rights Commissioner or the Employment Appeals Tribunal, that this employee acted reasonably and in good faith.

### **PROTECTION OF CHARITABLE ORGANISATIONS**

39. A charity trustee or agent (which latter category includes the auditor (or former auditor) of the charity, but does not specifically report to an “independent person” is obliged by *Section 65* to:
- “(a) Produce to an inspector all books, documents and other records of or relating to the charitable organisation that are in his or her possession, under his or her control, or within his or her procurement,
  - (b) Attend before an inspector, and
  - (c) Give to an inspector all assistance in connection with the investigation which he or she is reasonably capable of giving”.
40. The costs of an investigation shall be paid by the Authority. However, *Section 67* enables the High Court to order a person, who is either convicted on indictment or ordered to pay damages, or restore property, as a consequence of an investigation, to pay up to the full cost of that investigation.
41. Should the Authority form the opinion an investigation may be necessary, or an offence has been/may be committed, *Section 68* empowers the Authority to require a charity to produce “...such books, documents or other records as may be specified.”.
42. The Authority can impose “intermediate sanctions” on a charity, rather than bringing proceedings for an offence, where there are certain breaches of the provisions of this Act governing the keeping of accounts and making the annual statement of accounts and annual report (*Section 73*).
43. *Section 74* lists circumstances in which the Authority can apply to the High Court for an order to protect the charity’s assets.

## **CHARITY APPEALS TRIBUNAL**

44. The Minister shall appoint for a period not exceeding 5 years, with the possibility of reappointment, the five members of the Charity Appeals Tribunal (“the Tribunal”). Two members of the Tribunal must be (or have been) judges of the Superior Courts, or, alternatively, be barristers or solicitors qualified for at least 10 years. *Section 75* requires that two members “...have experience in areas of expertise relating to charities”.
45. The Tribunal can direct that the identity of one or more parties shall not be disclosed. With that exception, *Section 78* provides the Tribunal’s proceedings shall be conducted in public.
46. A decision of the Tribunal can be appealed to the High Court on a point of law (*Section 80*).

## **DISSOLUTION OF COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS FOR IRELAND**

47. On the establishment of the Authority, the Commissioners of Charitable Donations and Bequests for Ireland (“the Commissioners”) is dissolved and its functions transferred to the Authority (*Section 82*).
48. All lands and other property which were vested in the Commissioners are then vested in the Authority (*Section 83*). Similarly, *Section 84* provides that all rights and liabilities of the Commission arising under any contract or commitment will be recovered or enforced by/or against the Authority.

## **MISCELLANEOUS**

49. *Section 91* permits a charity to take out indemnity insurance for its charity trustees.
50. Amendments are made to the Street and House to House Collections Act, 1962, to take account of changes in fund-raising methods, particularly:
  - (a) The sale of items as part of the cash collection process; and
  - (b) The pledges of continuing contributions through direct debits or standing orders.

51. In addition to revised definitions of “collection” and “money”, *Section 93* defines “non-cash collection” in respect of which a permit for the relevant 12 month period from the Chief Superintendent of the Garda Síochána is required. The permit holder must notify the Chief Superintendent of the proposed actual collection date/s at least 14 days in advance. If a permit for a cash collection has been agreed for the same date and place, the Chief Superintendent shall prohibit the proposed non-cash collection.
52. Section 9(f) of the 1962 Act is amended by *Section 93(e)* to provide that collectors may receive, as an alternative to “a reasonable commission”, reasonable remuneration and expenses.
53. For cash collections, the collection box shall bear the name of the charity, its registered number and the number specified in the collection permit. *Section 94(a)(c)* requires the collection box be returned unopened and with its seal intact to the permit holder.
54. *Section 94(c)* governs non-cash collections and provides the collector’s “visible garment” shall bear the name and registered number of the charity. The collection form completed by members of the public shall show “in a prominent and clearly legible manner” the name of the charity, its registered number, the number of the permit, as well as the name of the bank, bank account and account number to which contributions will be made.
55. *Section 97* permits the Minister, after consultation with the Authority, to promulgate regulations governing the manner and conduct of fund-raising, including cash and non-cash collections.
56. A charity, as defined by this Act, is excluded (*Section 98*) from the definition of “retail credit firm” contained in Section 28, Central Bank Act, 1997, as amended.
57. Selling mass cards, other than under an arrangement with a bishop, or order provincial, of the Catholic Church, shall be an offence (*Section 99*).

**DEFINITIONS – Section 2 & 3**

“*Charitable organisation*” means-

- (a) the trustees of a charitable trust, or
- (b) a body corporate or an unincorporated body of persons –
  - (i) that promotes a charitable purpose only,
  - (ii) that, under its constitution, is required to apply all of its property (both real and personal) in furtherance of that purpose, except for moneys expended -
    - (I) in the operation and maintenance of the body, including moneys paid in remuneration and superannuation of members of the staff of the body, and
    - (II) in the case of a religious organisation or community, on accommodation and care of members of the organisation or community, and
  - (iii) none of the property of which is payable to the members of the body other than in accordance with *section 89*.

“*Charitable trust*” means a trust -

- (a) established for a charitable purpose only,
- (b) established under a deed of trust that requires the trustees of the trust to apply all of the property (both real and personal) of the trust in furtherance of that purpose, except for moneys expended in the management of the trust, and
- (c) none of the property of which is payable to the trustees of the trust other than in accordance with *section 89*;

*“Charitable trustee”* includes-

- (a) in the case of a charitable organisation that is a company, the directors and other officers of the company, and
- (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 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;

*“Constitution”* means the rules (whether in writing or not) governing the administration and control of a charitable organisation and that regulates its activities, and includes -

- (a) in the case of a charitable organisation consisting of trustees of a charitable trust, the deed of trust establishing the charitable trust,
- (b) in the case of a charitable organisation that is a company, the memorandum and articles of association of the company,
- (c) in the case of a charitable organisation that is a body corporate other than a company, the charter, statute or other like instrument by which it is established, and
- (d) in the case of a charitable organisation that is an unincorporated body of persons, the rules of the body,

but does not include any enactment or rule of law applicable to the carrying on of the activities of the organisation;

*“Excluded body”* means-

- (a) a political party, or a body that promotes a political party or candidate,
- (b) a body that promotes a political cause, unless the promotion of that cause relates directly to the advancement of the charitable purposes of the body,

- (c) an approved body of persons within the meaning of section 235 of the Taxes Consolidation Act 1997,
- (d) a trade union or a representative body of employers,
- (e) a chamber of commerce, or
- (f) a body that promotes purposes that are-
  - (i) unlawful
  - (ii) contrary to public morality,
  - (iii) contrary to public policy,
  - (iv) in support of terrorism or terrorist activities, whether in the State or outside the State, or
  - (v) for the benefit of an organisation, membership of which is unlawful;

*“Personal connection”* means-

- (a) For the purposes of this Act-
  - (i) a person is connected with an individual if that person is a parent, brother, sister, spouse, grandparent or grandchild of the individual, or a child of the spouse of the individual,
  - (ii) a person, in his or her capacity as a trustee of a trust, is connected with an individual if that individual, or any of that individual’s children, or any body corporate that that individual controls is a beneficiary of the trust,
  - (iii) a person is connected with any person with whom he or she is in partnership,
  - (iv) a person is connected with any person by whom he or she is employed under a contract of service,
  - (v) a body corporate is connected with another person if that person has control of it or if that person and persons connected with that person together have control of it, and

- (vi) any two or more persons acting together to secure or exercise control of a body corporate shall be treated in relation to that body corporate as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the body corporate.
- (b) In this subsection “control” has the meaning assigned to it by Section 22 of the Taxes Consolidation Act 1997 and cognate words shall be construed accordingly.

“Record” includes, in addition to any record in writing –

- (a) a plan, chart, map, drawing, diagram, pictorial or graphic image,
- (b) a disc, tape, soundtrack or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form,
- (c) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form, and
- (d) a photograph;

“Purpose that is of benefit to the community” includes -

- (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,
- (g) the promotion of religious or racial harmony and harmonious community relations,
- (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.



APPENDIX 2

Provision	Commencement Order	Date of Commencement
PART 1 Section...	S.I..... of 2009	.../.../2009
PART 2 Section...	S.I..... of 2009	.../.../2009
PART 3 Section...	S.I..... of 2009	.../.../2009
PART 4 Section...	S.I..... of 2009	.../.../2009
PART 5 Section...	S.I..... of 2009	.../.../2009
PART 6 Section...	S.I..... of 2009	.../.../2009
PART 7 Section...	S.I..... of 2009	.../.../2009