



CHARITIES BULLETIN

ISSUE 4 – MAY 2020

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- Manx Registered Charities
- The Isle of Man Law Society
- STEP
- IOMSCA
- ACCA
- AICP
- ACSP
- Institute of Directors
- Chartered Governance Institute (formerly ICSA)

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

The Act came fully into force on 1 April 2020, as did the Charities Regulations 2020. The Charities Tribunal Rules 2020 were made by the Council of Ministers on 2 April and approved by Tynwald at its sitting on 21 April and came into force on 1 May. The process of recruitment of the members of the Charities Tribunal is a matter for the Appointments Commission, which has been kept fully informed of progress in implementing the legislation, including the making, and approval, of the Rules.

Copies of the Act, the Regulations and the Rules can be downloaded from www.gov.im/charities.

2. On-line publication of information concerning charities

All information and copies of legislation published by the Attorney General concerning charities is available on the Chambers' charities web pages, which are accessed by the link: www.gov.im/charities. This includes the following:

- Charities Registration and Regulation Act 2019
- Charities Registration and Regulation Act 2019 (Appointed Day) Order 2019
- Charities Regulations 2020
- Charities Tribunal Rules 2020
- Charities Bulletins (Issues 1 to 4)
- FAQs
- Coronavirus Guidance for IOM registered charities
- Notification form (replaces the "Schedule 3" form)
- Registration application form
- Index of Charities registered on or before 31 March 2020
- Index of Charities registered on or after 1 April 2020
- Index of Charities removed from the register on or after 1 April 2020
- Model governing instruments:

- Model constitution of unincorporated association (two versions: one for adoption on the establishment of the charity, the second as a replacement for an existing constitution)
- Model Memorandum and Articles of Association of a charitable company limited by guarantee and incorporated under the Companies Acts 1931 to 2004 (two versions: one for a company intended to be audit exempt, the second for a company the accounts of which are to be subject to audit)
- Model charitable trust (with or without a settlor)

The Coronavirus Guidance and the FAQs are kept under review and will be updated as necessary. Suggestions for further matters to be included in the Guidance or the FAQs should be sent by e-mail to charities@gov.im.

Templates for receipts and payments accounts and for annual reports by charities preparing accounts on a receipts and payments basis will be uploaded to the web pages shortly, together with guidance as to the use of the templates and guidance for the independent examination of charity accounts.

Necessary diversion of resources as a result of the Coronavirus pandemic has delayed the transferring of electronic files from the Central Registry to the Attorney General's Chambers and the configuration of the back office systems to enable on-line publication of information on the charities register. This work is now underway and the information will be published as a rolling programme. In the meantime, requests for information held on the register concerning individual charities should be made in writing, preferably by e-mail to charities@gov.im.

Guidance on other topics concerning the registration and regulation of charities in the Isle of Man will be uploaded when available. Any suggestions as to matters in respect of which published guidance would be useful can be sent by e-mail to charities@gov.im.

3. Changes to requirements to file annual accounts and reports

Annual accounts due for accounting years ending on or before 31 March 2020 continue to be filed in accordance with the provisions of the Charities Registration Act 1989 (a copy of which can be found on the [Isle of Man Legislation website](#) under "Repealed Acts" on the "Legislation" drop down tab). It is not necessary to file annual reports for those years.

The provisions of the 2019 Act and the 2020 Regulations apply with effect from the accounting year in which the Act came into force, ie the accounting year which includes 1 April 2020. This is provided in Article 4(2) of the Charities Registration and Regulation Act 2019 (Appointed Day) Order 2019.

Accordingly, every charity will first have to prepare its annual accounts and annual report in compliance with Part 6 of the 2019 Act (ss 27 to 30) and Part 4 of the 2020 Regulations (Regulations 10 to 17) in respect of the accounting year which ends on or after 1 April 2020.

[Please note that the reference in some notes which have been circulated to the new requirements first applying in respect of the accounting year beginning on or after 1 April is incorrect. Many apologies for any confusion that this may have caused.]

A charity may prepare its accounts on a receipts and payments basis provided all of the following apply to it:-

- the charity is not a company;

- the charity's gross income for the financial year in question does not exceed the threshold for its accounts to be audited under section 27 of the Act (currently £250,000);
- the charity's governing instrument does not require that accruals accounts be prepared or that its accounts be audited;
- the charity has not resolved that accruals accounts be prepared or that its accounts be audited; and
- there is no legislation applicable to the charity which requires it to prepare accruals accounts.

If a charity, able to do so, chooses to prepare its accounts on a receipts and payments basis then it must use the template for this, and the template for the preparation of its annual report, which are to be published as approved forms by the Attorney General. The templates, and guidance as to their completion, will be published shortly on www.gov.im/charities.

In all other cases, the charity must prepare accruals accounts per Regulation 12 of the 2020 Regulations.

The requirements for audit or independent examination of charity accounts remain unchanged and an updated version of the guidance for independent examination originally published by the General Registry will be available on www.gov.im/charities shortly.

4. Notification of changes

As of 1 April 2020, the following changes must be notified to the Attorney General by using the notification form:

- Change of charity trustee or of the details of a charity trustee (Annex A)
- Change of responsible person or of the details of a responsible person (Annex B)
- Change of correspondence or other address for the charity (Annex C)
- Amendment of charity name (Annex D)
- Amendment of a governing instrument (Annex E)
- Winding up or dissolution of the charity (Annex F)

Notification must be given within one month of the happening of the relevant change.

The change is notified by completing and submitting pages 1 and 2 of the form (including the declaration) together with the appropriate annex(es). It is only necessary to print off and complete the annexes which relate to the changes being notified. The charity number should be inserted where indicated on the form and the appropriate annex(es). All fields must be completed otherwise the form cannot be processed and will be returned.

If a charity changes its accounting year end, this should be notified to the Attorney General in writing, either by letter addressed to "Charities Administration" at the address on the first page of this Bulletin or by e-mail to charities@gov.im.

5. Governing instruments

Charities are reminded that all charities on the register are required to have a written governing instrument which includes the provisions prescribed in Regulation 8. Any registered charity without a written governing instrument must adopt one by 1 April 2022. If your charity's governing instrument does not include the necessary provisions, or if your charity does not presently have a written governing instrument, the charity trustees should now be considering how to address this.

If your charity does not have a governing instrument, or if its governing instrument does not provide for its amendment, then the charity will have to seek consent from either the High Court or the Attorney General for the adoption of a written governing instrument or the amendment of the existing governing instrument. The procedure for obtaining consent from the Attorney General is set out in **item 6** below. This also applies in cases where the governing instrument does provide for its amendment.

Model documents are available on www.gov.im/charities for unincorporated associations, companies incorporated under the Companies Acts 1931 to 2004 and trusts established by declaration. These models can be used as reference documents or as replacement constitutions. Please be aware, though, that the model used as a reference, or adopted as a replacement, must be for an institution of the same legal nature as your charity.

If you have any queries concerning the legal nature of your charity, please contact the Charities Administration at the address on the first page of this Bulletin or by e-mail to charities@gov.im.

6. Requirement for the Attorney General's consent when amending a charity's governing instrument or name

Sections 17 and 19 of the 2019 Act provide that the prior written consent of the Attorney General must be obtained before any amendment is made to a charity's governing instrument or name unless the charity is a foreign charity. Consent should be requested by writing to the Charities Administration at the address on the first page of this Bulletin or by e-mail to charities@gov.im. The following should be included in the request:-

- details of the amendment(s) to be made; and
- reasons for the proposed amendment(s).

Where the proposals include more than minor changes to a governing instrument, a copy of the governing instrument should be provided, marked up to show the proposed amendments. Wherever possible, this copy should be provided as an editable word document attached to an e-mail.

Only after written consent has been given by the Attorney General personally (or by the Solicitor General or a person authorised under section 45 of the 2019 Act) can the charity follow its usual procedure for adopting the changes. The charity must notify the adoption of the changes by sending a completed notification form and Annex D or E (as appropriate) to the Charities Administration within one month of the date of adoption.

In the case of a foreign charity, although the Attorney General's prior consent is not required, the charity trustees are encouraged to notify the Charities Administration of any proposed changes so that they can be informed of any matters which may affect the charity's eligibility to remain on the register should the proposals be adopted.

7. Requirement for registered charity to state specified information

Charities are reminded of the requirements set out in Regulation 20 to state certain information (including the name of the charity, that it is a registered charity, its charity number, the names of its trustees and a postal or e-mail address for correspondence) on its correspondence and any publicity, etc (including in electronic form, e.g. on websites, Facebook and other social media platforms). Failure to comply with the requirements of Regulation 20 is an offence which carries a maximum penalty on summary conviction of a fine of £10,000.

Full details of the requirements are set out in Regulation 20. As charity trustees are individually liable in the event of a breach of the requirements in respect their charity, they should now read Regulation 20 (set out on page 6 of this Bulletin for ease of reference) and ensure that the requirements are implemented for their charity.

8. Changes to administrative processes

Charities are reminded that routine correspondence from the Attorney General's Chambers concerning the administration of the register is no longer being sent by post, but only by e-mail. This includes notification of the publication of Charity Bulletins and reminders concerning the filing of annual accounts. Please ensure that a current e-mail address, which is checked regularly, is provided for correspondence purposes.

9. Seminars

It remains the intention to hold the seminars for charity trustees which had to be postponed as a result of the onset of the Coronavirus pandemic. Dates will be published as soon as it is possible to make the necessary arrangements. If restrictions on public gatherings look set to remain in place for some time, alternatives will be considered, eg using an on-line facility such as Zoom. Further information will be published on www.gov.im/charities as soon as available, along with details of how to book.

10. Raising matters concerning the registration and/or regulation of charities or the administration of the register

The Attorney General is supported in relation to the delivery of certain of his civil law statutory functions, including those relating to charities, by a team in the Crown Office of the Attorney General's Chambers, which comprises a senior lawyer (Michelle Norman), a paralegal (Gwenaël Styles) and two support officers (including Wendy Joughin). Since 1 April 2020, this team has been responsible for the administration of the charities register.

For the time being, Wendy Joughin remains the primary contact for matters concerning the register, but the intention is that Gwenaël Styles and the second support officer will take on some of the responsibility as the administration of the register becomes fully integrated into the team's workstreams. In the meantime, Gwenaël has been configuring the existing IT systems in order to make the public information held on the register available on-line, as well as assisting with the development of approved forms.

The work of the team is overseen by Michelle Norman, whom the Attorney General has authorised under section 45 of the 2019 Act to perform certain statutory functions, including approving (or refusing) applications for registration and providing consent for the adoption, or amendment, of a governing instrument. Michelle supports, and advises, the Attorney General in the exercise of his functions as regulator and, in that context, she is responsible for providing guidance to charities on matters such as adequacy of governing instruments (including the wording of charitable objects), the appropriateness of activities undertaken, or contemplated, by charities and the proper exercise by charity trustees of their role.

Queries concerning the current registration process, the filing of annual accounts, the notification of changes to charity trustees or their details or the proposed amendment, or adoption, of governing instruments should be sent to "Charities Administration" at the address on page 1 of this Bulletin or, if by e-mail, to: charities@gov.im. For telephone enquiries, ring (01624) 687318 and ask for Wendy Joughin.

General queries, including concerns about charities operating in the Isle of Man, can also be raised in any of these ways and will be directed to the appropriate officer on receipt.

Please note that original registration application forms and documents for filing, such as notification forms and annual accounts and reports, must be sent by post or delivered to the Attorney General's Chambers. There is no facility for on-line filing.

Any complaint or concern regarding matters dealt with by the team should be directed, in the first instance, to Michelle Norman, either by letter marked for her attention and sent to the Attorney General's Chambers, by e-mail to michelle.norman@gov.im or by contacting the Chambers' reception on (01624) 685452.

CHARITIES REGULATIONS 2020

20 Requirement for registered charity to state specified information

- (1) A registered charity must state the information referred to in paragraph (2) and (if appropriate) in paragraph (3) in the documents and communications referred to in paragraph (4). This is subject to paragraphs (5) to (9).
- (2) The information is as follows -
 - (a) the name of the charity and any other name under which it carries out the activities to which the document or communication relates;
 - (b) that is a registered charity;
 - (c) the IOM charity number and any number with which it has been registered as a charity in a country or territory outside the Island;
 - (d) the present forenames, or the initials thereof, and present surname of each charity trustee; and
 - (e) the postal address, or the e-mail address, for correspondence.
- (3) Where the name of a registered charity does not include the word "charity" or the word "charitable", the fact that the registered charity is a charity must be stated in any contract or other document by which land is transferred to, or from, its ownership.
- (4) The documents and communications are as follows –
 - (a) any document containing correspondence sent by the charity, including communications sent electronically;
 - (b) any document published by the charity, including in electronic form; and
 - (c) any advertising or publicity material used by the charity, including posters and any fundraising material.
- (5) The information referred to in paragraphs (2) and (3) must be stated in English in legible characters.
- (6) Paragraph (2)(d) does not apply in respect of a charity trustee to whom the restriction on identification in regulation 5(1)(e) applies.
- (7) It is not necessary to state the information referred to in paragraph (2)(d) and (e) if -
 - (a) the document or communication concerned includes the address of the charity's website or of a website¹ on which the Attorney General has published such information; and
 - (b) the charity trustees have taken all reasonable steps to ensure that the information published by the Attorney General is accurate at the time that the document or communication is sent, published or used.
- (8) In the case of information published by a registered charity on its website, it is not necessary to state the information in paragraph (2) on each page or document which forms part of, or is accessed through, the website provided the information appears at least once on the website.
- (9) In the case of a registered charity which is a body corporate, the requirements of paragraph (1) apply in addition to any requirements concerning the stating of information which apply to the charity concerned by the law governing its establishment.

¹ www.gov.im/charities