

New Charity Law - Update

Many of you will have seen that the States will be adopting a new Charity Ordinance at the June 2021 States meeting. Those of you who have attended AGC meetings in the past couple of years will know of the background to this and, generally, what is being proposed, but for those who missed this, here is a brief recap.

Why do we need a new Charity law?

Current Charity Law in Guernsey is only a requirement to Register above certain thresholds, and for Registrants to do some simple things like keep proper records. In fact there are two Registers, one for Charities and the other for Non-Profit Organisations, but the distinction is arcane, poorly understood and many NPOs are registered as Charities, and vice versa. No one polices the Law, because no one has the power to do this, except maybe the Police. It's all a bit feeble.

Within the past decade, internationally, religious charities have been abused for terrorist financing and the OECD, which sets international anti-money laundering standards, has given guidance on the regulations it expects to see so as to counteract this sort of terrorist financing.

Guernsey's AML regime is being reviewed at the start of 2023 so if we expect to have a "Compliant" rating for our AML law, we need to strengthen the law here before that review.

If we do not strengthen our law there is a strong risk that we could be put on the OECD blacklist, which would be catastrophic for our finance-based economy.

So what is being proposed?

Given that only a very small number of Bailiwick charities have missions which involve sending funds outside the Bailiwick, the risk of terrorist financing here is very low, and we agreed with Government at the outset that the impact of new regulation should be light touch. We did not want to see a formal, expensive, bureaucratic, and intrusive Charity Commission for example.

But there has to be a baseline for charity governance that can ensure that all charities are properly accountable, and able to be monitored. The existing law does not do that.

So, the new law has two parts, the Ordinance (the document which the States will approve in June 2021) and the Regulations (which we haven't yet seen).

What is in the Ordinance?

It establishes a new, single register of NPOs and any organisation who wishes to be classified as a Charity within the Register must meet a Charitable Purpose test. See attached for a list of Charitable Purposes.

It empowers the Office of the Registrar to register and supervise Registered organisations. Note that the thresholds for registration have been raised to annual income more than £20,000, or assets more than £100,000.

It permits the Registrar to refuse applications, in particular where a person on a charity committee is prohibited because they have an unspent criminal conviction or a disqualification order.

It empowers P&R to set Regulations which govern the operation of a charity. We have not yet seen these Regulations, even in draft, but they are likely to follow the Guidance issued jointly by the AGC and P&R in November 2018.

It requires a Registered Organisation to report payments above a specified amount (this amount will be in the Regulations) outside the Bailiwick, other than payments for incidental purposes, or payments to affiliates in the UK, Jersey or the IoM.

It requires changes in the charity registration details within 21 days of the change, and it requires a registered organisation to complete the annual validation form by 28th February each year.

What do you have to do now?

The Ordinance does not come into action until a date provided within the Regulations, which we haven't yet seen even in draft. And we expect to have at least one round of consultation on the content of the Regulations. So at least a year we think.

Also, there will be some (to be agreed) transitional provisions. We think you are likely to have to complete some extra questions in your next Annual Validation form, mainly to specify which Charitable Purpose applies to you.

So not a lot for the time being.

The most useful thing you can do now is to look at the Charitable Purposes and establish which you think applies to you. You will have to justify why your charity mission fits within the Charitable Purpose you choose.

You can also choose to de-register if you so choose (see below).

What help can I get from the AGC?

We considered whether to put on a briefing session on the new law but have decided that it is too soon. The new Ordinance doesn't yet impinge on your activities, and until we see when it is coming into force, and particularly what the Regulations will mean for you, we think our time is best served by waiting until the picture is clearer.

When we do have the Regulations, the Operative Date, and the Transitional Provisions we will put on some seminars, training courses and workshops, using offers of help from professional sources.

Should I de-register?

If you fall below income of £20,000 or assets of £100,000, yes, you can choose to de-register.

Bearing in mind that Registration is free we would hope that you will consider the trade-off between the obligations of being a Registered Organisation and the authority that this adds your organisation.

Please also bear in mind that only Registered Organisations can:

- benefit from Guernsey Deposit Compensation Scheme
- benefit from access to the Financial Ombudsman
- be a member of the Association of Guernsey Charities

List of Charitable Purposes (Schedule 4 of the Law)

- (a) the prevention or relief of poverty,
- (b) the advancement of education,
- (c) the advancement of religion,
- (d) the advancement of health,
- (e) the saving of lives,
- (f) the advancement of citizenship or community development,
- (g) the advancement of the arts, heritage, culture or science,
- (h) the advancement of public participation in sport,
- (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,
- (j) the advancement of human rights, conflict resolution or reconciliation,
- (k) the promotion of religious or racial harmony.
- (l) the promotion of equality and diversity,
- (m) the advancement of environmental protection or improvement,
- (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,
- (o) the advancement of animal welfare, and
- (p) any other purpose that may reasonably be regarded as analogous to any of the purposes listed in subparagraphs (a) to (o).

Interpretation

- in item (d), "the advancement of health" includes the prevention or relief of sickness, disease or human suffering,
- item (f) includes –
 - (i) rural or urban regeneration, and

(ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of registered charities,

- item (h), "sport" means sport that involves physical skill or exertion,
- item (i) applies only in relation to recreational facilities or recreational activities that are –

(i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or

(ii) available to members of the public at large or to male or female members of the public at large,

- item (n) includes relief given by the provision of accommodation or care,
- item (p) includes, without limitation, the advancement of any philosophical belief (whether or not involving belief in a god) as analogous to the purpose set out in item (c).