



## **CHARITIES BULLETIN**

### **ISSUE 1 - SEPTEMBER 2019**

Circulated to:

- Manx Registered Charities
- The Isle of Man Law Society
- STEP

#### **1. Introduction**

Following the recent passing of the Charities Registration and Regulation Act 2019, the Attorney General's Chambers is preparing for the implementation of the Act, including the transfer of the Charities Register from the Central Registry to Chambers. This preparation necessarily involves a review of the existing registration and regulatory procedures to ensure that the systems in place for the future are administratively efficient, whilst still retaining the personal contact which we know is of value both to the charities sector and to the general public.

The Attorney General is very keen to continue to assist Manx charities so they have a clear understanding of the necessary governance issues and also to ensure that they are kept abreast of any changes or matters which arise which are of general interest to the charities sector. The circulation of a Charities Bulletin is one way in which this will be achieved.

#### **2. The implementation of the Charities Registration and Regulation Act 2019**

The [Charities Registration and Regulation Act 2019](#) received Royal Assent and was announced to Tynwald on 16 July 2019. The Act will be brought into force by the making of an Appointed Day Order. A copy of the Act can be purchased from the Tynwald Library or downloaded from the [legislation.gov.im](http://legislation.gov.im) website.

The Act has six main purposes, namely:

- 2.1 to update the meaning of "charity" in the Island so that it remains at least as broad as in England and Wales;
- 2.2 to provide for a modern register of charities which are carrying out activities within the Island;
- 2.3 to assist charity trustees (however described, eg as trustees, directors or committee members) in the proper delivery of their charity's objectives, by ensuring that charities have constitutional documents which are fit for purpose and that the process of responding to a changing environment is straightforward and inexpensive;
- 2.4 to ensure more effective regulation of charities by increasing reporting requirements and ensuring accountability within the Island on the part of all charities carrying on activities here, in addition to providing for the automatic disqualification of individuals

for acting as trustees on the happening of certain events and for consideration of the risk of a charity seeking registration to be used for money laundering activities or the financing of terrorism;

- 2.5 to improve public service and administrative efficiency by combining the functions of registrar and regulator in HM Attorney General, thus mirroring the Charity Commission in England and Wales; and
- 2.6 to provide a simplified mechanism for appealing decisions of the registrar/regulator by establishing a Charities Tribunal.

The Act also provides for the creation of a register of charity mergers, the significant benefit of which would be to remove the necessity for keeping a "defunct" charity in existence and on the Register merely to receive legacies to pass on to the charity to which its other funds had been transferred.

## **Implementation**

The Act will be implemented in two stages with some provisions coming into force on 1 October 2019 and the remainder on 1 April 2020, together with the Charities Regulations, as follows:

- **1 October 2019:** widening of the definition of "charity" and "charitable purpose"; automatic disqualification for acting as a charity trustee; creation of the register of charity mergers; creation of the Charities Tribunal (in order that it can be established prior to 1 April 2020); power to make regulations; matters concerning the submission of incomplete documents or ones including false and misleading statements; supplementary provisions concerning offences; records keeping; publication of approved forms; disclosure to or by the Attorney General and consequential amendments to the Charities Act 1962, the Charities Act 1986, the Foundations Act 2011 and the Tribunals Act 2006.

NB: The Charities Registration Act 1989 will continue in force without amendment until 1 April 2020.

- **1 April 2020:** the Charities Regulations and all remaining provisions of the Act, including new provisions as regards registration; the transfer of the function of registrar to the Attorney General; requirement for a written governing instrument; new provisions as regards amendment of governing instruments, objects and/or charity names; the requirement to file an annual report in addition to the annual accounts; the provisions concerning foreign charities; appeal provisions; certain consequential amendments and the repeal of the Charities Registration Act 1989 (the continuing provisions of which, including the requirement to file annual accounts and the Attorney General's regulatory powers, having been replicated in the 2019 Act).

## **Impact**

This means that the only changes in advance of 1 April 2020 which will directly affect Manx charities are the widening of the definition of charity and charitable purpose, the bringing in of the automatic disqualification provisions for charity trustees and the creation of the register of charity mergers. **All other matters relating to the registration and regulation of charities, including the registration process and the requirements as to the filing of accounts, will remain unchanged until 1 April 2020.**

### 3. The Charities Regulations

The Act provides for detailed provisions concerning the following matters to be set out in Regulations:

- information to be contained in the register and any restrictions on its publication;
- the documents to accompany the registration application;
- the matters to be provided for by a charity's governing instrument;
- information to be registered and included in the certificate of registration;
- the date that the requirement for a written governing instrument will apply to charities on the register prior to 1 April 2020 [NB This date will be no earlier than 1 April 2022];
- the evidence of winding up or dissolution to accompany a notification to the Attorney General;
- the qualifications of examiners and the form and content of accounts and of the reports or auditors or examiners;
- the form and content of the annual report;
- information to be furnished to the Attorney General;
- the keeping of financial records; and
- specified information to be stated in documents and communications by registered charities.

The Regulations are currently being prepared. Before they are finalised, they will be circulated to stakeholders, including all registered charities, for comment. The proposed application and notification forms will also be circulated at that time, along with suggested templates for accounts and reports for use by smaller charities. **As mentioned above, it is intended that the Regulations addressing the above will come into force as from 1 April 2020.**

### 4. Changes to administrative processes

The administration of the Charities Register and the exercise by the Attorney General of his regulatory functions are funded entirely by the tax payer as, unlike other registers, no fees are levied in relation to the Charities Register. This means that its administration has to be run as efficiently as possible.

In order to reduce the costs of postage and stationery, as well as administrative time, in all cases where an e-mail address has been provided by the correspondent of the charity concerned, written communication from Chambers and the Central Registry concerning charities matters (including the Charities Bulletins and all correspondence relating to registered charities) will henceforth be sent by e-mail unless there is a statutory requirement for it to be provided in hard copy form or the document concerned bears an original signature. However, correspondence addressed to Chambers and to the Central Registry may continue to be sent by post or by e-mail.

The Attorney General is aware that, whilst the e-mail addresses provided by some charities are specific to the charity, many are the personal e-mail addresses of the individual correspondents. Not only does this mean that correspondence relating to the charity is mixed in with personal e-mails but other officers of the charity will be unable to access it if the named correspondent is unavailable or if they resign from their role with the charity.

**Accordingly, the Attorney General would recommend that, as a matter of good practice, each charity consider setting up, as its e-mail correspondence address, an e-mail address which is specific to the charity, ideally including the charity's name, to which all the charity trustees would have access. This should be able to be done easily and cheaply with one of the many e-mail providers.**

In order to allow for an orderly transition of the functions of registrar, the Charities Registration Officer is temporarily located in Chambers. The postal address for matters relating to the Charities Register remains that of the Central Registry [ie the Registries Building, Deemsters Walk, Bucks Road, Douglas, IM1 3AR], but correspondence and documents for the attention of the Charities Registration Officer can also be delivered to Chambers and anyone wishing to speak with her in person is welcome to attend here.

## **5. Changes to the Central Registry's webpages concerning charities matters**

From 1 April 2020, the relevant Central Registry webpages will form part of the Chambers' website. In the meantime, the information will be reviewed and edited so that it contains details of all the new requirements which will be coming in then, as well as copies of the legislation and the new forms and templates. The webpages will also contain all information which the Attorney General is required to publish, including notification of the removal of charities from the register. Suggestions as to other general information on charities matters that could be included on the website would be most welcome.

Work is currently progressing on making available on-line the public information held on the register, which will include names of trustees and copies of annual accounts and reports. Once this is complete, such information will no longer be available from the Registry except in cases where the enquirer does not have on-line access. These changes will both increase public accessibility and reduce the costs of administering the register.

## **6. Seminars/workshops**

In order to assist charities in preparing for the new requirements, a number of seminars/workshops will be held in the weeks leading up to 1 April 2020. Dates will be published nearer the time and, to ensure that as many people can attend as possible, they will include weekday evenings and weekday and weekend daytimes. The seminars/workshops will focus on the changes being made by the Act and the role of charity trustees but will also include Q&A sessions. If there are other matters concerning charities, their regulation or the operation of the register which it would be beneficial to include, or to cover on other occasions, please do let us know.

## **7. Charity objects**

We have had a number of instances recently where charities have undertaken activities which do not fall within their objectives. This is a breach of the charitable trusts on which all property of a charity is held for which the charity trustees can be held accountable. Accordingly, the Attorney General asks that charity trustees ensure that all of the activities carried on by their charity are clearly within its charitable objectives. If you are uncertain as to whether a particular activity can be carried on by your charity and/or whether the charity's objectives can be altered to encompass it, please contact Michelle Norman in Chambers to discuss [e-mail: [michelle.norman@attgen.gov.im](mailto:michelle.norman@attgen.gov.im); tel: 685452].

## **8. Some general reminders from the Registrar General**

The Registrar General has asked that the following general reminders be circulated:-

- Regarding annual accounts: If a charity's governing document requires that its accounts be audited, or if it is a company which has not passed a resolution electing to dispense with the audit requirement, the charity's accounts will have to be audited even if its income is below the threshold for audit in section 5 of the Charities Registration Act 1989. In such circumstances, the Central Registry is unable to accept the accounts for filing unless they have been audited. Please contact the Charities Registration Officer, Wendy Joughin [e-mail: [charities@gov.im](mailto:charities@gov.im); tel: 687318] regarding any queries concerning whether an audit is required for a particular charity or for information concerning the process to be followed for a charitable company to dispense with the audit requirement.
- Regarding charity trustees: Any changes of trustees, or of their details, must be notified to the Central Registry within one month of the change. If there have been any such changes recently in relation to your charity and you have not submitted a Schedule 3 statement, please contact the Charities Registration Officer, Wendy Joughin [e-mail: [charities@gov.im](mailto:charities@gov.im); tel: 687318], as soon as possible. Where a charity trustee holds an office specified in the charity's governing document (e.g. Chair, Treasurer, Secretary, etc), it is necessary to notify the Central Registry of the office held, as well as providing the full name and other details of the person concerned. Often, governing documents specify a minimum and/or maximum number of charity trustees which are required for the charity in question. Charity trustees are responsible for ensuring that the requirements of the governing documents are adhered to. Further, in the case of charitable companies, the details held on the Companies Registry files must match those notified to the Central Registry for the purposes of the Charities Register.

## **9. Queries concerning charities**

If you have any suggestions for topics to be covered in future Bulletins, or queries or concerns regarding the current or proposed activities of your charity, or if your charity is considering updating its governing instrument, including by making changes to its name or objects, please contact Michelle Norman in Chambers [e-mail: [michelle.norman@attgen.gov.im](mailto:michelle.norman@attgen.gov.im); tel: 685452].

Any queries concerning the current registration process, the filing of annual accounts or the notification of changes to charity trustees or their details, please contact the Charities Registration Officer, Wendy Joughin [e-mail: [charities@gov.im](mailto:charities@gov.im); tel: 687318].

## **10. Publication of the Bulletin**

As well as being circulated as above, the Bulletin will be published on the webpages of the Attorney General's Chambers and the Central Registry.