

## Charities Regulator Requirements for Registration

If you are a charity, by law you must apply to the Charities Regulator to be included on the Register of Charities. You may also wish to apply for charitable tax exemption (CHY status) from Revenue in order to avail of certain tax benefits to which you are entitled because you are a charity. There are a number of requirements that are common to the Charities Regulator and to Revenue<sup>1</sup>. This guidance note provides advice on making the process of applying for charity registration and CHY status as smooth as possible for all concerned. The left hand column lists all the requirements that you have to meet and the right hand column provides additional explanatory information.

Requirement	What does this mean?
<p><b>Organisation Governing Instrument</b></p> <ul style="list-style-type: none"> <li>If an organisation does not currently have a Governing Instrument, it will need to draft the appropriate document. If the Governing Instrument has been amended at any stage (for example, by supplementary deed or special resolution), copies of those amending documents must also be provided. If it is proposed to make an amendment to the Governing Instrument of the organisation that requires the prior approval of the Charities Regulator, advance notice in writing of the proposed changes must be given to the Charities Regulator for approval.</li> </ul>	<p><b>Your organisation's most important document</b></p> <p><b>What it is:</b> The Governing Instrument is the document that provides a basis for everything that you do and how you do it. Depending on the legal structure of your organisation, it is your constitution (memorandum and articles of association), deed of trust or rules. If you do not have a Governing Instrument then you will have to draw one up. The Charities Regulator will be publishing model constitutions in April/May 2016.</p>
<ul style="list-style-type: none"> <li>An organisation must be constituted and operated exclusively for charitable purposes.</li> </ul>	<p><b>What it does:</b> Your Governing Instrument clearly sets out the overarching goals of your organisation, which are published on the Register of Charities. It also places limits on the activities that you are allowed to undertake that differentiate you from organisations that are not charities.</p>
<ul style="list-style-type: none"> <li>The income and property of the organisation must be applied solely towards the promotion of the main charitable object as set out in the Governing Instrument. The Governing Instrument should not ordinarily provide the charity trustees with a power to lend the property of the organisation. In cases where lending is being considered, the Governing Instrument must specify the conditions under which this can be permitted.</li> </ul>	<p><b>What it limits:</b> Your Governing Instrument will normally not allow lending of organisational resources. Your organisation's resources must be used only to achieve its aims. If you are a company limited by guarantee, make sure that your constitution (memorandum of association and articles of association) is in line with the requirements of the Companies Act 2014.</p>

<sup>1</sup> Please note that if your organisation intends to apply to Revenue for charitable tax exemption (CHY status), there is an additional requirement that charities have a majority of their charity trustees resident in Ireland. For more information on applying for Charitable Tax Status go to <http://www.revenue.ie/en/business/charities.html>

<ul style="list-style-type: none"> <li>The Governing Instrument must contain the standard clauses as outlined in the attached Schedule.</li> </ul>	<p><b>What it must include:</b> Your Governing Instrument needs to be fit for the purpose of registering you as a charity. It must contain the clauses in the Schedule at the end of this guidance note. The more complete your Governing Instrument is, the speedier the application process will be.</p>
<p><b>Charity Trustees</b></p> <ul style="list-style-type: none"> <li>There must be a minimum of three charity trustees, who are not related and who are independent of each other.</li> </ul>	<p><b>The people with ultimate responsibility for your charity</b></p> <p><b>Who they are:</b> The charity trustees are the people who have overall control of your organisation. ‘The buck stops’ with the charity’s trustees. For example, the people who make up your board of directors (if you are a company limited by guarantee) or your management committee or core group (if you are an unincorporated association) are most likely to be your trustees.</p>
<ul style="list-style-type: none"> <li>No charity trustee shall be appointed to any office of the organisation paid by salary or fees, or receive any remuneration or other benefit in money or money’s worth from the organisation. In general, no payments should be paid to charity trustees other than reasonable out of pocket expenses.</li> </ul>	<p><b>What they are entitled to:</b> Charity trustees may not profit from carrying out their duties as a charity trustee. However, they may be reimbursed for any out of pocket expenses they incur as a result of their involvement with your organisation. A reasonable rent may be charged for premises let by any member of your organisation to the organisation as long as this is adequately documented.</p>
<ul style="list-style-type: none"> <li>If the address of the organisation is that of one of the charity trustees then further information is required as to lease agreements, etc.</li> </ul>	<p>In general, if your organisation is renting property you must provide us with a copy of the lease agreement.</p>
<ul style="list-style-type: none"> <li>If the organisation is leasing property then a copy of the lease agreement is required.</li> </ul>	
<ul style="list-style-type: none"> <li>Two signatures of charity trustees are required on all bank accounts held by the organisation.</li> </ul>	<p><b>Their responsibilities:</b> All bank accounts held by the organisation must be signed off by at least two trustees.</p>
<ul style="list-style-type: none"> <li>Any involvement or connection by any charity trustee with another charity must be specified.</li> </ul>	<p>If a charity trustee is also a charity trustee – or a paid member of staff – with another charity, this must be declared.</p>
<p><b>Excluded Bodies</b></p> <ul style="list-style-type: none"> <li>As part of the assessment of applications for charitable status, the Charities Regulator will check that the applicant is not:             <ol style="list-style-type: none"> <li>a political party, or a body that promotes a political party or candidate</li> <li>an approved body of persons within the meaning of section 235 of the Taxes Consolidation Act 1997 (bodies established for the sole purpose of promotion of athletic or amateur games or sports)</li> <li>a trade union or a representative body of employers</li> <li>a chamber of commerce.</li> </ol> </li> </ul>	<p><b>Are you an excluded body?</b></p> <p>If your organisation is any of the types of bodies listed a-d, you cannot apply to be a charity.</p>

<p><b>Political Activity</b></p>	<p><b>Do you engage in political activity?</b></p>
<ul style="list-style-type: none"> <li>• As part of the assessment of applications for charitable status, the Charities Regulator will check to ensure that the applicant is not:             <ol style="list-style-type: none"> <li>a. 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</li> <li>b. a body that promotes purposes that are:                 <ol style="list-style-type: none"> <li>i. unlawful</li> <li>ii. contrary to public morality</li> <li>iii. contrary to public policy</li> <li>iv. in support of terrorism or terrorist activities, whether in the State or outside the State</li> <li>v. for the benefit of an organisation, membership of which is unlawful.</li> </ol> </li> </ol> </li> <li>• If the organisation is carrying out or plans to carry out any political activity, evidence must be supplied that the activity is solely to promote one or more of its charitable purposes.</li> </ul>	<p>The key question here is in two parts:</p> <ol style="list-style-type: none"> <li>1. Does your organisation promote, or is it established for charitable purpose(s) only?</li> <li>2. Does all advocacy/lobbying/ campaigning work that you do relate directly to furthering your charitable purpose(s)?</li> </ol> <p>Unless the answer to both parts of the question is Yes, you are not a charity.</p>
<p><b>Trading Activities</b></p> <ul style="list-style-type: none"> <li>• As part of the assessment of applications for charitable status, the Charities Regulator will check that any trading activities carried out by the applicant falls into one of the following broad categories:             <ol style="list-style-type: none"> <li>a. trades which are exercised in the course of the actual carrying out of a primary purpose of the organisation;</li> <li>b. trades carried on by the beneficiaries of the organisation;</li> <li>c. ancillary trading by the organisation.</li> </ol> </li> </ul>	<p><b>Do you trade?</b></p> <p><b>Let us know:</b> The Charities Regulator will need information on any trading activities you carry out in order to assess your application for charitable status. Trading activities will usually be one of the following:</p> <ol style="list-style-type: none"> <li>a. trading by the organisation itself as part of its charitable purpose;</li> <li>b. trading by the people whom the organisation is intended to support;</li> <li>c. trading by the organisation itself which is not directly linked to its main purpose.</li> </ol>
<ul style="list-style-type: none"> <li>• Ancillary trading activity may be carried out by a subsidiary of the charity in furtherance of the charity’s primary purpose. The subsidiary is not itself a charity and will not be registered as a charity. Such subsidiary is fully taxable on its profits but under section 848A of the Taxes Consolidation Act 1997, it can donate its profits to an eligible charity.</li> <li>• In all cases, evidence will also be required that the profit of the trade is applied solely for the charitable purpose of the organisation.</li> </ul>	<p><b>What kind of trading:</b> As a general rule, small scale ancillary trading such as a café in an art gallery or the operation of a shop that only sells donated goods for fundraising purposes is acceptable. However, large scale trading is likely to be more problematic in terms of charitable status. Each case will be considered on its own merits.</p> <p><b>Profits:</b> All profits from trading must go towards achieving the aim(s) of your organisation.</p>

<p><b>Funding Arrangements</b></p> <ul style="list-style-type: none"> <li>Information must be supplied on how the organisation will be funded.</li> </ul>	<p><b>Ensuring that you are a well-run and sustainable organisation</b></p> <p><b>Finances:</b> The Charities Regulator needs to be satisfied that your affairs are in order.</p>
<ul style="list-style-type: none"> <li>The organisation must show evidence of its viability.</li> </ul>	<p>Particular attention will be paid to your financial affairs.</p>
<ul style="list-style-type: none"> <li>Recent annual reports and accounts must be supplied. If recently set up, the organisation must provide detailed planned future activities supported by projected income and expenditure proposals.</li> </ul>	<p>You will need to provide evidence that your charity is viable and that you have adequate financial controls in place. This means that we will ask you for information on your past activities and for details of your future plans.</p>
<ul style="list-style-type: none"> <li>Where the organisation is required by law to be registered and regulated by another public body, evidence must be provided that it is compliant with these requirements.</li> </ul>	<p><b>Regulations:</b> It is likely that your charity also has to show that it is compliant with the rules and regulations of other public bodies. These will vary according to the nature of your organisation, but may include bodies such as:</p> <ul style="list-style-type: none"> <li>Companies Registration Office</li> <li>Education and Training Boards</li> <li>Food Safety Authority of Ireland</li> <li>Government Departments</li> <li>Health and Safety Authority</li> <li>Health Information and Quality Authority</li> <li>Health Service Executive</li> <li>Local Authorities</li> <li>National Standards Authority of Ireland</li> <li>Office of the Data Protection Commissioner</li> <li>Standards in Public Office Commission</li> <li>Workplace Relations</li> </ul> <p>(Please note that the above list is not exhaustive.)</p>
<ul style="list-style-type: none"> <li>Where the activities of the organisation include working with vulnerable beneficiaries, information must be provided on the risk assessment and safeguarding procedures.</li> </ul>	<p><b>Protections:</b> If applicable, you will also need to show how you safeguard vulnerable people who benefit from your services (for example, children).</p>
<ul style="list-style-type: none"> <li>Where the organisation intends to raise income through fundraising from the public, information on fundraising policies and controls must be provided, including details of any arrangements with fundraising agents.</li> </ul>	<p><b>Fundraising:</b> If you plan on raising money from members of the public to support your organisation you must let us know. We will require information on how exactly you intend to do this. If you will be fundraising or working overseas you will need to provide evidence that all of the money you raise will go towards achieving the aim(s) of your organisation.</p>
<ul style="list-style-type: none"> <li>If the organisation is fundraising for or working overseas, evidence must be supplied of the controls put in place by the organisation to ensure that all income is being used to further the charitable purpose.</li> </ul>	

<p><b>Place of Establishment</b></p> <p>If an organisation is established in a country outside the European Economic Area, such an organisation must have a place of business in the State.</p>	<p><b>Where you were established and where you operate</b></p> <p>Most charities are established and operate solely in the Republic of Ireland. However, others have more complex geographical arrangements. In general, if your organisation was set up outside Europe you must have an office in Ireland.</p>
<p><b>Winding Up</b></p> <ul style="list-style-type: none"> <li>If upon the winding up of the organisation there remains any funds or property, these must be transferred to some charitable body having similar main objects, or failing that, to some other charitable body (a cy-près scheme which requires the approval of the Charities Regulator, may be necessary). Notification of winding up should be forwarded to the Charities Regulator together with a final set of accounts and details of how any residual funds at the time of dissolution were distributed.</li> </ul>	<p><b>Thinking now about the future</b></p> <p>There are all sorts of reasons why your charity may cease to exist in the future. For instance, your mission may have been met, you may be subsumed by another charity or your organisation may no longer be viable. The Charities Regulator needs to be sure that any remaining money or assets are passed to a charitable body having similar main objects. The term cy-près is a legal one meaning 'as close as possible to'.</p> <p>If you are ever unsure about any matters of law you must seek legal advice.</p>

**If you are unclear about anything whatsoever, contact us.  
We are here to help you.**

This guidance is to assist charities in understanding the common requirements of the Charities Regulator and Revenue but should not be regarded as a legal interpretation. It is not, nor is it intended to be, a definitive statement of the law in this area and charities are recommended to obtain their own legal advice on issues raised in this guidance.

## Schedule: Required Standard clauses for company constitutions

### Income and Property

The income and property of the Company shall be applied solely towards the promotion of main object(s) as set forth in this Constitution. No portion of the Company's income and property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to members of the Company. No Director shall be appointed to any office of the Company paid by salary or fees, or receive any remuneration or other benefit in money or money's worth from the Company. However, nothing shall prevent any payment in good faith by the Company of:

- a) reasonable and proper remuneration to any member or servant of the Company (not being a Director) for any services rendered to the Company;
- b) interest at a rate not exceeding 1% above the Euro Interbank Offered Rate (Euribor) per annum on money lent by Directors or other members of the Company to the Company;
- c) reasonable and proper rent for premises demised and let by any member of the Company (including any Director) to the Company;
- d) reasonable and proper out-of-pocket expenses incurred by any Director in connection with their attendance to any matter affecting the Company;
- e) fees, remuneration or other benefit in money or money's worth to any company of which a Director may be a member holding not more than one hundredth part of the issued capital of such company;
- f) Nothing shall prevent any payment by the Company to a person pursuant to an agreement entered into in compliance with section 89 of the Charities Act, 2009 (as for the time being amended, extended or replaced).

### Additions, alterations or amendments

The Company must ensure that the Charities Regulator has a copy of its most recent Constitution. If it is proposed to make an amendment to the Constitution of the Company which requires the prior approval of the Charities Regulator, advance notice in writing of the proposed changes must be given to the Charities Regulator for approval, and the amendment shall not take effect until such approval is received.

### Winding-up

If upon the winding up or dissolution of the Company there remains, after satisfaction of all debts and liabilities, any property whatsoever, it shall not be paid to or distributed among the members of the Company. Instead, such property shall be given or transferred to some other charitable institution or institutions having main objects similar to the main objects of the Company. The institution or institutions to which the property is to be given or transferred shall prohibit the distribution of their income and property among their members to an extent at least as great as is imposed on the Company under or by virtue of Clause .... hereof. Members of the Company shall select the relevant institution or institutions at or before the time of dissolution, and if and so far as effect cannot be given to such provisions, then the property shall be given or transferred to some charitable object with the agreement of the Charities Regulator. Final accounts will be prepared and submitted that will include a section that identifies and values any assets transferred along with the details of the recipients and the terms of the transfer.

Note that should a company wish to make an application to the Companies Registration Office to dispense with "company limited by guarantee" or Irish equivalent in the name of the charitable company – an alternative winding up provision is required by the Companies Registration Office pursuant to section 1180 of the Companies Act, 2014

## Required Standard clauses for constitutions of organisations (other than companies) and trusts

### Income and Property

The income and property of the company/trust/body shall be applied solely towards the promotion of main object(s) as set forth in this Deed of Trust /Constitution / Rules. No portion of the company/trust/body's income and property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to members of the company/trust/body. No charity trustee shall be appointed to any office of the Company/trust/body paid by salary or fees, or receive any remuneration or other benefit in money or money's worth from the company/trust/body. However, nothing shall prevent any payment in good faith by the company/trust/body of:

- a) reasonable and proper remuneration to any member or servant of the company/trust/body (not being a charity trustee) for any services rendered to the company/trust/body;
- b) interest at a rate not exceeding 1% above the Euro Interbank Offered Rate (Euribor) per annum on money lent by charity trustees or other members of the company/trust/body to the company/trust/body;
- c) reasonable and proper rent for premises demised and let by any member of the company/trust/body (including any charity trustee) to the company/trust/body;
- d) reasonable and proper out-of-pocket expenses incurred by any charity trustee in connection with their attendance to any matter affecting the company/trust/body;
- e) fees, remuneration or other benefit in money or money's worth to any Company of which a charity trustee may be a member holding not more than one hundredth part of the issued capital of such Company;
- f) Nothing shall prevent any payment by the company/trust/body to a person pursuant to an agreement entered into in compliance with section 89 of the Charities Act, 2009 (as for the time being amended, extended or replaced).

### Additions, alterations or amendments

The organisation must ensure that the Charities Regulator has a copy of its most recent governing instrument. If it is proposed to make an amendment to the Governing Instrument of the organisation which requires the prior approval of the Charities Regulator, advance notice in writing of the proposed changes must be given to the Charities Regulator for approval, and the amendment shall not take effect until such approval is received.

### Winding-up

If upon the winding up or dissolution of the company/trust/body there remains, after satisfaction of all debts and liabilities, any property whatsoever, it shall not be paid to or distributed among the members of the company/trust/body. Instead, such property shall be given or transferred to some other charitable institution or institutions having main objects similar to the main objects of the company/trust/body. The institution or institutions to which the property is to be given or transferred shall prohibit the distribution of their income and property among their members to an extent at least as great as is imposed on the company/trust/body under or by virtue of Clause .... hereof. Members of the company/trust/body shall select the relevant institution or institutions at or before the time of dissolution, and if and so far as effect cannot be given to such provisions, then the property shall be given or transferred to some charitable object with the agreement of the Charities Regulator. Final accounts will be prepared and submitted that will include a section that identifies and values any assets transferred along with the details of the recipients and the terms of the transfer.