

# Changes to Charity Law: What Philanthropic Organisations Should Know

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The Charities (Amendment) Act 2024 (the 2024 Act) introduces significant changes to the governance and regulatory framework for charities in Ireland, amending the Charities Act 2009, the principal piece of legislation for charities. Some sections came into force this January, but most remain un-commenced.

While no commencement dates for the remaining sections have been designated, in addition to the changes already in force, philanthropic organisations, particularly those established as charitable foundations or charitable family trusts, should note some key reforms coming down the tracks and plan ahead. *We have set out a few of the changes below.*

## Charity Trustee Definition

The definition of charity trustee includes board or governing body members but, since commencement this year, now excludes the company secretary. This is a welcome clarification. The definition is however expanded in other ways to include a shadow director/ board member, being any person in accordance with whose directions or instructions the board of the charity are accustomed to act.

- **TIP** These changes may mean that charities need to update their register of charity trustees, and all charities should keep a close eye on who truly has decision-making power.

## Upcoming Requirements for Trustee Independence

Charities need to have a minimum of three charity trustees. A charitable trust may have one trustee which is a

body corporate but this in turn must have at least three directors. New rules which have yet to be commenced will provide that the majority of trustees must not be a connected relative (defined) and must be resident in Ireland, the UK or the EEA. This is intended to strengthen objectivity and align with international best practice in charity governance but will have a direct impact on certain philanthropic and family-led trusts where a majority of trustees share familial ties.

- **TIP** Charities with a majority of trustees sharing familial ties should review their trustee composition and will likely need to recruit additional trustees to ensure compliance. No imminent action is required however as the Charities Regulator has promised guidance and engagement with the charity sector before commencement of this section. This re-assurance is welcomed, particularly by such family led trusts who will need time to adjust legacy models and find suitable trustees.

## Member of a Charitable Organisation – Now Defined

A definition of member has been introduced, and this provision has commenced. For charities that are companies, the members are those persons who are company members within the Companies Act 2014 definition. For charities that are not companies, the members are those with the power to appoint, nominate or vote for the appointment of a person as a charity trustee of that organisation.

The new legislation will also, in due course, require all charities,

regardless of their legal structure, to keep an internal register of members containing the name and address of each member and the date of membership. Previously, charities which were not companies were not required to do so.

Charities should review their governing documents to check who is considered to be a member as these might include those who are simply volunteers, supporters and donors and all of these would need to be named on the register, with time. There are implications for being a member of a charity so with this in mind charities may wish to revisit, and possibly streamline, their structures.

- **TIP** Philanthropic organisations should ensure their governing documents accurately reflect these distinctions and make structural changes as required. For instance, some current members could cease their membership in exchange for becoming a 'Friend of' the organisation and this tier of support could be enshrined in the constitution while reducing the membership number.

## Next Steps for Philanthropic Bodies

Philanthropy Ireland members who are registered charities will need to carefully review their governance structures in light of these changes (new or upcoming). Advance planning is key. For further information and expert advice in navigating the 2024 Act please contact Niamh Callaghan, Ursula McMahon or another member of the MHC Charity Law and Not-for-Profit team. ■