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## **Introduction**

The purpose of the consultation is to collect views on proposed new legislation which aims to update and improve the effectiveness of the registration and regulation of Charities in the Island.

The registration and regulation of charities is currently provided for by the Charities Registration Act 1989. Over time, the provisions of that Act have become outdated and additional requirements are necessary so that there is a modern system in place which will enable the public to retain confidence in the Manx charitable sector. It is also necessary to take account of recent changes to the meaning of "charity" in England and Wales so that bona fide charities which are established in that jurisdiction are not prevented from carrying on activities here.

The Bill does not seek to make any changes to the nature of an organisation that can register as a charity in the Island, such as imposing an income threshold, nor does it alter the requirement that it have a substantial and genuine connection with the Island. Further, whilst the Bill extends the authority of the Attorney General as regards giving consent to certain steps to be taken by charities, it does not seek to exclude the jurisdiction of the High Court, which is provided by the Charities Act 1962.

## **Overview**

The Bill has six main purposes, namely:

- 1 to update the meaning of "charity" in the Island so that it remains at least as broad as in England and Wales;
- 2 to provide for a modern register of charities which are carrying out activities within the Island;
- 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;
- 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;
- 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
- 6 to provide a simplified mechanism for appealing decisions of the registrar/regulator by establishing a Charities Tribunal.

## **The Charities Registration and Regulation Bill 2018**

### *Part 1 – Introductory*

Part 1 of the Bill deals with its citation and commencement and the interpretation of certain terms.

### *Part 2 – Meaning of "charity" and "charitable purpose"*

Clause 4 restates the existing definition of "charity" and clause 5 sets out a definition of "charitable purpose" which requires the purpose to be one included in a list (which includes all of the purposes which are presently applicable in England and Wales) as well as being for the public benefit, as required by clause 7. Clause 8 makes it an offence for an institution to hold itself out as being a charity unless it is a registered charity or a charity exempt from the requirement to register.

### *Part 3 – The register and registration*

Clause 9 provides for there to continue to be a register, to be kept by the Attorney General who prescribes the information to be contained in it as well as the information which may be made available. Clause 10 imposes an express requirement to register and preserves the requirement that a registered charity have a substantial and genuine connection with the Island.

Clauses 11 to 13 provide for the application for registration, the criteria for the determination of an application and the administrative steps to be taken on registration. Clause 14 provides that the Attorney General is not liable for the accuracy of any document submitted for inclusion on a register maintained under the Bill but provides a power to make inquiries to establish the accuracy of any information provided. Clause 15 provides for the circumstances in which an institution must be removed from the register.

### *Part 4 – Formal requirements for registered charities*

Clause 16 requires that every registered charity have a written governing instrument. The date on which this requirement will take effect in relation to charities which had previously registered will be prescribed by the Attorney General but will be at least two years after this provision comes into operation.

Clauses 17 and 18 make provision for the amendment of the governing instrument, including the amendment of a charity's objects.

Clauses 19 and 20 make provision as regards the change to a charity's name, including the power of the Attorney General to require a charity to abandon a misleading or undesirable name.

Clauses 21 and 22 make provision in relation to the adoption, or amendment of, a governing instrument in the case of an existing charity, including giving the Attorney General to power to consent to such adoption or amendment or, in the case of a charity constituted under an Act of Tynwald, to make an order amending the Act to effect the necessary change.

To ensure that the register is kept up to date, clause 23 provides for the notification to the Attorney General of amendment to the various particulars of registered charities.

### *Part 5 – Charity trustees*

Clause 24 defines a “charity trustee” for the purposes of the Bill.

Clause 25 provides circumstances in which a person is automatically disqualified for being a charity trustee, albeit the Attorney General can waive the application of the provision in cases where it is the public interest to do so.

Clause 26 imposes a requirement on the Attorney General to provide the Financial Services Authority with a copy of any notification under clause 23 concerning charity trustees.

### *Part 6 – Charity accounts and annual reports*

Clause 27 re-enacts the existing requirement that a registered charity file annual accounts, which may be subject to audit or examination depending on whether the charity’s income exceeds the relevant thresholds. Supplementary provisions as regards auditors are made by Clause 28.

Clause 29 imposes a requirement that every registered charity also file an annual report as to the activities of the charity and such other information as may be prescribed.

Clause 30 clarifies that, in the case of a charity established elsewhere than in the Island (“a foreign charity”), the requirement as to the filing of annual accounts and reports is in relation to the activities of the charity carried on by it in, or otherwise connected with, the Island.

### *Part 7 – Charity mergers*

Clause 31 provides for a register of charity mergers to be kept by the Attorney General. Clause 32 describes the circumstances which constitute a charity merger for the purpose of clause 31. Clauses 33 and 34 make provision in relation to the notification of a charity merger and the details to be entered onto the register of charity mergers.

The effect of the registration of a charity merger on gifts to a charity which ceases to exist following the merger is provided for by clause 35.

### *Part 8 – Regulation and inspection*

Clauses 36 and 37 re-enact the existing powers of the Attorney General to obtain information as to the property of a registered charity and to institute inquiries into an institution which is, or purports to be, established for charitable purposes. Clause 38 provides for the obtaining of search warrants in connection with an inquiry under clause 37, the detailed provisions for their obtaining and use being set out in the Schedule.

Clause 39 re-enacts the existing powers of the High Court, on the application of the Attorney General, to make orders for the protection of charities and their property, such as for the removal or suspension of a trustee.

### *Part 9 – Foreign charities*

The definition of a “foreign charity” is set out in clause 40.

Clause 41 imposes a requirement that, if none of its trustees are ordinarily resident in the Island, a foreign charity to appoint a person resident in the Island as the “responsible person”, who will be responsible for the compliance by, or on behalf of, the charity in respect of all applicable statutory requirements.

### *Part 10 – Appeal*

Clause 42 establishes a Charities Tribunal.

The jurisdiction of the Charities Tribunal is set out in Clause 43, namely to determine an appeal in respect of a decision or direction of the Attorney General under the Charities Act 1986 or under any of the provisions of the Bill, with the exception of a decision as to the exercise of the Attorney General's functions under Part 8. A further appeal lies to the High Court on a point of law.

### *Part 11 – Miscellaneous provisions*

Clause 44 imposes a requirement for a decision or direction which is subject to a right of appeal to be given in writing and to include a statement of reasons.

Clause 45 enables the Attorney General to appoint a person employed as an officer in the Attorney General's Chambers to perform certain specified functions. For the purpose of any appeal, a decision of that person in the exercise of the relevant function is treated as if it were a decision of the Attorney General.

Clause 46 makes provision as regards the making by the Attorney General of regulations to carry the provisions of the Bill into effect. Tynwald approval is required.

Clauses 47 and 48 re-enact existing provisions regarding the winding up of institutions by the High Court and as to the invalidity of certain transactions of charitable companies.

Clause 49 makes provision as to the reference on a registered charity's correspondence to matters to be prescribed.

Clause 50 makes it an offence knowingly or recklessly to furnish any information which is false or misleading in a material particular.

Clause 51 sets out supplementary provisions in relation to offences under the Bill, including a provision which makes certain persons connected with an institution liable for its non-compliance.

Clause 52 makes provision as to the delegation by charity trustees.

Clause 53 makes provision as regards approved forms to be used for the submission of information.

Clause 54 makes provision as regards the keeping of records by the Attorney General.

Clause 55 empowers the Attorney General to enter into arrangements with the Registrar General for the provision of services in connection with the delivery of the Attorney General's functions under the Bill.

Clause 56 makes provision as regards the refusal of unacceptable documents.

### *Part 12 – Amendments and Repeals*

Clauses 57 to 62 provide for certain consequential amendments as well as for the repeal of the Charities Registration Act 1989.

## *Human Rights*

In the opinion of HM Attorney General, the provisions of the draft Bill are compatible with the Convention rights (within the meaning of the Human Rights Act 2001). Although Clause (3) will enable the Attorney General to prescribe that certain information contained on the Register be available to the public, as the right to respect for an individual's private life which is protected by Article 8 is a qualified right, this will necessarily require the weighing up of the relevant competing interests, as permitted by paragraph 2.

### **Comments**

Views on the draft Bill which is attached to this document are now sought. To assist readers of the Bill, Explanatory Notes have been prepared and these are provided with this document.

General comments on the Bill and related matters are welcome.

### **Responding to the consultation**

When submitting your comments please indicate whether you are responding on behalf of an organisation (and if so which organisation) or on your own behalf. Anonymous responses will not be accepted.

Please let us know whether we can publish your comments.

Any comments or questions should be submitted in writing please (unless unable to do so by reason of a disability) to –

Michelle Norman  
Senior Legal Officer (Advisory)  
Attorney General's Chambers  
Belgravia House  
Circular Road  
Douglas  
IM1 1AE

Or by email to: [michelle.norman@attgen.gov.im](mailto:michelle.norman@attgen.gov.im)

The closing date for the receipt of comments is 5 October 2018.

Paper copies of this document can be provided upon request.

### **What happens next?**

After this consultation closes a summary of matters raised in the consultation, with responses where appropriate, will be published and the draft Bill will be finalised with a view to it being introduced into Legislature at the earliest practical opportunity.

## **Bodies to be consulted directly**

- Tynwald Members
- Isle of Man Law Society
- Isle of Man Constabulary
- Judiciary

## **Consultation Criteria**

The Council of Ministers' "Public engagement and consultation principles" were laid before the November 2017 sitting of Tynwald. In summary, the consultation principles are as follows:

1. Consultations have a purpose and offer genuine opportunities to make a difference
  2. Consultations follow a clear and open process
  3. Consultations are well planned and delivered in a reasonable timescale
  4. We encourage and enable everyone affected to get involved, if they wish to
  5. We provide jargon free and understandable information
  6. Use suitable methods to deliver the consultation
  7. We learn and share lessons to improve future consultations
  8. We tell people the impact of their contribution
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