CHARITY LAW REFORM IN 2026

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Anticipating Change and Preparing for the Charity Regulator's Next Phase of Oversight

The Charities (Amendment) Act 2024 (the "Act") which makes a wide-ranging set of amendments, insertions and repeals of the Charities Act 2009, the principal piece of charities legislation for almost a decade, was enacted on 10 July 2024. Each section of the Act needs a commencement order from the Minister to become law. The first commencement order for the Act was published in January 2025, as a result of which, 12 sections were commenced. Since then, the charity sector has been awaiting further developments.

Given the expected commencement this year of a series of other sections of the Act, Madeleine Delaney (CEO, Charities Regulator), held a helpful webinar in early March on the changes that are likely to become law in 2026 by virtue of a further commencement order or orders and what charity trustees can do to prepare for these changes. This article takes a look at the areas which have been called out by the Charities Regulator as worthy of particular focus by charities and their trustees alike, as the next phase of reforms approach. It is worth noting however, that no guarantee can be given that the expected commencement orders will issue.

Section 54B & 54C – Charity Trustee Duties:

Charity trustees' existing duties remain, but a new section 54B codifies their fiduciary duties to include the following:

- to act in good faith in what the charity trustee considers to be the best interests of the charitable organisation;
- to act honestly and responsibly in the advancement of the charitable purpose of the charitable organisation;
- to avoid any conflict between the charity trustee's duties to the charitable organisation and the charity trustee's other (including personal) interests;
- to exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both -
  - the knowledge and experience that may reasonably be expected of a person in the same position as the charity trustee, and
  - the knowledge and experience which the charity trustee has.

It is anticipated that putting the duties on a statutory footing will strengthen public expectation and confidence in this area. In the words of the Charities Regulator 'charity trustees are at the centre of everything in charity law'.

Section 54C enables the Charities Regulator to publish or revise guidelines and codes of conduct to assist it in performing its functions. A revised Charities Governance Code is expected in due course.

Charity trustees and charitable organisations must have regard to and heed all guidance from the Charities Regulator.

Changes in Relation to the Register

At present, charity trustees must provide their name and address for entry on to the Charities Register. Charity trustees will now also be required to provide their email address and telephone number. However, only the name of the charity trustee will be made public. In addition to this, charity trustees must provide documentary proof of address which will likely take the form of a utility bill and a declaration that the charity trustee is not disqualified from acting as a charity trustee. This puts on a statutory footing, the long-established practice of uploading declarations to this effect.

The Act will insert a new section whereby a charitable organisation must notify the Charities Regulator where:

- information on the Register ceases to be correct;
- it is proposed to wind up the charitable organisation or cease its operations; or
- there is a resignation or appointment of a charity trustee.

If charity trustees fail to notify the Charities Regulator of any of the above, it is an offence under the Act. Charity trustees should ensure that they are familiar with the scenarios where they must notify the Charities Regulator and ensure internal procedures are in place to facilitate this. Timely engagement with the Charities Regulator is key.

Section 54A – Minimum Number of Trustees

This section, once commenced, will require a charitable organisation to have at least 3 charity trustees. The majority of these trustees must be resident in Ireland, the UK or the EEA. Connected relatives cannot make up a majority of the trustees. Charity trustees should ensure that their charity can comply with these new rules and if it currently cannot, then be prepared to make changes to the composition of its board/charity trustees.

Section 54D – Register of Members

This section makes it a requirement for a charity to keep a record of its members, including their addresses, the date when they became a member and the date their membership ceased. Charity trustees should ensure that they have the necessary policies and procedures in place to allow them to keep a record of members and ensure that it is reviewed regularly and updated accordingly. We look at the definitions of members in charities, which have already come into force, below:

- For a Company Limited by Guarantee, a member is defined as per section 168 of the Companies Act 2014 as including the subscribers to the constitution and every person who agrees to become a member.
- For an association, a member is anyone entitled to appoint, nominate or vote for the appointment of a trustee. This has provided clarity for unincorporated associations and re-stated the company law position in terms of member definitions in CLGs.

Section 46(7) - Charity Communications

Currently, a charity must state that it is a registered charitable organisation in all of its publications and other public documents. The Act will require the charity to include its name (as it appears on the Register) and its Registration Number (RCN) on all publications, websites, social media channels etc. Charity trustees should ensure that their forums are all up to date in this regard and that any third parties that produce materials for the charity are made aware of these new requirements.

Section 39(9)(b) – New Registration Applications

Charitable status could, under this new rule, be granted subject to specific conditions. The Charities Regulator can impose timelines for when these conditions must be complied with. If the condition is not complied with, the Charities Regulator will consider the application to be withdrawn. Charity trustees need to be aware of this change in the law and watch relevant time periods imposed.

Changes to Section 39 & 40

Anomalies currently exist in the treatment of section 39 and section 40 charities. Section 40 charities are those with a tax exemption from the Revenue Commissioners and are deemed to be registered (without having undergone the charity test) so long as they hold this exemption. Section 39 charities on the other hand went through a charity application process and registration with the Charities Regulator. The Charities Act 2009 treats them differently in that there are certain offences for section 39 charities that don't exist for section 40 charities. The Act provides that if a person knowingly or recklessly provides false or misleading information relating to any charity's registration to the Charities Regulator, that person will be guilty of an offence. Previously, this only applied to section 39 charities, whereas, once commenced, it will apply to both section 39 and section 40 charities.

Section 48 - Annual Statement of Accounts

This section deals with the preparation of a charity's statement of accounts every year. It also deals with what form accounts must take if the charity is a certain size. The relevant thresholds for the different sizes of charities will be changed once commenced. The Act requires charities with over €100,000 gross income or expenditure to comply with a certain format of account and this threshold will be increased to €250,000. However, the format of accounts that larger charities might have to keep, has not yet been drafted and requires additional Ministerial regulations separate to the commencement order that we have outlined in this article. It is envisaged that this standard will be the UK standard of SORP which many large charities in Ireland already comply with, but it is not known when this might come into effect. For the moment, charity trustees should be aware of relevant thresholds for their charities.

Next Steps

The next phase of implementation of the Act is expected to bring noteworthy changes to the Irish charity landscape, and the Charities Regulator has made it clear that charity trustees are expected to anticipate, as opposed to react to, these changes.

The message is one of preparedness and charity trustees who familiarise themselves with these anticipated changes and re-visit their organisational structures and governance frameworks accordingly should be well placed to navigate the changes.

If you would like any further information on any of the above then please contact Ursula McMahon, at umcmahon@mhc.ie, or another member of our Charities team in Mason, Hayes & Curran LLP.