

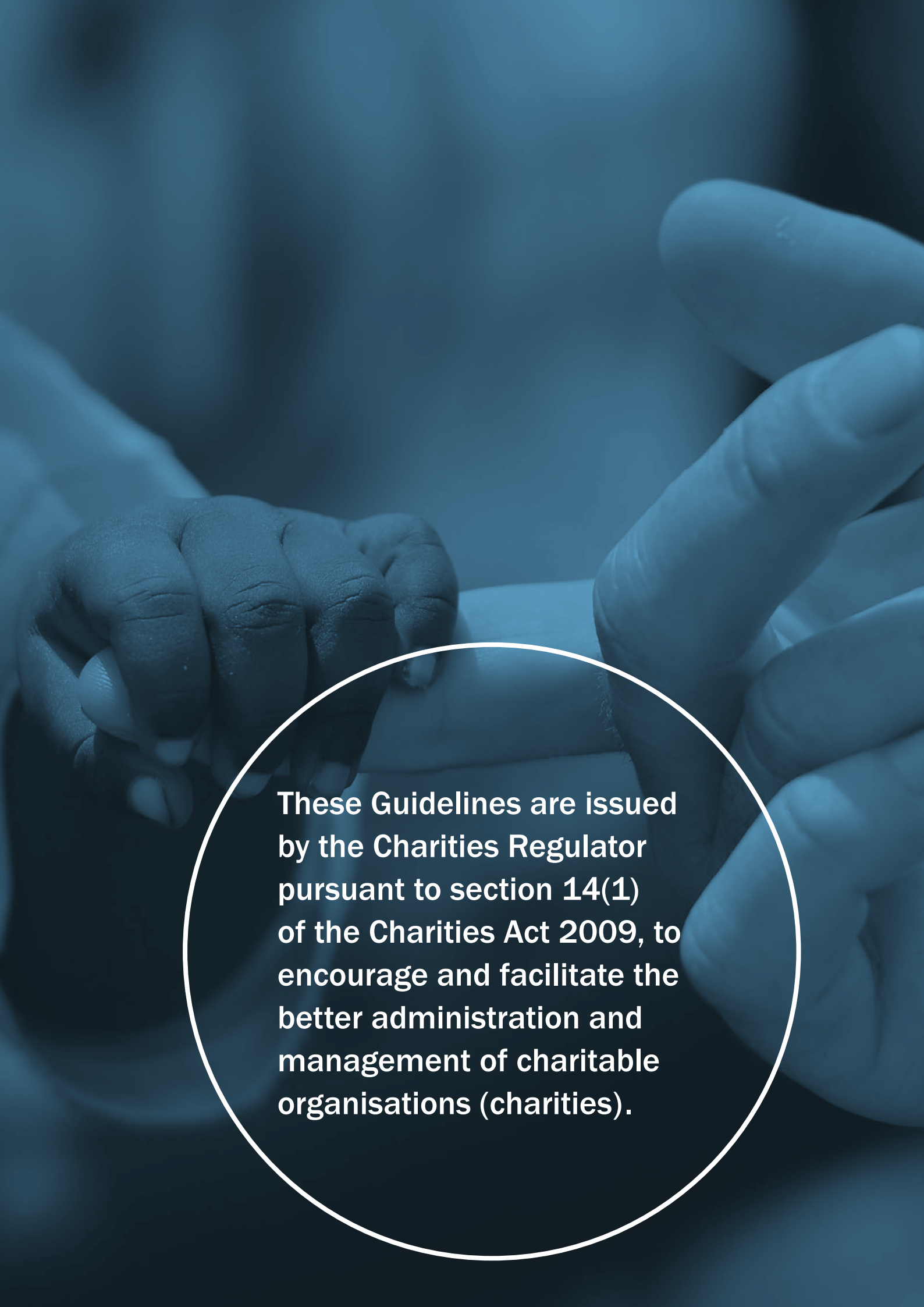


An Rialálaí
Carthanas

Charities
Regulator

What is a Charity?





These Guidelines are issued by the Charities Regulator pursuant to section 14(1) of the Charities Act 2009, to encourage and facilitate the better administration and management of charitable organisations (charities).

Contents

1.	What does this guide explain?	3
2.	Does your organisation pass the charity test?	4
	2.1 Does your organisation operate in the Republic of Ireland?	5
	2.2 What is your organisation's charitable purpose?	5
	2.3 Does your organisation generate a 'public benefit'?	10
3.	Is your organisation an 'excluded body'?	11
4.	Is your charity's name acceptable?	12
5.	Charity Checklist	13

LEGAL DISCLAIMER

This document is issued by the Charities Regulator under section 14(1)(i) of the Charities Act 2009, to encourage and facilitate the better administration and management of charitable organisations. This document is not, nor is it intended to be, a definitive statement of the law and it does not constitute legal advice. This document is not a substitute for professional advice from an appropriately qualified source. The Charities Regulator recommends that charity trustees consult their governing document and obtain their own independent legal advice where necessary. The Charities Regulator accepts no responsibility or liability for any errors, inaccuracies or omissions in this document.

What is the Charities Regulator?

The Charities Regulatory Authority or Charities Regulator for short is a statutory organisation, set up in October 2014, to regulate and protect charities.

We have a number of functions, such as setting up and maintaining the Register of Charities. We also ensure that charities comply with their legal requirements, we carry out investigations into the affairs of charities and we issue guidelines and codes of conduct¹.



1 See www.charitiesregulator.ie for more information about us.



What does this guide explain?

This guide explains what a charitable organisation is for the purposes of the Charities Act 2009².

It looks at how we interpret the three main elements of this definition, which we refer to throughout this document as the ‘charity test’ and provides some clarity on excluded bodies.

The guide aims to assist those considering setting up and applying to register as a charity. It may also be useful for trustees of existing charities, in particular those who are considering revising their charitable purpose(s). Charity Trustees are the people who control and are legally responsible for the management of a charity. They must comply with their organisation’s governing document (constitution, deed of trust, rule book etc.), which provides the basis for everything their organisation does and how it does it.

More detailed information is available for those considering setting up or applying to register as a charity on our website.

All charities must apply to be registered with us. This is a legal requirement. If your organisation had charity status from the Revenue Commissioners on 16 October 2014, you are deemed to already be registered as an Irish charity. If not, before beginning the registration application process, your organisation first needs to consider whether it fits the legal definition of a charity. This document will help you to understand how the law defines a charity.

2 See www.Irishstatutebook.ie for the details of the Charities Act 2009.

2

Does your organisation pass the charity test?

The Charities Act 2009 sets out the requirements that your organisation must meet to be considered a charity. This definition of a charitable organisation can best be illustrated using this simple graphic, the 'charity test':

The Charity Test



To pass the charity test and meet our registration requirements, your organisation **must** provide evidence that it:

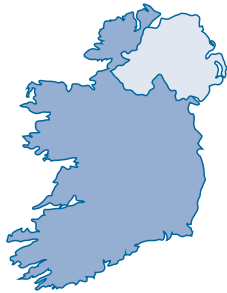
- ✓ Operates in the Republic of Ireland
- ✓ Exists for a charitable purpose(s)
- ✓ Promotes this charitable purpose(s) only
- ✓ Carries out all activities to further this charitable purpose(s)
- ✓ Exists to benefit the public or a section of the public in Ireland, or elsewhere, through its charitable purpose(s)
- ✓ Is not an excluded body

If you are unsure whether your organisation meets these requirements, we strongly suggest you discuss this matter in detail within your organisation and formally record the decision made to apply to register your organisation, or not. You may wish to seek legal advice to assist you with this decision-making process.

Charities can take any number of 'models' and 'forms'. These models may include service providers, grant givers and membership organisations, to name a few. The forms a charity can take may include a company limited by guarantee (clg), other company types, associations or trusts. Whatever model or form a charity takes, it must pass the charity test in order to apply to register.

Let us look at each element of the test in more detail.

2.1 Does your organisation operate in the Republic of Ireland?



**OPERATES
IN REPUBLIC
OF IRELAND**

A charitable organisation that operates, or intends to operate or carry out activities, in Ireland must apply to be registered. This does not mean that the people (or section of the public) that your organisation will benefit need to be in Ireland.

For example, an organisation can operate in Ireland with the main purpose of advancing education, by building schools in a number of communities in a specific region of Africa, to benefit the children and future generations of those communities.

2.2 What is your organisation's charitable purpose?



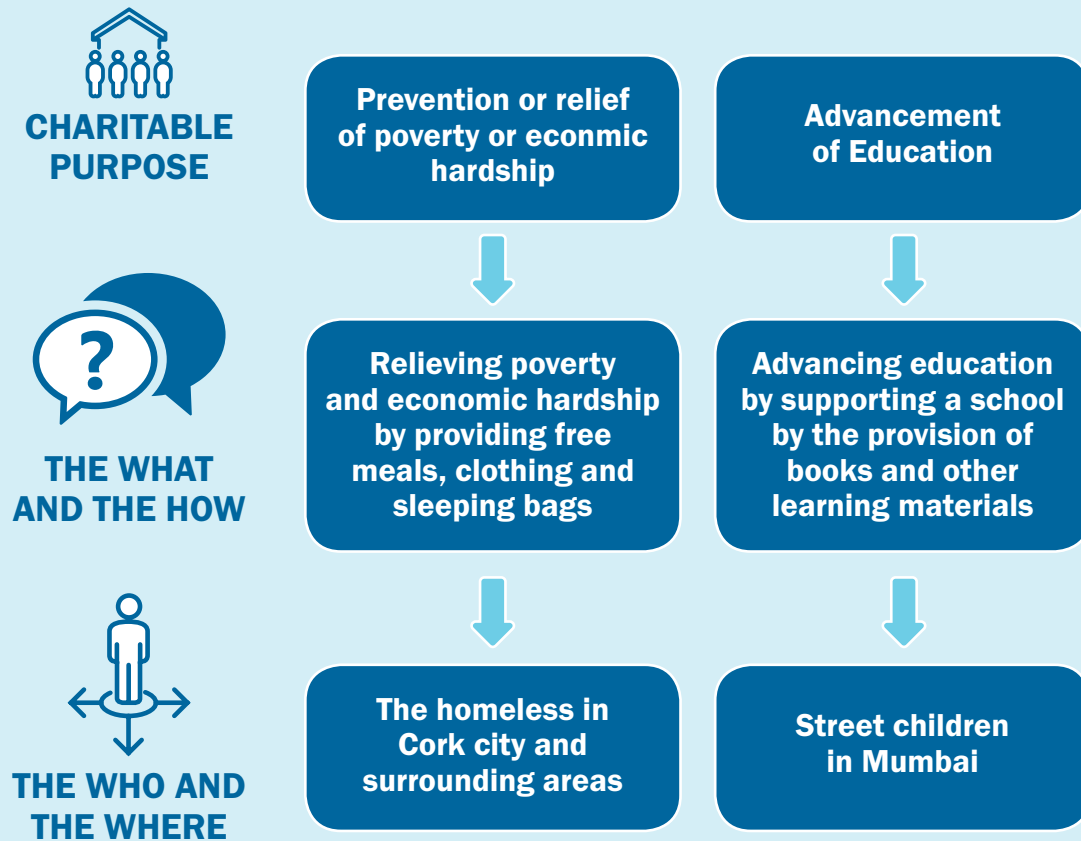
**CHARITABLE
PURPOSE**

Your organisation's 'purpose' is what it is set up to achieve. This purpose is usually set out in the 'objects clause' of your organisation's governing document. This purpose should concisely describe **what** outcomes the charity is set up to achieve, **how** it will achieve these outcomes, **who** will benefit from these outcomes and **where** the benefits will be felt.

The Charities Act 2009 sets out specific categories of charitable purposes. To satisfy this element of the charity test, your charity's purpose must fall within one or more of these categories:

- > 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.





Examples of how a charitable purpose is set out under two categories of charitable purpose.

Let's consider each of the four categories of charitable purposes.

CATEGORY 1:

The prevention or relief of poverty or economic hardship

Poverty and economic hardship do not necessarily mean just a lack of money or material things. It may also relate to the impact that a lack of money or material things has on a person.

For example, your organisation could fall into this category if it exists to provide money management and debt advice, or training in work skills to improve employment prospects.

What constitutes the prevention or relief of poverty or economic hardship will vary depending on where and with whom your organisation works.

For example, an organisation working in one of the world's poorest regions might address the lack of basic essentials such as clothing or food, but an organisation working in Ireland might help low-income families by providing gifts for children at Christmas.

CATEGORY 2:

The advancement of education

A wide range of experiences can be deemed educational and people can learn in many ways. The definition of this purpose, as with the others, is not narrowly defined or static.

Schools, colleges, pre-schools, playgroups, research bodies, professional institutes, think tanks, museums and libraries could fall within this category of charitable purpose.

To advance education, your organisation's work must support education, but it does not necessarily need to directly provide structured learning.

For example, if your organisation exists to build schools in a developing country or provide school books to children of low-income families in Ireland, it could fall within this category.

CATEGORY 3: The advancement of religion

The Charities Act 2009 does not contain a definition of religion. However, existing case law has established that a religion has two core elements:

- > Belief in a 'Supreme Being'
- > Faith and worship of that 'Supreme Being'

To advance religion, your organisation's work must support a religion that contains the two core elements outlined, but it does not necessarily need to be a religious body.

For example, if your organisation exists to raise awareness of a religious belief through the dissemination of religious books or films or to organise religious pilgrimages or retreats, it could fall within this category.

Unlike other jurisdictions, donations or gifts for the advancement of religion are presumed to be of public benefit, unless the contrary is proved.

However, a donation or gift is not deemed to be for the advancement of religion if it is made to, or for the benefit of, an organisation or cult, that employs oppressive psychological manipulation of its followers or to gain new followers or whose main objective is to make a profit.

CATEGORY 4: Any other purpose that is of benefit to the community

While this is a broad category, the legislation provides further detail on what is deemed a charitable purpose under this heading:

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

In addition to the more obvious organisations that could fall within this sub-category, such as meals-on-wheels or youth clubs, organisations set up to advance community welfare could include those providing specialist care or accommodation to the elderly, or those providing specialist advice or equipment to disabled people.

The advancement of community development, including rural or urban regeneration

Organisations that fall within this sub-category support people and community groups to improve the quality of life for the whole community. Remember, community does not just mean a locality; it can also refer to an interest or identity, for example ethnic origin.

Regeneration is the process of reversing the economic, physical and social decline of places where the need for improvement can clearly be identified.

The promotion of civic responsibility or voluntary work

This involves developing and teaching civic values for the good of a community or society as a whole. For example, it might include organisations that exist to promote democracy and equality, or encourage engagement with social processes.

The promotion of voluntary work is the promotion of the values and benefits that volunteering can bring, both to the volunteers and those who benefit from their activities. Organisations that fall within this sub-category include those that encourage organisations to improve their capacity to support and train volunteers, or organisations that provide a service linking volunteers to volunteering opportunities.

However, the fact that a charity may have volunteers working for it, does not mean that the charity promotes civic responsibility or voluntary work.

The promotion of health, including the prevention or relief of sickness, disease or human suffering

The promotion of health generally means that the organisation advances physical or mental health, conventional medicine and complementary or alternative therapies.

Organisations that fall within this sub-category could focus on curing specific diseases and illnesses, relieving symptoms or providing support to families of the terminally ill.

The promotion of health could also include organisations that exist to help people maintain or improve their health by providing dietary guidance, counselling or support, or undertaking medical research.

The advancement of conflict resolution or reconciliation

This sub-category is very broad and relates to organisations that exist to resolve or prevent conflict or disputes between individuals and communities.

It could include organisations that exist to relieve the suffering, poverty and distress that arises from conflict, either nationally or internationally. Organisations that fall within this category might identify the causes of conflict and seek resolutions.

Organisations that promote restorative justice and organisations that offer familial counselling or mediation services could also fall within this category.

The promotion of religious or racial harmony and harmonious community relations

This sub-category relates to social inclusion. Organisations that fall within this sub-category could include those that actively promote the lessening of conflict between people from different races, religions or belief systems. Such organisations could work on a local, regional, national or international basis.

The protection of the natural environment and the advancement of environmental sustainability

These two sub-categories are very similar. They both relate to the preservation and conservation of the natural environment and the promotion of sustainable development. Organisations that exist to protect or conserve a specific plant or animal species, or promote energy-saving measures or the use of a renewable energy source may fall within these categories.

The advancement of the efficient and effective use of the property of charitable organisations

This sub-category could include organisations that exist to ensure that other charitable organisations are well run or allow their resources to be used more effectively. An organisation with this purpose may provide support and advisory services to charities to improve their management, administration and operations through training.

The prevention or relief of suffering of animals

Organisations that fall within this sub-category exist to prevent cruelty towards animals or relieve the suffering of animals. This could include rescuing or re-homing animals, providing veterinary treatment or running animal shelters.

The advancement of the arts, culture, heritage or sciences

This is a broad sub-category and covers organisations working in areas such as art, music, theatre, literature, language, dance and so on. An organisation that exists to provide arts venues and facilities or to encourage high standards in the arts could fall within this sub-category.

Advancing heritage includes preserving historic land, buildings and items, as well as preserving or maintaining particular traditions.

Finally, the advancement of science could include organisations that exist to carry out scientific research or disseminate research findings, or encourage engagement with the sciences and those supporting the work of scientific bodies.

The integration of those who are disadvantaged, and the promotion of their full participation, in society

This involves helping people who are disadvantaged. The disadvantage may be permanent (such as terminal ill health or a disability) or temporary (such as unemployment or upon release from prison or following a bereavement).

Summary

To fall within one of the four categories of charitable purpose outlined in the Charities Act 2009, your organisation must exist for a reason that will further that purpose in some way. The legislation does not provide a definitive list of accepted organisation types. Neither does it specify how your organisation's charitable purpose(s) must be furthered. **We will examine this on a case by case basis.**

Once you have agreed your organisation's main purpose(s) – i.e. the what, the how, the who and the where – you and the board of trustees should consider **four key questions:**

- ✓ Is your organisation established for a charitable purpose(s) only?
- ✓ Do all of the activities your organisation undertakes (or plans to undertake) relate directly to furthering the charitable purpose(s)?
- ✓ Does your organisation apply all of its income and property towards that charitable purpose(s)?
- ✓ Is your organisation's purpose(s) of public benefit?

2.3 Does your organisation generate a 'public benefit'?



We have looked at the requirement for your organisation to operate in the Republic of Ireland. We have also looked at the types of charitable purpose that your organisation might have and whether it could satisfy that element of the charity test. Now let's consider whether your organisation's purpose(s) generates a 'public benefit'.

First, let's clarify what we mean by a 'public benefit'.

An organisation's purpose(s) must benefit the public or a section of the public in Ireland or elsewhere. The benefit your organisation's purpose(s) provides should be identifiable.

An organisation that benefits only one person cannot be legally regarded as a charity. However, the beneficiaries may be limited to a class of people, as long as the organisation does not put restrictions within that class or, if it does, that any such restrictions are reasonable and justified.

For example, an organisation set up to raise funds for a person to receive medical treatment overseas for a rare illness does not have a public benefit as the monies raised will benefit a specific individual. This is a private benefit.

On the other hand, an organisation set up to support sufferers of a particular rare illness (whether by fundraising for treatment, providing respite, funding a research study or all of these activities) will have a public benefit, even if the number of sufferers is very small. As long as all sufferers of that rare illness can access the same supports, the organisation is providing a benefit to a specific section of the public.

It is possible for some private benefit to occur, but this must be necessary, reasonable and ancillary to the public benefit. For example, if your organisation has a paid employee, there is a private benefit to that employee. In this case, you should be able to demonstrate that employing someone is necessary for your organisation to provide the public benefit and the employee's pay and conditions are reasonable.

It is possible for some private benefit to occur, but this must be necessary, reasonable and ancillary to the public benefit.

3 Is your organisation an 'excluded body'?

Let's look at 'excluded bodies' and explain why some organisations are not allowed to register as a charity.

Firstly, organisations that do not meet each element of the charity test outlined above are unable to be registered as a charity. The legislation also sets out a number of exclusions, specifying the types of organisations that are not, and cannot become, charities.

The most obvious organisations that are not and cannot become charities are, bodies that promote activities that are unlawful, contrary to public morality, contrary to public policy or in support of terrorism or terrorist activity.

Less obvious organisations that are not and cannot become charities include, trade unions or representative bodies of employers and chambers of commerce. Other organisations specified in the legislation include:

➤ **Political parties or bodies that promote a political party, cause or candidate**

However, there can be exceptions if the promotion of that cause relates directly to the advancement of the charitable purpose(s) of the organisation. For example, an organisation that provides services to people with disabilities and also campaigns for better services for people with disabilities may still be considered a charity. Please see our 'Guidance on Charities and the Promotion of Political Causes' document for more detailed information on this topic.

➤ **Organisations established solely for the promotion of athletic or amateur games or sports**

Not all sports-related bodies are automatically excluded³. For example, a dragon boat club for cancer survivors and their families in a particular part of Ireland may be considered a charity under the advancement of community welfare and the promotion of health.

3 Excluded sporting bodies are listed in the [Section 235 of the Taxes Consolidation Act 1997](#).

4

Is your organisation's name acceptable?

If you are still considering setting up a charity, the final matter you need to consider is your organisation's name.

Choosing the wrong name could prevent your organisation from being registered as a charity, even if you pass the charity test and are not an excluded body.

When deciding on a name, please consider if your organisation's name:

- ✓ Is the same or very similar to an existing charity?
- ✓ Could mislead people regarding its purpose(s) or activities?
- ✓ Could lead people to incorrectly believe it is connected to another body?
- ✓ Might cause offence to a reasonable person?

If you answer 'yes' to any of these questions, you should consider changing your organisation's name.

5 Charity checklist

Now that you are aware of the elements of the charity test and have had a chance to consider what bodies are excluded from becoming charities, here is our checklist again to help you decide whether your organisation will meet our registration requirements:



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