



CHARITIES BULLETIN

ISSUE 2 – JANUARY 2020

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

1. The implementation of the Charities Registration and Regulation Act 2019

As reported in Issue 1 of the Bulletin (September 2019), the Charities Registration and Regulation Act 2019 ("the 2019 Act") is being implemented in two stages, with the provisions coming into force 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:** all remaining provisions of the 2019 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).

As well as preparing for the transfer of the function of registrar to the Attorney General, which includes ensuring that the necessary back office systems are in place and that the on-line information is revised to take account of the various legislative and procedural changes, work has been underway to draft the procedural rules for the new Charities Tribunal as well as the Regulations which are essential for the operation of the Charities Registry from 1 April onwards. The Charities Tribunals Rules, which will be made by the Council of Ministers under the Tribunals Act 2006 following consultation with the Deemsters, will reflect the model rules which were drawn up several years ago for proceedings in Manx Tribunals.

2. The Charities Regulations 2020

The 2019 Act provides for detailed provisions concerning a number of matters to be set out in Regulations, which has been done in the Charities Regulations 2020 (“the 2020 Regulations”), for which the Attorney General is seeking to obtain Tynwald approval during the Tynwald sitting in February. As a matter of courtesy to Charities and other stakeholders, a copy of the Regulations is being made available in advance of its publication as part of the usual Tynwald procedures. This can be downloaded from the Attorney General’s Chambers’ website <https://www.gov.im/about-the-government/offices/attorney-generals-chambers/>

The 2020 Regulations are set out in five parts, as follows:

- **Part 1** – This Part provides for general matters relating to the 2020 Regulations, including their commencement and interpretation.
- **Part 2** – This Part sets out the particulars and information to be contained in the Charities Register, specifies the circumstances in which information held on the Register will not be published, lists the documents which will have to accompany a registration application and details the information which will be contained on the certificate of registration.

The 2020 Regulations do not include the form on which applications should be made as this is not required to be prescribed in regulations. Instead, it will be published as an approved form. The form is currently being prepared and will be published shortly.

- **Part 3** – This Part sets out the matters which must be provided for in a charity’s governing instrument. The Attorney General is able to disapply any of the provisions in relation to a specific institution or a class of institution, where he considers it appropriate to do so. This means that, for example, he would be able to disapply the provisions regarding members in the case of an institution, such as a trust or a foundation, which would not ordinarily have a membership.

Part 3 also provides that the requirement for a registered charity to have a written governing instrument will apply with effect from 1 April 2022 to charities already in existence on 1 April 2020. The Attorney General considers that the two year period allowed should be ample, particularly given that model governing instruments will be available from Chambers and, in most cases, the adoption of a written governing instrument should be a straightforward process.

- **Part 4** – This Part sets out requirements concerning the keeping of accounting records and the adoption of accounting control systems, as well as providing for the reports of auditors, for the reports and the qualifications of independent examiners and provides a definition of “gross income”. Of these requirements, only the adoption of accounting control systems is new as the other provisions are currently set out in the Charities (General) Regulations 1990 (“the 1990 Regulations”) and the Charities Regulations 2007 (“the 2007 Regulations”).

Part 4 also sets out the requirements for the preparation of annual accounts and the new annual reports. As regards the annual accounts, Regulation 11 provides for charities to prepare receipts and payments accounts unless the charity is an auditable charity (i.e. required to have its accounts audited because its income has exceeded the figure in section 27(4) of the 2019 Act, currently £250,000) or is required by law (e.g. because it is a company), or for another reason stated in

Regulation 11, to prepare accruals accounts. As a strict interpretation of the existing requirement (Regulation 4 of the 1990 Regulations) is that all charities should prepare accruals accounts, making provision for receipts and payments accounts to be prepared in relation to most charities with a gross income of £250,000 or less should prove less onerous.

The Attorney General will be publishing a template for completion for the preparation of receipts and payments accounts, which will not only assist charities in the preparation of the accounts but will standardise their presentation, improving the ease of their analysis. It is expected that the template will reflect those in use by the Charity Commission and the Office of the Scottish Charity Regulator.

- **Part 5** – This Part provides for filing requirements concerning winding up or dissolution and for the furnishing of certain information to the Attorney General (including details of safeguarding policies, where relevant).

This Part also sets out the information that must be stated by a charity in its communications and other documents, which will include correspondence by e-mail or letter, information published on its website and any fundraising or other publicity materials, e.g. collection boxes. The purpose of setting out the information is so that the charity's status is clearly identified and members of the public are made readily aware of the identity of the charity trustees and of how to contact the charity.

Part 5 also provides for the contravention of certain of the 2020 Regulations to be an offence and provides for the revocation of the 1990 and 2007 Regulations, which are entirely replaced by the 2020 Regulations.

This Part also provides for the revocation of the Charities (Exemption) Regulations 2008, under which charities which meet certain criteria are exempt from Registration. These Regulations were originally enacted to facilitate the wishes of a very wealthy local resident who wished to set up charities which would not be in the public domain. In total, less than ten charities took advantage of the exemption provisions, of which only three continue to do so, the remainder having been dissolved or having registered, including the charities for which the exemption provisions were originally created. In the circumstances, the Attorney General can see no justification for retention of the exemption provisions.

3. How much are the legislative requirements actually changing?

From some of the questions which have been asked, it is apparent that there are misunderstandings about the extent to which the requirements concerning Manx charities are changing. In advance of 1 April, we will be compiling a list of "Frequently Asked Questions and Answers" but, in the meantime, the following may be helpful:-

- There will be new forms for applying for registration as a charity and for notifying events such as changes concerning the charity trustees.
- There are no changes to the requirements concerning the audit or independent examination of a charity's annual accounts.
- Charities which are permitted to prepare receipts and payments accounts (see regulation 11) will do so on a published template.
- Charities will be required to file an annual report containing certain information (see regulation 17). The Attorney General is able to publish templates for the

annual report and it is likely that a template will be provided for use by charities whose accounts are not required to be examined or audited.

- Any charity already on the register on 1 April 2020 which does not have a written governing document will have to adopt one by 1 April 2022. All charities affected by this will be contacted over the next few months.

4. Changes to administrative processes

As reported in Issue 1, 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) is now being 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.

Although Issue 1 was sent out by e-mail wherever possible, it had to be sent by post to 144 charities, which included 46 in respect of which the e-mail addresses held by the Registry proved not to be valid. Accordingly, the Registrar General would remind charities that they should ensure that contact details are kept up to date and, wherever possible, provide an e-mail address for correspondence which is specific to the charity concerned, as opposed to a personal e-mail address of the charity's designated correspondent.

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

The work on the webpages and concerning on-line publication of information held on the Charities Register which was referred to in Issue 1 is continuing. The new forms and templates will be published as soon as they are available.

6. Seminars/workshops

Issue 1 referred to the intention to hold seminars/workshops in the weeks leading up to 1 April 2020. It is anticipated that these will commence in mid-February. The dates will be published shortly on the webpages of the Central Registry and of the Attorney General's Chambers, along with details of how to book.

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; 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; 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; 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.

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. This is because the directors of the company are the charity trustees, meaning that no person can be considered to be a trustee of a charitable company unless they hold the office of director.

9. Queries concerning charities or the implementation process

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; tel: 685452].

If you have any queries or comments concerning the Charities Regulations 2020, please contact Michelle Norman as soon as possible as they have to be signed off by 22 January in order to comply with the timetable laid down by the Council of Ministers for the submission of business to February's sitting of Tynwald.

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; 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.