

Setting Up a New Nonprofit

Setting up a nonprofit of any sort can be an exciting project. People who are inspired to make a difference, to address unmet needs or to make a change in the way things work can achieve great things. It is almost impossible to make significant progress without involving others to help complete the work that needs to be done, which will mean setting up an organisation of some form. This guide will bring you through the key considerations in setting up a nonprofit organisation as well as provide descriptions of the most common forms of nonprofit to help you choose the best form for your organisation.

Disclaimer

This Guide is intended to convey general information only and does not constitute legal advice. Therefore, it may not be applicable in all situations and should not be relied or acted upon as legal advice. Readers seeking to act upon any of the information contained in this Guide are urged to seek individual advice from legal counsel in relation to their specific circumstances. The Guide does not provide legal information on all corporate forms available and is current as of March 2023. Although we hope and believe the Guide will be helpful as background material, we cannot and do not warrant that it is accurate or complete, particularly as circumstances change after publication. The legal input for this Carmichael resource was provided by Mason Hayes & Curran LLP, (MHC), a leading provider of legal services to the Charity and Not-for-Profit sector in Ireland.

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Definitions

What is a nonprofit?

“Nonprofit” is a broad umbrella term which can cover a wide variety of organisations. A nonprofit has a clear social purpose or public benefit. The organisation’s resources (income, equipment, staff, volunteers etc.) are used to deliver the maximum possible social purpose or public benefit in line with its stated purpose and target group. Where there is a surplus of resources (i.e. if more income is generated in a year than is needed for expenditure), this surplus is reinvested into the organisation or held in reserve to meet the organisation’s future needs. The surplus cannot be distributed to the organisation’s members other than in the form of reimbursement for expenses or fair remuneration. Nonprofit organisations can include:

- Registered charities
- Amateur sports clubs
- Some social enterprises
- Local groups and committees

What is a charity?

In Ireland, a charity is an organisation with a charitable purpose, for public benefit, as defined in the Charities Act 2009 and it must register with the Charities Regulator. All charities in Ireland should have a Registered Charity Number provided by the Charities Regulator. All charities are nonprofits but not all nonprofits are charities since some types of nonprofits cannot register as a charity (because they do not meet the definition of a “charitable organisation”). Step 5 of this Guide addresses whether your organisation will need to register as a charity and Step 7 addresses how to do so.

What is a social enterprise?

A social enterprise is a business with a social purpose or public benefit. Maximising profit is not the primary goal of a social enterprise.

A social enterprise may operate on a nonprofit basis and be a registered charity. As outlined above in the definition of a nonprofit, any surplus generated will typically be reinvested into the organisation or held in reserve to meet the organisation’s future needs. The surplus will not typically be distributed to the organisation’s members other than in the form of reimbursement for expenses or fair remuneration.

However, some social enterprises may pursue profit in addition to their social purpose (although pursuing profit will not be the primary goal of the organisation) and may distribute some or all of this profit to their members in a form other than reimbursement for expenses or fair remuneration. In this case, the organisation should not present itself as a nonprofit and will not be able to register as a charity.

Steps to Establish a Nonprofit

Step 1: Identify the Need

Nonprofits are usually set up to address a problem or meet a need. This might be a problem experienced within a local community or an issue facing people within society at large. You may or may not have experience of the particular condition or situation yourself. Either way you will need to establish the extent of need and be able to clearly articulate this need.

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Useful questions to ask:

- How many people are affected by this issue?
- Who is affected (e.g., does gender, age or location make a difference?)
- What impact does the issue have on people's lives?
- What do people need to address the issue?
- What are the financial implications for the individual or for society as a whole?

The answers to these questions make the case for your organisation and why it is needed.

Step 2: Research Similar Organisations

It is vitally important to thoroughly research whether there are any existing organisations which fully or partially address the need you have identified. It may be the case that another organisation fully addresses this need in a different location. In this case it would be appropriate to approach this organisation and discuss the possibility of establishing another branch of this organisation rather than establishing a brand new organisation. Equally it may be the case that another organisation operates in the location you have in mind but, in your opinion, does not fully address the need you have identified. Again, it would be worth approaching this organisation to investigate whether it is open to expanding its services, whether it sees a need for the service you have in mind and whether it sees any potential issues in trying to deliver this service.

Existing organisations will have existing human resources such as volunteers, staff and/or Board members and will have existing funding from state bodies, grants or donations from the public. Duplicating the work of an existing organisation may make it very difficult for your organisation to compete for those same resources and could create inefficiencies in utilising resources to have the greatest possible social impact.

Use a search engine as well as the Register of Charities to look for similar organisations. Even if you do not find a group doing exactly what you think is needed, you may locate a suitable umbrella organisation or parent body either at home or abroad.

Step 3: Find the People

Once you are satisfied that you are not duplicating the work of an existing group, you should set about finding some more people to work with you. It is important to do this as early in the process as possible. Although it may be tempting to push ahead on your own for a while, you will soon reach the stage where it is too much work for one person. It is more difficult to entice other people in a project if they get the impression that you only want them because you are swamped with work, so do not wait until you are desperate to start looking for help.

Involving other people at an early stage is also important in terms of building commitment to the new organisation. If people have been involved in making decisions about the aims and activities of the group, they will have more investment in it and a greater sense of ownership. A common failing among fledgling organisations is that they are regarded as the 'baby' of one highly enthusiastic individual who does not understand why they are being left to do all of the work. The successful functioning of any voluntary or community group relies on the commitment and hard work of a number of individuals and this kind of teamwork needs to be developed from the beginning.

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Ways of finding people:

- Word of mouth: ask around family, friends and work colleagues
- Use local avenues such as notices in newsagents' windows, supermarket and library noticeboards, local newsletters and papers or use social media
- Talk to relevant professionals who may encounter people who are affected by the issue you are concerned with
- Call a public meeting for people interested in the issue and ask for volunteers to join a working group to take things forward
- Boardmatch/Active link: use nonprofit-specific websites and newsletters to find relevant people

Once you advertise that you are interested in a specific issue there is a risk that you may be inundated with people needing help from you rather than people wanting to help you get things organised. Try to be clear in any of your communications that you are looking for people prepared to help set something up. You may need to explain to people that you are not in a position to help them at the moment. While this is difficult to do, you need to avoid a situation where you are spending so much time answering queries or supporting other people you have no time left to set up the organisation itself.

Step 4: Identify the Aims and Activities

Your organisation needs to have clear aims that arise out of the need you have identified. In other words what is the purpose of your group? Why does it exist? Some typical examples from voluntary and community groups might include:

- To empower people to actively influence the social and economic policies that impact on their lives
- To increase awareness of a specific issue within the general public
- To promote understanding and respect between people from different communities
- To improve the local environment
- To promote research into the causes of a specific medical condition and its effective treatment
- To challenge discrimination against socially excluded groups

The activities that your organisation engages in should flow from the aims that you have set. These are the things that will be done in order to achieve your aims. For example, this could take the form of:

- Providing information
- Running support groups
- Providing social activities for senior citizens
- Running after-school clubs
- Organising volunteers to help with a community garden
- Providing training

When you are deciding what activities your organisation will engage in it is important to be realistic and keep things achievable. There will always be someone who thinks that your group should do more but it is important to keep things manageable, particularly at the start.

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Step 5: Consider Whether Your Organisation Needs to Register as a Charity

It is useful to know early in the process of setting up your nonprofit whether it will need to apply for registration as a charity, as this can allow you to ensure you are using the appropriate charity templates for your governing document and policies right from the beginning and speed up the process of registering as charity when it comes to that point (see step 7).

If the answer to all three of the following questions is 'yes', then your organisation is obliged to apply for registration as a charity:

1. Does your organisation wish to operate or carry on activities in the Republic of Ireland?
2. Does your organisation have **exclusively** charitable purposes?
3. Does your organisation provide a clear public benefit, in the Republic of Ireland or elsewhere?

There is more detail on the [Charities Regulator's website](#) regarding which organisations are obliged to apply for registration as a charity and which types of organisation are excluded from the obligation to apply for registration.

All organisations which meet the definition of a charitable organisation and which operate or carry on activities in the Republic of Ireland must be fully registered on the Register of Charities. This is a legal requirement and it is an offence for an unregistered charitable organisation to carry on certain activities in the State. However, there are some organisations that cannot apply for charitable status, and these include:

- Organisations established solely for the promotion of athletic or amateur games or sports;
- Trade Unions;
- Political Parties;
- Lobbyists;
- Chambers of Commerce;
- Fundraising groups who are set up solely to help a particular person (examples include, but are not limited to, medical treatment).

The above organisations are generally excluded from applying for registration as a charity but may still be considered nonprofits.

Step 6: Decide on a Legal Form

Once you have established whether your organisation will need to register as a charity, you will need to decide on your legal form. There are a number of different legal forms which nonprofits may take. This guide will give a brief introduction to the following forms:

- Company Limited by Guarantee
- Designated Activity Company
- Trust
- Unincorporated association

Other forms which a nonprofit may take include:

- Co-operative

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- Sole trader
- Private company limited by shares
- Partnership

No one structure is better than another as each has advantages and disadvantages, but some forms are more suitable for certain types of nonprofit than others.

Incorporating as a company

Incorporating as a company creates a separate legal entity for the organisation from the people which run it. By creating a separate legal entity for the organisation, the organisation will be able to set up bank accounts and enter into contracts and lease agreements itself.

The two most common forms of company for nonprofits in Ireland are companies limited by guarantee (CLGs) and designated activity companies (DACs).

It is important to research legal forms thoroughly and seek legal advice if needed before selecting the form most appropriate to your organisation.

If choosing to incorporate as a company, the application process is completed through the Companies Registration Office (CRO). It is generally quite a quick process of filing an A1 Form with the CRO along with a copy of the governing document (e.g. constitution – which itself will take some time to draft) and paying the filing fee. Directors' liability is limited in a CLG or DAC, meaning that Directors are generally only held personally liable in cases where they have not acted honestly, responsibly or reasonably, but it is standard practice for a company to have Directors and Officers Liability Insurance in place. Directors have duties and responsibilities under company law. If the organisation is a charity, the Directors and (under current charity law) Company Secretary will also be the charity trustees of the charity and will have responsibilities under charity law. It is important to note that charity trustees cannot receive any remuneration from the charity of which they are charity trustees (even if payment is proposed for carrying out a role other than the role of charity trustee). The General Scheme of the Charities (Amendment) Bill 2022 proposes to amend the law so that the company secretary of a charitable company will not automatically be deemed to be a charity trustee. However, for the time being, the company secretary of a charitable company is a charity trustee.

Company Limited by Guarantee (CLG)

This form of company is the most common form of legal entity for nonprofits in Ireland.

The governing document of a CLG is the constitution (which is comprised of the "memorandum" and "articles" of association). The constitution will define the company's objective, which will be its purpose. The constitution for a nonprofit CLG should also have an asset lock which restricts the company to only using its resources for its stated objective. A CLG must have at least two Directors (although a charitable CLG must have at least three) and a Company Secretary (who may be one of the Directors). This form of company cannot raise capital by issuing shares and therefore has no shareholders. A CLG instead has "members" which have certain powers given under the constitution or any accompanying governance handbook or policy. The members of the CLG agree in the constitution to contribute up to a certain sum (generally €1) towards the CLG's debts and liabilities in the

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event that the CLG is wound up. A CLG must file accounts with the CRO each year. The [Charities Regulator](#) has a template governing document for a charitable CLG.

Designated Activity Company (DAC)

Similar to a CLG, a DAC will have a clear purpose in its constitution, which should be a social purpose in the case of a nonprofit. Unlike a CLG, this form of company may raise capital by issuing shares and does not necessarily have an asset lock in the constitution which prevents it from using its resources for anything other than its stated objective. However, for a nonprofit, the constitution may limit the amount of dividends that can be paid to shareholders and provide for a full asset lock. A DAC must have at least two Directors (although a charitable DAC must have at least three) and a Company Secretary, who may be one of the directors. It must also have at least one member who holds shares. Employees can hold shares and therefore be members of the company. If the DAC is not a charity, employees can be appointed as Directors. A DAC must file accounts with the Companies Registration Office each year.

Unincorporated forms

Trust

In a trust, a group of people (the trustees) hold property on behalf of a group (the beneficiaries) for a particular purpose. Trustees have strict obligations to the beneficiaries and they cannot profit from the trust. Trusts are governed by a range of legislation, including the Trustee Act 1893 and the Land and Conveyancing Law Reform Act 2009. The governing document for a trust is called a Trust Deed.

A trust is not a separate legal entity and the trustees may be personally held legally liable for any problems or debts arising out of the group's activities.

Unincorporated Association

An "unincorporated association" can be the simplest form of nonprofit to establish as it does not require registration with the CRO. This form may be suitable for a small community group which will not have significant income or any staff, contracts or lease agreements. However, an unincorporated association is not a separate legal entity and the individuals involved in this form of organisation may personally be held legally liable for any problems or debts arising out of the group's activities. It will likely be difficult to own or rent property, employ staff, enter contracts or get funding.

If an unincorporated association is not a charity, it has less regulation and governance requirements than most other legal forms and does not have to file annual accounts. However, the application process and reporting requirements for a charity with the Charities Regulator are generally more onerous than those for a company.

At a minimum, an unincorporated association should keep books of account, have appropriate insurance cover in place and have a governing document which sets out how the organisation will be run. The [Charities Regulator](#) has a template governing document for a charitable unincorporated association which may be helpful even for unincorporated associations which are not obliged to register as a charity.

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Step 7: Apply to register as a charity (if necessary)

If your organisation needs to register as a charity, then you should begin that process once the form of the organisation has been decided. Our [Top Tips for Applying for Charitable Status](#) may be useful at this point. It is free to apply to register as a charity but the application form can take some time to complete as it will require documentation which you may need to create from the outset. The approval process can also take some time as the application must go through various stages of approval before the Registered Charity Number (RCN) can be issued.

The Charities Regulator requires the names of the organisation's charity trustees as part of the registration process. For a charity which is also a company, the Directors of the company and the Company Secretary will also be the charity trustees. The General Scheme of the Charities (Amendment) Bill 2022 proposes to amend the law so that the company secretary of a charitable company will not automatically be deemed to be a charity trustee. The Regulator requires that a charity has at least three charity trustees and at least three of the charity trustees must be unrelated and independent (not married, siblings, parent and child etc.). Even if the form of company has a lower minimum number of Directors, under company law, a charity will need at least three charity trustees.

An organisation which has a RCN from the Charities Regulator can then apply to the Revenue Commissioners for a charitable tax exemption (CHY number).

A registered charity is required to comply with the [Charities Governance Code](#) and to report on this compliance when the organisation is submitting its first annual return to the Charities Regulator and when it submits every subsequent annual return. Our resource, [The Implementation of the Charities Governance Code](#), may be useful.

Step 8: Agree operational policies

Every nonprofit organisation will need policies and procedures beyond those set out in the governing document. Our resource, [How to agree operational policies for your nonprofit](#), may be useful at this point.

Step 9: Create your digital presence

Before you publicly launch your nonprofit organisation (but after you have obtained charitable status), make sure that people can contact you. This may take the form of a website and/or a social media page. Provide information on the organisation's origins, the people who run the organisation and what the organisation intends to do. Be clear about how people can contact the organisation whether they would like to volunteer or to access services provided by the nonprofit.

Step 10: Have a Launch

Once you are happy that you have the right structure and people in place it can be a good idea to have a special event to launch your organisation. This could take the form of an information evening, a news conference, a social activity or whatever kind of event is most suited to your aims and objectives as a group. A launch is the ideal opportunity to put your organisation on the map and raise awareness of what you are doing among your stakeholders. Do make sure you have the resources in place to deal with any subsequent enquiries or requests before you go public.

Authors

This resource was co-authored by Carmichael with legal input from Mason Hayes & Curran LLP (MHC), a leading provider of legal services to the charity sector in Ireland. Carmichael provides [training](#), a [resource library](#) and other [supports](#) for the nonprofit sector.

Resources

- [Charities Governance Code](#), Charities Regulator.
- [Companies Registration Office](#)
- [How to agree operational policies for your nonprofit](#), Carmichael, 2022.
- [Revenue Commissioners](#)
- [Social Enterprises Ireland: Legal Structures Guide](#), Thompson Reuters Foundation and Mason Hayes & Curran LLP, 2020.
- [The Implementation of the Charities Governance Code](#), Carmichael, 2020.
- [Top Tips for Applying for Charitable Status](#), Carmichael, 2021.
- [What is a Charity](#), Charities Regulator, 2018.
- [Where can nonprofits go for help](#), Carmichael, 2022.
- Unincorporated Charity Model Constitution, [Charities Regulator](#).
- Unincorporated Charity Standard Clauses, [Charities Regulator](#).
- Charitable CLG Model Constitution, [Charities Regulator](#).
- Charitable CLG Standard Clauses, [Charities Regulator](#).