



Stronger Charities.  
Stronger Communities.

# REGULATION UPDATE

# MAIREAD O'CONNOR

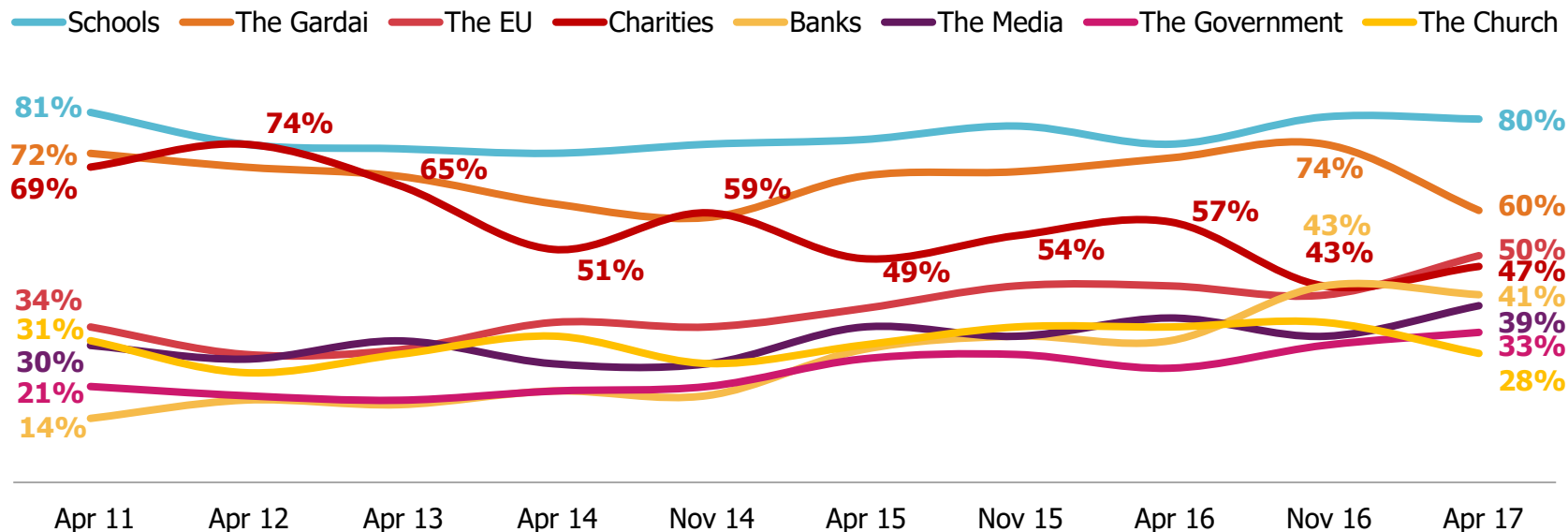
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# MOST RECENT SURVEY DATA ON PUBLIC TRUST IN CHARITIES

**8% say they trust charities "a great deal"**  
**39% say they trust charities "up to a point"**



"To what extent do you trust each of the following institutions?" **Ranked by 'Up to a point + A great deal'**

Source: Irish Charity Engagement Monitor, Apr 17, nfpSynergy | Base: 1,000 adults 16+, Ireland

University Governance Investigation Raises 'Grave Concerns', Says UL President

IABA avoids sanctions after progress made on governance

Tánaiste wants 'utmost clarity' on governance of national maternity hospital

Ross hits out at Pat Hickey's 'shameful corporate governance'

Console failed to show how it spent €75,000 Lotto grant

Universities face severe criticism over use of public funds

Templemore auditor points to tangled web of financial indiscretions

**Regulator finds Ataxia Ireland made inappropriate payments**



# REGULATION

The Charities Regulator

## Purpose of the



## An Rialálaí Carthanas Charities Regulator

- Re-establish Trust in Ireland's Charities
- Provide a publically accessible Register of Charities
- Give guidance on **Legal Duties of Charity Trustees**
- Provide an Annual Reporting Structure
- Publish Data from these Reports
- Monitor Compliance
- A Charity Appeals Tribunal
- Investigative Powers – Prosecution & Fines
- Expected in 2017/18:
  - ✓ New Legal Requirements for Fundraising
  - ✓ New Legal Requirements for Financial Reporting



# DUTIES OF TRUSTEES

## WHO ARE CHARITY TRUSTEES?

- In a Company Limited by Guarantee  
Directors & Officers = Trustees
- In unincorporated entities  
Members of the Board/Committee/Core Group = Trustees
- In a Charitable Trust  
Trustees

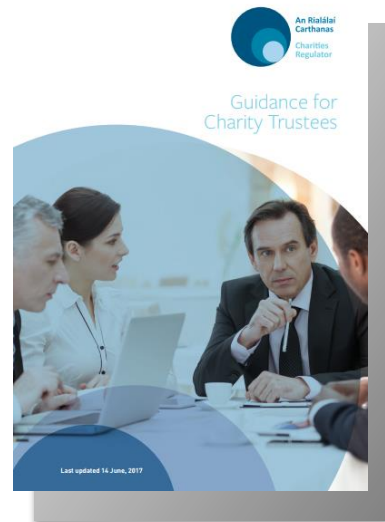
**Trustees have overall control of a charitable organisation**

**Trustees are Volunteers**



# 12 LEGAL DUTIES OF TRUSTEES

1. Comply with their charity's governing document
2. Ensure that their charity is carrying out its charitable purposes for the public benefit
3. Ensure that their charity is registered on the Charities Regulator's Register of Charities
4. Ensure that their charity keeps proper books of account
5. Ensure that your charity prepares and furnishes an annual report to the Charities Regulator
6. Ensure that your charity prepares and furnishes financial accounts to the Charities Regulator
7. Act in the best interests of their charity
8. Act with reasonable care and skill
9. Manage the assets of your charity
10. Make appropriate investment decisions
11. Ensure the Charities Regulator is informed if you are of the opinion that there are reasonable grounds for believing a theft or fraud has occurred.
12. Ensure that you comply with directions issued by the Regulator.



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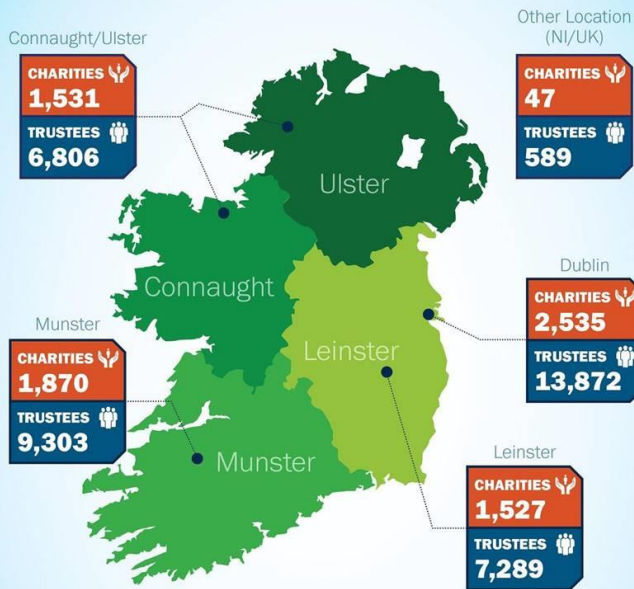
## 12 LEGAL DUTIES OF TRUSTEES

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## COMPLIANCE WITH THE CHARITIES REGULATOR

- Annual Activity Report
- Annual Financial Statement
- Keep your Records up to date – incl. Trustee details
- Publicise your Registered Charity Number
- Seek consent for certain changes – your charity's name, your constitution
- Give notice if winding up

# Trustees' Week



	CHARITIES	TRUSTEES
	7,510	37,859
Schools	1,339	10,275
<b>Total</b>	<b>8,849</b>	<b>48,134</b>



Correct as of November 1, 2017

## CHARITY TRUSTEE WEEK

13-17 November 2017

# 48,134 Trustees

# #TrusteesWeekIrl

# UPCOMING DEVELOPMENTS FROM THE CHARITIES REGULATOR

- **Fundraising** Requirements –Sept 2017
- **Financial Reporting** Requirements – due by end of 2017/early 2018 – likely to require charities with income over €250,000 to adhere to SORP.
- **Governance** Report – the Consultative Panel on Governance will report to the Regulator by the end of 2017 – may lead to further guidance/regulation of Governance practice in charities



COMPANIES REGISTRATION OFFICE  
AN OIFIG UM CHLÁRÚ CUIDEACHTAÍ



Oifig an Stiúrthóra um Fhorfheidmiú Corparáideach  
Office of the Director of Corporate Enforcement

# COMPANIES ACT 2014

## *Key Features (for Companies Limited by Guarantee)*

### **DIRECTORS**

- Minimum requirement of 2 Directors, 1 Member

HOWEVER...

**CRA & Revenue Commissioner require a corporate charity to have at least 3 unrelated Directors/Trustees**

Revenue Commissioners require charities to have at least 3 members



# COMPANIES ACT 2014

## **Codification of Directors Fiduciary Duties**

- Act in good faith
- Act honestly and responsibly
- Act in accordance with company constitution
- Not use company property for personal or third party benefit without approval
- Not fetter judgement
- Avoid conflicts of interest
- Exercise due care, skill and diligence

# COMPANIES ACT 2014

## Legal Obligations of Directors include:

- Maintaining a Register of Members
- Maintaining a Register of Directors and Company Secretaries
- Maintaining proper books of account, portraying a 'true and fair' picture
- Preparing annual financial statements- having financial statements audited
- Holding an AGM-Providing a written report to company members
- Ensuring minutes of AGM/EGM, Board, sub-committees are kept
- Ensuring the annual report is completed and returned
- Ensuring legal obligations/reports are met

# COMPANIES ACT 2014

## The Company Secretary

- Every company is legally obliged to appoint a company secretary
- Support the company and its directors operate within the remit of their roles
- Provide guidance to enable compliance with relevant legislation
- No formal qualifications are required to become the secretary of a CLG
- Companies have a duty to ensure that the person appointed has the skill necessary to discharge their duties

A company secretary can be held liable for negligence -however, they are not expected to have a greater degree of skill than might reasonably be expected from a person with their level of knowledge and experience

## **QUESTIONS FOR YOUR CHARITY RE COMPANIES ACT 2014:**

Board - who might be thought to be a Director?

Company Secretary – Do they have the supports needed?

**An Coimisinéir  
Cosanta Sonraí**



**Data Protection  
Commissioner**

## DATA PROTECTION AND CHARITIES

- Key Governance Responsibility – Risk Register
- Regulations that must be followed
- Trust and Transparency
- Issues have emerged...



## DATA PROTECTION: WHAT DO I NEED TO KNOW?

- What are your current obligations under the law?
- What does our internal policy say?
- Do our internal procedures adhere to the policy?
- What is the GDPR?

# THE GDPR

- The General Data Protection Regulation
- EU Regulation – in force from May 2018
- Increases the emphasis on accountability, security and transparency
- Grants citizens enhanced rights over their data
- Now is the time to become aware of any changes under GDPR that will affect your organisation – you will need to put a plan in place







# LOBBYING ACT 2015

## **Does an organisation need to register?**

There is a three-step process that an organisation should apply. The Act states that an organisation must register if it passes each of the three tests.

## **Lobbying is communication by:**

1. Persons within the scope of the Act
2. With Designated Public Officials
3. On relevant matters

Act makes no distinction regarding method, venue or formality of communication

- Mail, telephone, in-person, electronic, social media
- Office, social setting, casual encounter, other

# LOBBYING ACT 2015

## **Persons within the scope of the Act**

- Representative bodies and advocacy bodies with at least 1 employee
- Persons with more than 10 employees
- Third party lobbyists paid by a client (who fits one of the above criteria) to lobby on the client's behalf
- Anyone lobbying about the development or zoning of land

# LOBBYING ACT 2015

## With Designated Public Officials

- Ministers, Ministers of State, Members of Dáil Éireann, Seanad Éireann
- Members of the European Parliament for Irish constituencies
- Members of Local Authorities (elected officials)
- Special Advisors
- Senior Civil and Public Servants
- Civil service: Secretaries General, Assistant Secretaries, Director grades and equivalent
- Local authorities: CEOs , Directors of Services , Heads of Finance
- To be extended to PO grade within 12 months

# LOBBYING ACT 2015

## On Relevant Matters

- The initiation, development or modification of any public policy or of any public programme;
- The preparation of an enactment; or
- The award of any grant, loan or other financial support, contract or other agreement, or of any licence or other authorisation involving public funds...

**Apart from** matters relating only to the **implementation** of any such policy, programme, enactment or award **or of a technical nature**

## **LOBBYING ACT 2015 REGISTRATION REQUIREMENTS**

- Register after first communication with Designated Public Official (DPO)
- Include in registration:
  - Organisation Name
  - Business address and contact details
  - Main business activities
  - Identify person with primary responsibility for lobbying
  - Company Registration Office Number or Charitable Registration Number
- NIL return required

# LOBBYING ACT 2015

## Key Features

### Commenced September 2015

- Registration of lobbyists
- Regular submission of returns - 3 x/year
  - ❖ Jan 1st to April 30th - Deadline May 21st 2017
  - ❖ May 1st to Aug 31st - Deadline September 21st 2017
  - ❖ Sept 1st to Dec 31st - Deadline January 21st 2018
- Web-based public registry
- Independent lobbying registrar
- Promoting compliance;
- Regular reports to Oireachtas; Legislative review
- Post-employment restrictions for **some** public officials

## Key Features

### Commenced January 2017

- Investigation & Enforcement provisions relating to relevant contraventions

### Relevant Contraventions:

- Carrying on lobbying activities without being registered;
- Failing to make a return by the deadline;
- Providing the Standards Commission with any information known to be inaccurate or misleading;
- Failing to co-operate with an investigating officer who is investigating contraventions of the Act; and
- Obstructing an investigation.

## **BE AWARE...**

In February 2017...

- First fixed payment notices issued by the office to organisations which failed to file on time or failed to file a NIL return
- €200 fines





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# THE GOVERNANCE CODE

## A VOLUNTARY CODE OF GOOD GOVERNANCE



# PRINCIPLE 1. LEADERSHIP

## The Best Boards...

### **Provide leadership by**

- Agreeing our purpose, vision and values and ensuring that they remain relevant and valid.
- Developing, resourcing, monitoring and evaluating a plan to make sure that our organisation achieves its stated purpose.
- Managing, supporting and holding to account staff, volunteers and all who act on behalf of the organisation.

# PRINCIPLE 2. CONTROL

## The best boards...

### Exercise control by

- Identifying and complying with all relevant legal and regulatory requirements.
- Making sure that there are appropriate internal financial and management controls.
- Identifying major risks for our organisation and deciding ways of managing the risks.

# PRINCIPLE 3. TRANSPARENCY & ACCOUNTABILITY

The best boards are...

**Transparent and accountable** by

- Identifying those who have a legitimate interest in the work of our organisation (stakeholders) and making sure that there is regular and effective communication with them about our organisation.
- Responding to queries or views of stakeholders about the work of our organisation and its governance.
- Encouraging and enabling the engagement of those who benefit from our organisation in the planning and decision-making of the organisation.

## PRINCIPLE 4. EFFECTIVENESS

### The best boards...

#### Work effectively by

- Ensuring that our governing body, individual board members, sub-committees, staff and volunteers understand their role, their legal duties and their delegated responsibility for decision-making.
- Making sure that as a board we exercise our collective responsibility through board meetings that are efficient and effective.
- Making sure that there is a suitable board development and renewal process in place.

# PRINCIPLE 5. INTEGRITY

## The best boards...

Behave with **integrity** by

- Adhering to high standards of honesty, fairness and independence
- Understanding, declaring and managing conflicts of interest and conflicts of loyalties.
- Safeguarding and promoting our organisation's reputation.