

## Charities Act 2009/Draft Charities (Accounting and Reporting) Regulations 2016

The Charities Act 2009 (“the Act”) contains eight sections, namely sections 47 to 54, that address financial recording and reporting matters for charities.

Sections 48 to 52 of the Act requires regulation to be made by the Minister for Justice and Equality and in late 2016, the Charities Regulator both issued the Draft Charities (Accounting and Reporting) Regulations 2016 (“draft regulations”) and undertook a consultation process.

While the draft regulations provided a clear insight to the charity sector as to the possible format and scale of reporting information which will be required, trustees should understand the practical requirements of the relevant sections of the Act. The following is a summary of the relevant sections under the Act together with commentary on the draft regulations, as applicable to sections 48 to 52 of the Act.

### **Section 47: Proper books of account**

Charity trustees are required to keep or cause to be kept proper books of account that:

- correctly record and explain the transactions,
- enable the financial position to be determined with reasonable accuracy at any time,
- enable accounts to be prepared in compliance with section 48, and
- enable the accounts to be readily and properly audited.

Proper books of account are deemed to be kept if they:

- are kept on a continuous and consistent basis, that is to say, the entries therein shall be made in a timely manner and be consistent from one year to the next.
- contain day to day details of all monies received and expended by the organisation
- contain a record of the assets and liabilities of the charity.
- give a true and fair view of the state of affairs of the charity and explain its transactions.

Books of account and annual accounts are required to be:

- kept either in written form or in a format readily convertible into written format
- in an official language of the State
- be available in written form at all reasonable times for inspection, without charge, by persons entitled to inspect the books of account of the organisation.
- Be retained for six years from the end of the financial year to which they relate.

It should be noted that the six-year retention period requirement still applies where a charity is dissolved or terminated unless the Charity Regulator consents in writing to them being destroyed or disposed of in some other manner.

Where a charity trustee contravenes this section they shall be guilty of an offence. A defence for an offence would be where a trustee can prove that they believed, on reasonable grounds, that a competent and reliable person was duly charged with the duty to ensure compliance with this section.

It should be noted that this section does not apply to charitable organisations that are companies.

## Section 48: Annual statement of account

Charity trustees shall, in respect of each financial year, prepare an annual statement of accounts in such form and containing information as may be prescribed by regulations.

The regulations may make provision for:

- the annual statement of accounts to be prepared in accordance with particular standards and methods;
- any information to be provided by means of notes to the annual statement of accounts; and
- determining the financial year of a charity for the purpose of the Act.

Where gross income or total expenditure is **less than €10,000**, a charity has to include a **summary of finances** in the annual activity report.

Where gross income or total expenditure is **greater than €10,000 but less than €100,000** a charity may, instead of preparing an annual statement of accounts, prepare an **income and expenditure account and a statement of the assets and liabilities**.

Where gross income or total expenditure is **greater than €100,000** the charity must prepare a **statement of accounts**.

### Draft regulations commentary:

While the format of each of the above is yet to be prescribed, the draft regulations provide detail on the scale and proposed structure of financial reporting which will be required by charitable organisations.

Charitable organisations whose annual gross income or expenditure is less than €10,000 will be required to include a financial summary in the annual report sent to the Authority which is to include an analysis of income and expenditure under various prescribed headings together with details of any other gains and losses. It is worth noting that even charities at this low income threshold level will be required to analyse reserves at the beginning and end of year and movements in the year between unrestricted, restricted and endowment funds. Details of fixed assets, net current assets/liabilities, cash resources, external debt and capital commitments will also be required.

Charitable organisations, which are not companies and whose gross income or expenditure is greater than €10,000 but does not exceed €100,000, may prepare simplified accounts consisting of a statement of receipts and payments, a statement of assets and liabilities and notes to the accounts. The draft regulations do state that if the constitution or trust deed of the charitable organisation or if the charity trustees require accrual accounts, then the charity must prepare an annual statement of accounts.

While the draft regulations provide for charitable organisation to prepare simplified accounts, the following proposed requirements may provide challenges for some charitable organisations:

- the statement of receipts and payments and the statement of assets and liabilities will need to separately distinguish between unrestricted, restricted expendable endowment or permanent endowment funds;
- the statement of assets and liabilities will need to include a summary of the holding of investments and market valuation, by type;
- the statement of assets and liabilities is to include an estimate of the liabilities at the end of the financial year.

Annual statement of accounts/Accrual accounts shall consist of a statement of financial activities, a balance sheet, a cash flow statement (if required under financial reporting standards), and notes to the accounts.

The draft regulations state that every financial year should be of 12 month's duration or a period not more than 7 days greater or less than 12 months. Where there are exceptional reasons to do so, the charity trustees may determine that a financial year is to be any duration that is at least 6 months and not more than 18 months, with such determination not being allowed more than once in every three -year period. This is inconsistent with Section 288 of Companies Act 2014 which provides that such an alteration to a financial year end date can only be made once every five years.

### **Section 49: Annual returns under Companies Acts**

Incorporated charities, under the relevant provisions of the Companies Act, files accounts and annual returns in the Companies Registration Office (CRO). The registrar of companies is required to give a copy of that annual return and accounts to the Charity Regulatory Authority.

Non incorporated entities will submit their annual report and accounts to the Charity Regulatory Authority.

#### **Draft regulations commentary:**

The draft regulations clarify that where a charity has submitted an annual return and accounts to the registrar of companies under the Companies Acts, they are not required to attach that information to the annual report submitted to the Authority. For the avoidance of doubt, such charities must still submit an annual report to the Authority.

### **Section 50: Annual audit or examination of accounts**

Where gross income or expenditure greater than the audit threshold, the accounts of a charity shall be audited. The Act provides that the prescribed audit threshold cannot exceed €500,000.

When assessing whether a charity exceeds the audit threshold, consideration is to be given to the results for the relevant financial year, the immediately preceding financial year and the pre-preceding financial year. Where a charity exceeds the threshold in the relevant financial year and also in either the immediately preceding or pre-preceding year (i.e. in at least two out of three years), then an audit is required.

Where a charity does not exceed the audit threshold, the accounts of a charity are to be examined by an independent person approved by the Authority.

The audit or independent examination must be completed not later than 9 months after the end of the relevant financial year.

It should be noted that the Charity Regulator may require, or charity Trustees may elect for, accounts of the charity to be audited, even where the gross income or expenditure does not exceed the audit threshold.

Non-compliance will result in more detailed oversight by the regulator. The cost of such additional oversight will be borne by the charity.

It should be noted that this section does not apply to charitable organisations that are companies.

**Draft regulations commentary:**

The draft regulations state that the audit threshold is €100,000.

**Section 51: Regulations in relation to audits and examinations**

Auditors and independent persons will have to issue a report on the statement of accounts.

Charity Trustees/directors are obliged to provide access to all books and records and provide full disclosure to the auditor or independent person.

**Draft regulations commentary:**

The auditor is required to provide a report on the annual statement of accounts to the charity trustees which shall include an opinion of the auditor as to whether the accounts comply with the regulations, give a true and fair view of the state of affairs of the charitable organisation at the end of the financial year in question and of the surplus/deficit of the charitable organisation in that financial year.

Where the annual statement of accounts are to be examined by an independent reviewer, the draft regulations provides details as to who may be considered an independent person and provides a comprehensive list of professional bodies of which such an independent person must be a member. An independent reviewer is required to provide a report to the charity trustees setting out various prescribed details.

**Section 52: Annual report**

Charity trustees are required to prepare and submit to the Authority an annual report in respect of its activities in that financial year. Such report to be submitted within 10 months of the year end.

The regulations may:

- contain different provisions in relation to different classes of information and different classes of charitable organisations;
- require that an annual report contain such information (other than information required to be provided in an annual report) as may be specified in the regulations; and
- provide that an annual report shall be prepared in such manner as is specified in the regulations.

The following shall be attached to an annual report submitted by a charity in accordance with this section:

- a copy of the annual statement of accounts (or the income and expenditure account and the statement of assets and liabilities, where relevant)
- where the accounts have been audited, a copy of the auditor's report;
- where the accounts have been examined by an independent person, a copy of the independent person's report.
- In the case of a company, a copy of the accounts (prepared in accordance with the Companies Acts).

## Draft regulations commentary

The draft regulations set out the required information which shall be required to be included in an annual report for submission to the authority. The level of detail required differs depending on the size of the charity.

The annual report of all charities, regardless of size, must include:

- (a) The name of the charitable organisation as it appears in the Register and any other name by which it makes itself known.
- (b) The number assigned to it in the Register.
- (c) The address of the principal office, where it does not have such an office, the name and address of one of the charity trustees.
- (d) The names of all persons who are charity trustees on the date the annual report was approved by the charity trustees.
- (e) The name of any person who has, at any time during the financial year in question, been a charity trustee.
- (f) Particulars of any governing constitution.
- (g) The purposes of the charitable organisation, as set out in the constitution of the charity.
- (h) A summary of the main activities of the charitable organisation undertaken to further its charitable purpose(s) for the public benefit and achievements in the financial year.

Where the annual gross income or total expenditure exceeds €10,000 the annual report must also include:

- (a) A description of the charities reserves policy, including the level of reserves held, why they are held and quantifying and explaining the purpose of any designated funds and the likely timing of any expenditure that has been set aside for the future.
- (b) If the charitable organisation has a deficit, an explanation of the circumstances giving rise to it and details of the steps being taken to rectify it.

Where the annual gross income or total expenditure exceeds the audit threshold (i.e. €100,000), the annual report must also include (in addition to all of the requirements above):

- (a) A description of the methods adopted to recruit and appoint new charity trustees and the name of any external body or person that is entitled to appoint the charity trustees, if any.
- (b) An analysis of donated facilities and services, if any, that the charitable organisation received during the financial year.
- (c) A list of the principal risks and uncertainties which are facing the charity.
- (d) A description of the policy for the purposes of identifying, mitigating and managing the principal risks faced by the charitable organisation.
- (e) A summary of the planned objectives of the charitable organisation for the next financial year.

In the case of a charity which is not required to prepared accounts (i.e. gross income or expenditure of less than €10,000), the annual report shall also include a financial summary as described above under Section 48.

Charities are not required to include a separate financial summary in the annual report if all of the information that would be required in that financial summary is included in a statement of accounts which is either annexed to the annual report or submitted, as relevant, to the register of companies.

**Section 53: Requirement to provide information**

The Authority may, by direction in writing, require a charity to provide the Authority with such information as it may reasonably require to enable it to perform its functions.

**Section 54: Public inspection of annual reports etc**

All annual reports and documents attached thereto will be available for inspection by members of the public at all reasonable times. This does not apply to a private charitable trust, i.e. a trust that is not funded by donations from the public.