



## **CHARITIES BULLETIN**

### **ISSUE 6 – MAY 2021**

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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. On-line publication of information concerning charities**

In case of any queries, the Attorney General asks that the website [www.gov.im/charities](http://www.gov.im/charities) be the first point of reference, in particular the guidance regarding specific topics and the [Frequently Asked Questions](#) document. Please consider contacting the Charities Administration team only if the answer is not available on-line.

The website was re-formatted towards the end of 2020 and now comprises eight pages:

- The [landing page](#), which contains a description of the information to be found on each of the seven sub-pages, the contact details for Charities Administration and its opening hours and any announcements;
- [Index of charities registered in the Isle of Man](#), which includes a link to the searchable index as well as a table of recent changes to the register of charities (i.e. those charities added or removed within the last three months) and a link to the register of charity mergers;
- [Establishing and registering a charity in the Isle of Man](#), which includes information and guidance on establishing a charity on the Island, including model governing instruments, guidance as to the role of a charity trustee, information for foreign charities seeking to register here (including eligibility) and guidance as to the registration process;
- [Running a charity – ongoing requirements](#), which includes details of the statutory requirements applicable to registered charities, together with guidance as to the notification of certain changes (e.g. changes of trustees and their details) and information about how to make changes to charity names and governing instruments;
- [Annual accounts and reports](#), which includes information concerning compliance with the requirement to prepare and file annual accounts and reports and links to the published templates for receipts and payments accounts and annual reports;

- Winding up/dissolving a charity and the removal of a charity from the register, which includes information concerning winding up or dissolving a charity, including charity mergers, and the removal of a charity from the register;
- Charities legislation, which includes a description of, and links to, all the Manx legislation regarding charities which is currently in force, as well as to recently repealed legislation;
- Publications, which includes copies of all forms, templates, guidance, model governing instruments, Charities Bulletins, Frequently Asked Questions (FAQs), Coronavirus Guidance and other documents published by the Attorney General or the Charities Administration Team.

The Coronavirus Guidance and the FAQs are kept under review and will be updated as necessary.

Work continues on the transfer of data into our information management systems, which is a necessary step in the process of making public information held on the register available online. Until this information is available online, requests for public information held on the register concerning individual charities should be made in writing, preferably by e-mail to [charities@gov.im](mailto:charities@gov.im).

Any suggestions as to matters in respect of which published guidance would be useful, or for inclusion in the FAQs can be sent by e-mail to [charities@gov.im](mailto:charities@gov.im).

## **2. Reminders concerning changes to requirements to file annual accounts and reports**

The provisions of the Charities Registration and Regulation Act 2019 (“the 2019 Act”) and the Charities Regulations 2020 apply with effect from the accounting year in which the Act came into force, i.e. 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.

This means that, as the new legislation has now been force for over 12 months, every charity has now had at least one accounting year in respect of which the new requirements concerning the preparation and filing of annual accounts and reports apply. Although those requirements have been set out in detail in previous Bulletins, on the Annual accounts and reports page on the website, in the Guidance on the Preparation of Receipts and Payments Accounts and Annual Report, in the FAQs (both documents available on the [Publications page](#)) and in reminders sent to charities, repeated errors are being seen with the documents filed including:

- Annual reports not being submitted at the same time as the annual accounts, or at all;
- Receipts and Payments accounts being submitted other than on the published template;
- Receipts and Payments accounts being submitted by charities which are required to prepare their accounts on an accruals basis;
- Accruals accounts being submitted without any confirmation as to whether they have been prepared in accordance with “proper practices” (see page 3 below)
- Independent examiners preparing their reports using the prescribed form which has been superseded by a published template.

- Accounts being submitted without audit where, irrespective of the amount of the charity's gross income, audit is a requirement of the charity's governing instrument or other governing law;

As the requirement for audit or examination may arise irrespective of the amount of your charity's gross income, please confirm the requirements regarding your charity. In case of any doubt, please see [Flowchart #2 Do my charity's accounts require to be scrutinised?](#)

Please also note that the requirements for audit or external examination under section 27 of the 2019 Act apply depending on your charity's "gross income" for the accounting year in question. "Gross income" is defined in Regulation 16 as being the total recorded income of the charity from all sources including special trusts and funds released from endowments, but excluding — (a) resources being received as endowments; (b) gains from disposals of fixed assets and investments; (c) asset revaluation gains. Thus, for example, if your charity is gifted with a property which it is unable to sell, its value does not form part of the gross income for that year.

A number of charities with a small income are filing accounts which have been subject to independent examination even though such examination is only required under the 2019 Act if the gross income for the accounting year in question exceeds £25,000. If your charity is not required by law (including any provisions in its governing instrument) to have its accounts scrutinised by an independent examiner, then the charity trustees should think very carefully about whether the expense of doing so can be justified, particularly in cases where the charity's income is such that it does not cover its operating costs. If a charity is obliged to have its accounts independently examined, or audited, because of a requirement in its governing instrument to this effect but its gross income is below the applicable thresholds in the 2019 Act, then the charity should consider amending its governing instrument to remove such requirement.

We have been asked whether there is a template for accounts prepared on an accruals basis or for an annual report of a charity the gross income of which exceeds £250,000. Such accounts and report have to be prepared in accordance with "proper practices", i.e. in accordance with FRS102 or a SORP currently published by the Charity Commission for England and Wales or the Office of the Scottish Charity Regulator. The Attorney General does not publish a template for accruals accounts because he considers that it is a matter on which charities should take the appropriate professional advice.

Regarding the completion of the annual report, one of the primary purposes of the report is to demonstrate whether the charity's activities during the accounting year in question are ones which can properly be carried out within its objects. If they cannot, the charity trustees may have been acting in breach of the charitable trusts, in which case the Attorney General would have to consider the exercise of his regulatory powers.

It is for this reason that the requirement is to state the charity's objects exactly as they are written in the charity's governing instrument. A summary or other wording of the objects is not sufficient. Also, the report on the activities must set out a sufficient explanation of the activities carried out by the charity in the furtherance of its objects for the Attorney General, and members of the public, to be able to form an initial view as to whether the charity has been acting properly.

As the annual reports and accounts filed in compliance with the statutory requirements form part of the information concerning the charity which is available to the public, it is good practice not to include the names of individuals connected with the charity, such as volunteers, who are not charity trustees. Individual donors to, or beneficiaries of, the

charity should never be named in those documents unless they have consented in writing to their identity being made public.

### **3. Reminders concerning notification of changes**

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)  
*NB Your charity will have a "responsible person" only if it is a foreign charity without charity trustees resident on the Island.*
- 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 occurrence of the relevant change, as required by section 23 of 2019 Act.

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 first two pages of the form and the annex(es) which relates 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 properly be processed and may be returned.

Please note that, when completing a notification form and the relevant Annex, it is important that all the fields be completed correctly, taking account of the guidance provided by the footnotes. As notification forms are "approved forms", they may be rejected by the Attorney General if they have not been completed correctly. If rejected, the requirement to notify the change will not have been complied with. Also, considerable administrative time is taken up in requesting missing information.

Despite having published the Guidance on notifying the occurrence of an event using the notification form (available on the [Publications page](#)) and set out the requirements in previous bulletins, we continue to receive a significant number of incorrectly completed notification forms. The most common errors/omissions are:

- Submitting an Annex without pages 1 and 2 of the form;
- Omitting titles of individuals (e.g. Mr, Mrs, Miss, Ms, Dr);
- Omitting former names of individuals (in particular where the title given is "Mrs");
- Giving shortened forms of forenames;
- Omitting offices held by individual charity trustees where the charity's governing instrument requires the appointment from among the Charity trustees of officers such as a Chairperson, Secretary, Treasurer, etc.;
- Omitting dates of changes, e.g. dates of resignations and appointments;
- Completing the forms with illegible handwriting;
- Submitting copies of Form 9N;
- Submitting change notifications using the old Schedule 3 form;
- Using the incorrect continuation form for trustees; and
- In the case of a charitable company, notifying individuals as trustees who have not been appointed as directors [NB the directors are the charity trustees and only they should be notified as such].

Please do not provide the details of an officeholder (e.g. Chairperson, Secretary, Treasurer) unless that person is one of the charity trustees<sup>1</sup>. This is because it is only the details of the charity trustees which are required to be held on the Register. So, for example, if the charity's secretary is not a charity trustee, details concerning that person should not be notified. This means that, in relation to a charitable company, details of the person appointed as company secretary for the purposes of company law should not be provided unless s/he is also a director of the company.

Finally, the notification form must be signed by a person who is a charity trustee on the date of signing. In particular, this means that a person cannot notify their own retirement as a charity trustee because the retirement will have taken effect before the form is signed.

Further guidance is included in the "Guidance on notifying the occurrence of an event using the notification form" which is available on [www.gov.im/charities](http://www.gov.im/charities).

Please note that the notification form is only for use for notification of changes referred to in section 23. Thus, for example, if a charity changes its accounting year end, the Attorney General should be informed of this 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](mailto:charities@gov.im).

#### **4. Reminder regarding the 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.<sup>2</sup> (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 below for ease of reference) and ensure that the requirements are implemented for their charity.

Please note that, as an alternative to including the information referred to in Regulation 20(2)(d) and (e), the charity can include either the address of its own website (provided the information is published there) or of our website: [www.gov.im/charities](http://www.gov.im/charities) (provided the charity ensures that the information held on the register is kept up to date). The postal and e-mail correspondence addresses are published as part of the Index of charities registered in the Isle of Man and, although the names of charity trustees cannot yet be accessed on-line, the website does provide information about how public information held on the register can be obtained.

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<sup>1</sup> The "charity trustees" are the persons who have the general control and management of the administration of the charity concerned. The term by which they are known depends on the legal nature of their charity: e.g. in the case of an unincorporated association, the committee members are the charity trustees, in the case of a company, it is the directors or the members of the Council of Management (depending on the term used in the Articles of Association) or, in the case of a charity established as a trust, it is the trustees.

<sup>2</sup> See the list in Regulation 20(4).

## 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 website<sup>3</sup> 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.

### 5. Reminder regarding the provision of a correspondence e-mail address

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

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<sup>3</sup> [www.gov.im/charities](http://www.gov.im/charities)

e-mail. This includes the sending out of reminders regarding the filing of annual accounts and reports and the notification of announcements and updates.

For this reason, it is essential that the e-mail address provided by the charity (which is required to be held on the register and will be published as the charity's e-mail correspondence address) is an effective means of corresponding with the charity trustees. Ideally, the correspondence address provided should be one which is accessible to more than one of the trustees of the charity, so that it is able to be checked irrespective of the availability of a particular individual or that person's access to a particular computer system, e.g. a school computer during the holidays. For this reason, we recommend the use of an e-mail address which is specific to the charity, rather than, for example, the personal or work e-mail address of the secretary.

## **6. Reminder regarding governing instruments**

Any charity which does not already have a written governing instrument is required to adopt one by 1 April 2022. Model governing instruments, and guidance as to their use, are available on the [Publications page](#).

The charity trustees of charities which already have a written governing instrument should ensure that its provisions are being adhered to (e.g. that the required number of charity trustees have been appointed) and also that it remains fit for purpose. The model governing instruments have been prepared in accordance with the requirements of Regulation 8, so may be used as examples of good practice when considering whether an existing governing instrument should be amended or replaced.

Any change to a governing instrument requires the prior written consent of the Attorney General. For further information, please see the Guidance on making changes to the name of a charity or to its governing instrument, which is available on the [Publications page](#).

## **7. Financial and other regulatory matters**

Charities are reminded that they are obliged to have in place accounting control systems, as described in Regulation 10(6). These include measures to ensure that risk is appropriately managed. In that regard, charity trustees should be familiar with the extent of the protection afforded by the Isle of Man Depositors' Compensation Scheme and avoid holding funds with individual banks or groups which exceed the amount protected. Further information concerning the Scheme can be obtained from the Isle of Man Financial Services Authority ("the FSA").

Charities should also be aware that, if they fall within the definition of a "specified non-profit organisation" as set out in Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015, they will be designated businesses for the purposes of that Act, in which case they are required to be registered with the FSA.

*The definition of "specified non-profit organisation" is a body corporate or other legal person, the trustees of a trust, a partnership, other unincorporated association or organisation or any equivalent or similar structure or arrangement, established solely or primarily to raise or distribute funds for charitable, religious, cultural, educational, political, social, fraternal or philanthropic purposes with the intention of benefiting the public or a section of the public —*



- (a) which has an annual or anticipated annual income of £5,000 or more;*
- (b) (which has remitted, or is anticipated to remit, at least £2,000 in any one financial year to one or more ultimate recipients in or from one or more higher risk jurisdictions; and*
- (c) where the decision as to where to remit the funds is made within the Island;*

*and for the purposes of this definition "higher risk jurisdiction" means a jurisdiction which the specified non-profit organisation, having considered any relevant guidance, determines presents a higher risk of money laundering, the financing of terrorism or proliferation.*

Further information can be obtained from the FSA.

## **8. Seminars for charity trustees**

The programme of seminars has now been completed, with 13 being held in total in February, July and December 2020 and May 2021. If anyone would like a copy of the handout which was distributed to the attendees, please e-mail [charities@gov.im](mailto:charities@gov.im). The handout contains information regarding both the new legislation and the responsibilities of charity trustees.

## **9. Other information**

Charity trustees may be interested in the [Charities Governance Code](#) published by the Charity Governance Code Steering Group which is a cross-sector collaboration involving a number of organisations in the UK, the Charity Commission for England and Wales being an observer.

There are two versions published; one for larger charities and the other for smaller charities.

## **10. Future announcements/updates**

Any future announcements or updates will be notified on the charities website landing page and by e-mail alerts sent to the correspondence e-mail addresses which are held on the register. The Charities Bulletins were intended to be published on an ad hoc basis as part of the process of implementing the new legislation. As that process has now concluded, it is not the present intention to issue any further Bulletins.