

Changes to Charity Regulation — Policy Letter November 2019

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Why is change needed?

- Current regulation is pretty feeble
- Adverse Anti-Money Laundering findings in 2015
- FATF very concerned about Non-Profit Organisations being used to support terrorism. Two important documents issued that frame their approach to NPOs
 - “Combating the abuse of Non-Profit Organisations”
 - “Detecting Terrorist Financing – Relevant Risk Factors”
- Next AML visit coming in 2022

Consultation and advance warning

- Long, but sympathetic discussions about a proportionate set of rules
- Public consultation two years ago; the approach was generally accepted
- P&R produced a “Guidance Paper” last year on changes to Governing Documents
- Anticipated changes heavily trailed at last AGC Forum and AGM

So what are the changes (1)?

- Single (merged) Register; charities identified using a Charitable Purpose test
- The registration thresholds are going up, but Registrar can waive some requirements for voluntary registration below the threshold
- Reference to regulations for standards of ethical conduct (for further consultation)

So what are the changes (2)

- Governance provisions
 - constitutions will have to have some specific things in them
 - some people may not be allowed to be “controllers”
 - you’ll have to keep good records, conduct background checks and report on some large donations and grants in excess of £5,000
 - financial probity and transparency
 - Limit for cash transactions
 - Dual control of payments
 - No requirement to publish accounts but must be available to Committee/Officers
 - Registry can compel audit and publication of accounts if it is the public interest

Enforcement

- Yes, there will be enforcement
 - by the Registry
 - they'll have a right of inspection and to ask for documents
- Sanctions for breaches will be against the charity and officers
 - private warnings
 - public warnings
 - fines and penalties are going up (current level not considered dissuasive)
 - charity could make a claim against officers for acting ultra-vires or negligently
 - Permissive powers not compulsory powers

What will your constitution need to have in it? (1)

- Name
- Legal status
- Purpose & mission
- Whether affiliated to another NPO
- Nature and identity of your members
- Membership rules (eligibility, suspension, expulsion etc.)
- Rules for proceedings at meetings, particularly quorums
- Rights of members to have the annual accounts inspected independently

What will your constitution need to have in it? (2)

- Rights of members to see the annual accounts
- If there is a Committee or Board
 - Terms of office
 - Conflict of interest provisions
 - Retirement and dismissal
 - Remuneration (if applicable)
 - One Committee member must be Guernsey resident
- Duties and powers of the Committee/Board
- Duties and powers of the Chairman
- Duties and powers of the Treasurer
- Duties and powers of the Secretary (if you have one)
- Rules for procedures at Committee/Board meetings, including provisions for quorums

Help from the AGC

- www.charity.org.gg/AboutAGC - look for *Forum November 2019*
 - Policy letter
 - Paper from P&R giving Guidance on changes to Constitutions
 - Jersey Charitable Purpose Test
 - AGC Constitution checklist
- Specimen constitution for small charities (to come)
- Training and workshops (to come)