

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

The States are asked to decide:-

Whether, after consideration of the Policy Letter dated 12th November, 2019, of the Policy & Resources Committee, they are of the opinion:-

1. To agree to the introduction of a single register of NPOs and the repeal of the requirement for the Registrar to maintain a separate register of charities
2. To agree to amend the definition of NPOs by the introduction of a charitable purposes test, which may be amended by regulations made by the Committee after consultation with the Registrar
3. To agree to amend the criteria for registration to bring them in line with the risks posed by the NPO sector
4. To agree to the introduction of a power for the Committee to make regulations, after consultation with the Registrar, exempting types or classes of NPO from the requirement for registration or from particular obligations attaching to registration, including NPOs who register voluntarily, and making changes in respect of the thresholds or any exemptions that have been put in place
5. To agree to the widening of the Registrar's powers to refuse applications for registration
6. To agree to the introduction of restrictions on the persons who may act as owners, controllers or directors of NPOs
7. To agree to the introduction of a power for the Committee to make regulations, after consultation with the Registrar, in respect of governance measures applicable to NPOs, including in respect of ethical standards
8. To agree to the introduction of wider information-gathering and oversight powers for the Registrar and information sharing gateways between the Registrar and other parties
9. To agree to the introduction of an exemption from the requirement to provide information about the owners, controllers or directors of NPOs that are Guernsey or Alderney legal persons where that information has already been provided under the registration requirements applicable to those legal persons upon and subsequent to incorporation, and to any amendments to the Beneficial Ownership of Legal Persons

(Guernsey) Law, 2017 that may be necessary to ensure consistency of sanctioning powers

10. To agree to changes to the sanctions applicable for non-compliance with the registration requirements
11. To agree to the introduction of a reporting requirement in respect of certain categories of transaction and a power for the Committee to make regulations, after consultation with the Registrar, amending the categories of transaction exempt from this requirement
12. To agree to the repeal of the Law and the introduction of new legislation consolidating the registration framework applicable to Guernsey and Alderney as outlined in the Policy Letter; and
13. To direct the preparation of such legislation as may be necessary to give effect the foregoing, including any necessary consequential and incidental provision.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

CHARITIES AND OTHER NON PROFIT ORGANISATIONS

Presiding Officer
Royal Court
St Peter Port
Guernsey

12th November, 2019

Dear Sir

1. Executive Summary

- 1.1 The Bailiwick of Guernsey is fortunate to have a successful and healthy charitable sector involved with a wide variety of community activities. Many of these voluntary, non-profit and charitable organisations (referred to collectively in this policy letter as “NPOs”), work alongside the States of Guernsey (“the States”) to deliver essential services and facilities. The States recognises and is grateful for the significant contribution NPOs make to the community. They are viewed across the States as an important partner in realising the vision to “be among the happiest and healthiest places in the world, where everyone has equal opportunity to achieve their potential. We will be a safe and inclusive community, which nurtures its unique heritage and environment and is underpinned by a diverse and successful economy”, as set out in the Future Guernsey Plan, the plan for government. In this regard, the Policy & Resources Committee welcomes the input which has been provided by the Association of Guernsey Charities (“AGC”) and the Guernsey Community Foundation. The Committee will work with the third sector as the legislative framework envisaged in this policy letter develops. The Committee is conscious of the importance for the framework governing NPOs to be proportionate.
- 1.2 This policy letter proposes a number of changes to the registration framework for NPOs that is currently set out in the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (“the Law”). The Law applies to NPOs established in Guernsey and Alderney. The changes proposed by the Committee will help to strengthen the governance of NPOs and support them to more effectively manage risk, while enabling the States to comply with international financial regulations and standards. The changes fall into six categories.

- 1.3 The first category is aimed at facilitating a more targeted and risk based approach to compulsory registration, which requires the removal of the registration requirement from low risk NPOs and its extension to some which are currently exempt NPOs that are assessed as being higher risk. This may be done by raising the financial thresholds for registration and amending both the definition of NPO (including the introduction of a charitable test) and the exemptions from registration. It is envisaged that these changes will in turn enable the introduction of a single register for NPOs, to include charities, rather than the maintenance of two separate registers as currently required under the Law. This is dealt with in paragraphs 4.2 and 4.3 below.
- 1.4 The second category is aimed at preventing the registration framework being used inappropriately. This involves a widening of the power to refuse applications for registration and the introduction of a basic fit and proper test for the officers of NPOs. This is dealt with in paragraphs 4.4 and 4.5 below.
- 1.5 The third category concerns the quality of the controls that NPOs have in place and the information they obtain about parties with whom they deal. This involves an extension of the compulsory governance obligations applicable to registered NPOs and the introduction of a reporting requirement for overseas transactions above a specified threshold. This is dealt with in paragraphs 4.6 and 4.7 below.
- 1.6 The fourth category relates to the possible use of the registration framework to promote standards of ethical conduct in the charitable sector, particularly in relation to adult safeguarding and child protection requirements. This is dealt with in paragraph 4.6 below.
- 1.7 The fifth category is aimed at more effective enforcement. This involves both widening the information gathering and other oversight powers of the Registrar of Guernsey and Alderney NPOs (“the Registrar”), widening the range of sanctions available to the Registrar and raising the level of existing sanctions applicable for non-compliance with the obligations under the registration regime. These measures would be accompanied by the power for the Registrar to issue statutory guidance and standard forms, and enhanced information. This is dealt with in paragraphs 4.8 and 4.9 below.
- 1.8 The sixth category concerns clarity and ease of use. It involves the repeal of the Law and the introduction of new legislation consolidating and clarifying the registration framework applicable to Guernsey and Alderney. This is dealt with in paragraph 5 below.

2. Background

- 2.1 The current framework was introduced in order to address the standards of the Financial Action Task Force (“the FATF standards”) in respect of money laundering and terrorist financing in place at that time, in line with the Bailiwick’s longstanding commitment to meeting international standards in relation to financial crime. The framework has been revised from time to time. These revisions include the extension of the Law to Alderney in 2011, changes made in 2014 to clarify the language around

criminal offences and to widen the information-sharing gateways in the Law, and the issue of joint guidance by the Policy & Resources Committee and the AGC in 2018.

- 2.2 The Committee has conducted a comprehensive review of the registration regime, which has taken into account a number of factors that point to the need for further changes.
- 2.3 First, there are two recommendations in the January 2016 MoneyVal report on Guernsey's compliance with the FATF standards which can only be met by revisions to legislation. These are the extension of the registration requirements to manumitted organisations (this term is explained in paragraph 3.1.5 below) and the strengthening of the sanctions for failure to comply with registration requirements. Second, the FATF has revised its standards on NPOs since the Law was introduced and these changes need to be considered in the context of any revisions to the legal framework. These changes include requirements for jurisdictions to identify, assess and understand risks as well as specific requirements in relation to the NPO sector. Third, although the Law was introduced to meet the FATF standards in force in 2008 and, therefore, the international anti-money laundering and terrorist financing ("AML/CFT") agenda at that time, it is recognised that there is a need to enhance governance standards in a proportionate way within NPOs generally, not only for AML/CFT purposes. Fourth, input by the AGC and the Registrar, and their experience with the legislation, has disclosed a need to simplify the current legislation on NPOs. Fifth, following the recent introduction of Guernsey and Alderney registers of beneficial ownership of legal persons, which are separate registers maintained under dedicated Guernsey and Alderney legislation, there is now a potential duplication issue for NPOs that are Guernsey or Alderney legal persons in respect of the information about their owners or controllers that must be included in their applications for registration as NPOs and the information that must be provided for the purposes of the beneficial ownership registers.
- 2.4 The ethical governance of the charitable sector (particularly in respect of child protection and adult safeguarding) has also become a matter of growing public concern; brought to light in particular through the Charity Commission's recent investigation into Oxfam's conduct¹. Many local charities, whether focused on Guernsey or overseas, work with especially vulnerable groups of people, and governments and regulators have an important role to play in establishing appropriate standards of ethical conduct, which prioritise the welfare of those people. In updating the current framework, the States of Guernsey has an opportunity to put measures in place that will enable such standards to be set for the local charitable sector, in an appropriate and proportionate way.

¹ <https://www.gov.uk/government/publications/charity-inquiry-oxfam-gb>

3. The Current Position

3.1 Existing Framework

3.1.2 The existing legal framework requires NPOs based in Guernsey, Alderney, Herm or Jethou with gross assets and funds of, or over, £10,000 or gross annual income of, or over, £5,000 to be registered on the register of NPOs. The application for registration must include the full names of the persons who own, direct or control the activities of the organisation including its directors, officers and trustees. The application must also provide the current home addresses or registered offices of such persons, depending on whether they are natural or legal persons.

3.1.3 The register is maintained by the Registrar, who publishes the name and address of each NPO which solicits or accepts donations, funds and contributions from the public, or those that do not meet this criteria but which elect to be inscribed on the public Register. Registrations must be renewed at the commencement of each calendar year.

3.1.4 Registered NPOs are currently subject to a number of requirements under the Law. They must:

- (a) make, keep and retain records of all financial transactions (with whosoever made) in order to evidence the application or use of the organisation's assets, funds and income. The records must be retained in a readily retrievable form for a period of no less than six years after the date of being made;
- (b) file annual financial statements with the Registrar, in such form as the Registrar may specify (subject to an exemption for NPOs with assets of less than £100,000 or income of less than £20,000, or whose assets or income are applied exclusively in the Bailiwick); and
- (c) inform the Registrar as soon as is reasonably practicable of any change to any of the matters required to be stated in the application for registration.

3.1.5 Apart from the record-keeping obligations referred to above, the current framework does not apply to manumitted organisations, that is, any NPO which is administered, controlled or operated by a person:

- who holds or is deemed to hold a licence granted by the Guernsey Financial Services Commission under certain specified regulatory Laws; and
- who administers, controls or operates the organisation in the course of his or her regulated activities.

3.2 2014 Proposals

3.2.1 In September 2014 the States of Guernsey considered a Policy Letter ("the 2014 Policy Letter")² from the (then) Policy Council which recommended a number of changes to the Law. These were as follows:

² Article VII of Billet d'État No. XX of 2014

- (a) remove the exemption for manumitted organisations, so that they would become subject to all existing and any future requirements in connection with registration;
- (b) amend the definition of NPOs to clarify its scope;
- (c) widen the regulation-making powers available to the Policy Council to permit the making in due course of regulations to cover all necessary matters regarding internal governance issues
- (d) make criminal sanctions for failing to comply with the different requirements imposed on NPOs explicit and consistent;
- (e) permit disclosures relating to NPOs to be made by the Registrar of NPOs to the Director of Income Tax and to corresponding authorities inside the Bailiwick as well as outside.

3.2.2 Recommendations (d) and (e) were addressed by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2014. As part of its review the Committee has been considering how best to address recommendations (a) to (c) in the 2014 Policy Letter. In addition, the review has identified the need for a further amendment since the amendment giving effect to (e) came into force, namely to permit information to be shared with the proposed Social Investment Fund (SIF)³.

3.2.3 The 2014 Policy Letter also recommended that the Income Tax (Guernsey) Law, 1975 (“the Income Tax Law”) be amended to permit information on NPOs to be disclosed to the Registrar of NPO. An amendment to implement this recommendation is pending and may conveniently be finalised at the same time as the consequential amendments to the Income Tax Law that are envisaged below.

4 Proposals for Change

4.1 As a result of its review, the Committee proposes various changes that are set out below. These changes are required to ensure that the jurisdiction continues to meet its objectives in terms of its international position as being highly regarded for providing a legal and operational framework for NPOs that promotes transparency, integrity and confidence in the sector and is clear, easy to understand and proportionate to the risks of the sector.

³ The proposal to establish a SIF (formerly referred to as the Social Investment Commission) was considered and approved by the States of Deliberation in the 2017 and 2018 budget. A policy letter, to be submitted in 2020, will detail the governance, structure and funding for the SIF. It is proposed that the SIF will provide funds to Bailiwick charities and third sector organisations for charitable and community purposes which address the themes of the Policy and Resources Plan “Future Guernsey”.

4.2 **Definitions**

- 4.2.1 The 2014 Policy Letter recommended that the definition of NPOs should be amended so as to clarify its scope. However, the review by the Committee, and in particular discussion with the AGC, has identified that more significant revisions are required, in a number of respects.
- 4.2.2 The first revision concerns the fact that, while charities are a type of NPO, the Law includes separate definitions of charity and of NPO as different registration requirements are applicable to each entity. The definition of charity covers (a) any organisation established for charitable purposes only and (b) any person who has been entrusted with property or funds applicable to charitable purposes (or with any income from such property or funds). An NPO is defined as any organisation established (solely or principally) either for the non-financial benefit of its members or for the benefit of society or any class or part of society and, without limitation, includes any organisation established solely or principally for fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works; this definition includes charities. The definition of organisation is wide ranging and includes a body of persons (corporate or unincorporated), a trust, any other legal entity, or any equivalent or similar structure or arrangement. It also extends to any person who comes within the situation outlined at (b) above in this paragraph.
- 4.2.3 The FATF standards refer to NPOs, which are defined as legal persons, arrangements or organisations that primarily engage in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of “good works”. A registration requirement that applies only to charities would be considered as too narrow to meet these standards. The original reason for the separate definitions of charity and NPO in the Guernsey framework was to address this wider approach by the FATF and, in addition, it was felt useful for the Registrar to maintain separate registers of charities and NPOs as the tax consequences of registration for these two categories are different. However, in practice it is not always easy to distinguish between a NPO that is a charity and a NPO that is not. Therefore, the Committee recommends that the legal framework should be amended to include a charitable test to inform what should be considered to be a charity, and also to require only one register to be maintained, but which would be maintained in a way that enabled charities to be separately specified as such.
- 4.2.4 The Committee has reviewed whether or not legislation in the UK and in the other Crown Dependencies might be helpful in defining charities in the Guernsey context. It has concluded that a definition similar to that in the Charities (Jersey) Law, 2014 ("the Jersey Law") would be suitable for Guernsey. Under the Jersey Law, there is a charity test which an entity meets if all of its purposes are charitable (or ancillary or incidental to its charitable purposes) and if it provides public benefit in Jersey or elsewhere to a reasonable degree. The Jersey Law defines what a charitable purpose is by reference to an exhaustive list, which covers a wide range of activities including the relief of poverty, the advancement of education, the arts and community development, the provision of recreational facilities and the relief of those in need by reason of age, ill-

health, disability, financial hardship or other disadvantage. It is proposed that the same approach be taken in Guernsey, including a power for the Committee to make regulations after consultation with the Registrar to add to, or explain, the list of charitable purposes, in line with a corresponding power in the Jersey Law.

4.3 **Registration and Provision of Financial Statements**

- 4.3.1 Revisions to the thresholds for registration and the provision of financial statements are considered necessary for a number of reasons.
- 4.3.2 First, the FATF Standards now explicitly recognise that not all NPOs are inherently high risk. Therefore, they require countries to identify NPOs that are likely to be at risk of abuse and to put in place measures to address those risks. On that basis, the Committee considers that there are NPOs within the jurisdiction that no longer need to be covered by a registration framework aimed at meeting the FATF standards as they are considered to be low risk. Examples include sports and social clubs established by employers that operate purely for the benefit of their employees, and private residential associations that operate for the purposes of financing the upkeep of communal areas accessible to their members.
- 4.3.3 Second, the current threshold for registration is set so low that persons who hold a single fundraising event for use of funds within Guernsey or Alderney can inadvertently and needlessly be required to be registered. Linked with this, individuals involved with these events might not realise that registration is required. The Committee considers, therefore, that the current framework is not proportionate.
- 4.3.4 The Committee has undertaken analysis of the effects of changing the thresholds. Even quite significant modifications would have relatively minor effects on the number of registered entities. The Committee considers that, subject to a risk-based exception (see the following paragraph), the proportionate level at which the registration requirements should be set currently would be the same threshold at which financial statements are required to be provided to the Registrar i.e. it should apply to NPOs with assets or funds of, or over, £100,000, or gross annual income of, or over, £20,000.
- 4.3.5 It is also recommended that, separate from this, there should be a second criterion for registration on risk grounds so that, irrespective of the level of gross assets or funds, the registration requirement would also be applicable to all charities and other NPOs under whose constitutions the raising or distribution of assets outside the Bailiwick is envisaged, except where these overseas distributions are incidental to the activities of the NPO (e.g. the purchase of office equipment) or are *de minimis* (e.g. where an NPO provides funds to pay for refreshments at an event overseas). As the question of what constitutes an incidental or *de minimis* payment will vary depending on the activities of the NPO in question, it is envisaged that the Registrar will issue guidance on this.

- 4.3.6 No change is currently proposed to the threshold for the provision of financial statements, as it is considered appropriate in the future for all registered NPOs to provide financial statements to the Registrar and also for those NPOs generally to ensure that they have high governance standards. However, in some cases, based on risk, it will be appropriate for financial statements to be audited (i.e. subject to scrutiny by a professional third party) and it is proposed that the Committee should have the ability to make regulations on this matter. Governance is further addressed below at paragraph 4.6.
- 4.3.7 In order to ensure that the registration framework continues to be proportionate, the financial threshold and the new criterion relating to the use of assets outside the Bailiwick would be complemented by a power for the Committee to make regulations exempting certain types or classes of NPO from the need for registration, or from any specific obligations attaching to registration. The regulation-making power would also be wide enough to allow changes to be made in respect of the thresholds or any exemptions that have been put in place. Any such regulations would be made on the basis of consultation with the Registrar.
- 4.3.8 Under the above proposals unsubmitted NPOs will be required to be registered unless they are subject to regulations exempting them from registration.
- 4.3.9 For some NPOs that do not meet the criteria for compulsory registration, there may nonetheless be tax or other advantages to registration (for example, protection for deposits under the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008). Therefore, as is the case now, there would be nothing to prevent NPOs which are not required to register with the Registrar from doing so. However, the Committee does not wish NPOs in this category to be disadvantaged by the changes to the regime that are not necessary for them on AML/CTF risk grounds and would be disproportionate to the size and activities of many of them. Therefore, it is proposed that the power to make regulations exempting certain types or classes of NPO from the need for registration or from specific obligations referred to above will be wide enough to permit the Committee to disapply, in whole or in part, the obligations applicable to registered NPOs where those NPOs have registered on a voluntary basis.

4.4 ***Refusal to Register Organisations***

- 4.4.1 The Registrar's current power to refuse an application for registration only applies where the Registrar is not satisfied that an organisation is an NPO. It is proposed to extend this power to situations where, in the opinion of the Registrar, no information, or insufficient information, has been provided about an NPO's purpose, control and governance, or where the Registrar believes that the proposed name of the NPO could be misleading as to its purpose, or where the Registrar considers that control and governance are not or will not be adequate, where there is a concern about its owners, directors or controllers which will have an effect on the NPO's ability to meet its responsibilities, or otherwise on public interest or similar grounds.

4.5 ***Standards for Controllers of NPOs***

4.5.1 There are currently no requirements in the Law for the fitness and propriety of owners (i.e. beneficial owners, shareholders or similar), controllers or directors of NPOs or the control they exercise in relation to NPOs. Such individuals might have very significant control over the use of the assets of an NPO. This does not provide a credible framework either for the Guernsey or Alderney public or anybody else providing funds to NPOs, or to the international community. The Committee is not at this stage proposing the introduction of a full licensing regime for NPOs with the Registrar undertaking the kind of licensing functions which would normally be associated with a supervisory authority for financial services businesses. Such a licensing framework would be disproportionate to the current risks of the NPO sector, as well as being costly to implement.

4.5.2 Therefore, it is proposed that instead that the Law should provide that

- persons with criminal convictions (other than convictions that are spent in line with the provisions of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002);
- those who do not meet the director eligibility criteria within the Company Law; and
- minors

are not permitted to be owners, controllers and directors of the activities of NPOs (whether or not they are registered). This would be subject to a power for the Registrar to disapply the restriction in the case of criminal convictions if he or she considers it appropriate. This is to ensure that persons who have been convicted of offences that cannot sensibly be considered relevant to their fitness or propriety to own, control or direct an NPO are not prevented from doing so. In addition, as discussed below, regulations will be introduced to provide governance standards for NPOs. The particular parties responsible for complying with the regulations will vary according to the nature of the NPO in question but, in general terms, will be senior officers, board members, or trustees as the case may be, or those who otherwise exercise control over the activities of the NPO.

4.5.3 There will also be an exemption in respect of the provision of information about people who exercise managerial functions or are the beneficial owners of legal persons incorporated in the Bailiwick.

4.5.4 Information about those exercising managerial functions in respect of these legal persons, including Board members or other managing officials depending on the type of legal person in question, is already publicly available on the registers that govern incorporation. Under beneficial ownership legislation introduced in 2017, there are now also registration requirements in respect of the individuals who own or control these legal persons.

- 4.5.5 The effect of this is that, where an NPO constitutes one of these forms of legal person, the authorities will already have information about its managing officials and its underlying owners or controllers, as this will have been provided to the appropriate register and there is a continuing obligation to keep this information up to date.
- 4.5.6 In order to avoid the same information having to be provided to more than one register, it is proposed that, if an NPO is a Bailiwick legal person, it will not automatically have to provide the same information about the persons who own it or who direct or control its activities twice.
- 4.5.7 In addition, the Registrar is mindful of the importance of complying with the data protection framework established under the Data Protection (Bailiwick of Guernsey) Law, 2017. In this regard he or she will ensure that, where additional personal data is received and maintained a result of the amendments referred to in this Policy Letter, appropriate mechanisms will be in place to continue to comply with the framework.

4.6 **Governance**

- 4.6.1 Good governance is crucial for NPOs. Therefore, in addition to the basic fit and proper test proposed above, a number of other steps will be required to promote the transparency and integrity of NPOs. In order to achieve this, the current regulation-making power under the Law should be extended as envisaged in the 2014 Policy Letter to include governance. It is proposed that this should be done after consultation with the Registrar. It is also proposed that governance measures for these purposes should include ethical standards (such as requiring charities to have in place effective child protection and adult safeguarding policies). These standards must be proportionate; and, as a general principle, the Committee will consult with the sector wherever appropriate prior to introducing new regulations, in addition to consulting the Registrar.
- 4.6.2 The intention is for the regulations made under this power to impose high level requirements and for the Registrar to issue guidance providing the detail on how the requirements can be met. It is envisaged that the regulations would cover four aspects of governance. The first is the constitutional documents NPOs must have, which should address the basic minimum standards to be expected of them. This would include requirements regarding quorums for decision making, independent oversight of finances and disbursements, and record keeping. The second is risk mitigation measures, primarily aimed at identifying donors and beneficiaries where this is considered necessary on the basis of risk. The third is measures to ensure financial probity and transparency, such as a requirement for NPOs to pass funds over a certain limit through their bank accounts and for the proper division of functions to ensure that responsibility for the approval for the release of funds and the release of funds itself rests with separate and unconnected individuals. The fourth relates to establishing standards in respect of child protection, adult safeguarding or other forms of ethical conduct.

4.6.3 It is envisaged that the third aspect (financial probity and transparency) would also allow specification of categories or types of NPO required to put in place assurance measures in relation to their financial statements, whether through external audit or otherwise, and to provide for the provision of financial statements by NPOs to third parties on request and publication by the Registrar. The making of any regulations in relation to assurance and publication of financial statements might be sensitive and the Committee proposes to consult further on this point in particular and whether the exemption for NPOs not to file accounts with the Registrar where their assets or income are applied exclusively in the Bailiwick (referred to in paragraph 3.1.4(b) above) should be revised or removed.

4.6.4 The regulations should be enforceable so as to ensure that NPOs are treating them seriously and endeavouring to meet them. This means that the Registrar should be able to apply sanctions for breaches of them. The overall sanctions framework, including the sanctions proposed to apply for breaches of regulations, is specified below.

4.7 ***Reporting of Transactions***

4.7.1 In order to monitor overseas payments and, therefore, assist the Registrar to monitor the risks posed by NPOs to the jurisdiction, it is proposed that a legal requirement should be introduced to report payments of a value, to be set by regulations made by the Committee, that are made to parties outside the Bailiwick. However, this would not apply to payments to affiliated organisations in Jersey, the Isle of Man or the UK, or to incidental payments such as payments for services provided to an NPO. No approval would be required but it is envisaged that the Registrar would be able to issue forms specifying the information about the transaction(s) and related information to be provided to it. In addition, the regulation-making power referred to above would include a power to amend the categories of transactions that are exempt from this requirement, to ensure that the legal framework can be updated quickly in line with any changes or developments in the risk profile of particular types of transactions.

4.8 ***Sanctions and Enforcement***

4.8.1 The MoneyVal report states that the current sanctions for non-compliance with registration requirements are not effective or dissuasive. This echoes a comment which was made by the International Monetary Fund in the report following its evaluation of Guernsey's AML/CFT framework in 2010. Although the AML/CFT authorities had concluded, prior to the MoneyVal evaluation, that the sanctions framework was adequate for Guernsey's context, it is now apparent to the Committee that it should be revised and the level and range of sanctions increased.

4.8.2 In doing so, it is important to recognise the particular policy considerations that arise from the status of NPOs when determining the penalties that are appropriate, especially the fact that their assets are largely made up of donations from members of the public that are given for philanthropic or similar purposes. Against this

background, the Committee has considered whether it is appropriate for financial penalties to apply not only to NPOs but also persons who are senior officers or who direct or control the activities of NPOs. The Committee has decided that the legislation should provide both for the possibility of administrative financial penalties being applied to NPOs and the persons mentioned above by the Registrar. This would be in addition to the administrative financial penalties for NPOs specified below. It is important to recognise that the powers will be permissive rather than compulsory and that they should allow the right party or parties to be subject to penalties for a breach. In addition, the Registry should have publically available procedures so as to transparently demonstrate the proportionality of the sanctions and enforcement framework. Other penalties are specified below.

4.8.3 The Registrar may currently strike off a NPO for the following reasons:

- the Registrar has reason to believe that the organisation is not a non-profit organisation,
- the organisation fails to comply with any request for information by the Registrar,
- the organisation fails to comply with any obligation or requirement imposed by or under the Law,
- a person is found guilty of an offence under the Law in respect of statements made or information or documents produced or furnished for or on behalf of the organisation, or
- the organisation fails to pay certain fees imposed by the Registrar,

provided in each case that the Registrar has given the organisation two weeks' notice of the intention to strike it off the Register. The Registrar may publish the fact of an organisation being struck off the Register in such manner as he or she thinks fit (including by publication in La Gazette Officielle).

4.8.4 It is proposed that the Law should be revised to allow the Registrar to also strike off a NPO:

- where any of its officers has committed any criminal offence of any kind under any legislation (other than where a conviction is spent or not relevant – see above);
- on public interest or similar grounds.

4.8.5 Looking at the issue of financial penalties, these are already in place under the Law in relation to the following criminal offences:

- failure by an NPO to be registered (a fine of up to £10,000 on summary conviction);
- provision of information which is false, deceptive or misleading (up to three months imprisonment and/or a fine of up to £10,000 on summary conviction and up to two years' imprisonment and/or an unlimited fine on indictment);

- failure to comply with duties in respect of annual statements and keeping of proper records (a fine of up to £10,000);
- failure to comply with a request for information made by the Registrar or with any obligation or requirement imposed under the Law (a fine of up to £500).

4.8.6 At the time of the drafting of the Law in 2008, any legislation on NPOs was breaking new ground. The level of the penalties took account of this and the financial and staff resource capacity of smaller NPOs. However, from the perspective of 2019, when compared with similar criminal offences in other legislation, it is recognised by the Committee that some of the penalties in the Law are too low both in absolute and relative terms. It is therefore proposed that the level of criminal financial penalties be brought in line with the penalties applicable to comparable offences elsewhere in the legal framework.

4.8.7 Administrative financial penalties can also be applied to an NPO by the Registrar. These are as follows:

Failure to register	£500
Failure to renew registration	
• 1 st month (whole or part)	£20
• 2 nd month (whole or part)	£40
• Each subsequent month (whole or part)	£80
Failure to file annual financial statements	
• 1 st month (whole or part)	£20
• 2 nd month (whole or part)	£40
• Each subsequent month (whole or part)	£80
Failure to respond to information request	
• 1 st month (whole or part)	£0
• 2 nd month (whole or part)	£0
• Each subsequent month (whole or part)	£10

4.8.8 International assessors consider that these levels are too low to be dissuasive. The Committee believes that very high penalties would be inappropriate to the large majority of the very small NPOs which comprise Guernsey's third sector. However, in some cases the cost of imposing a financial penalty would be greater than the level of the penalty applied. Therefore, it is proposed that the levels should be increased.

4.8.9 The following increases are envisaged: the financial penalty for failure by an NPO to be registered would move from £500 to £2,000; the financial penalty for failure to renew registration or to file annual financial statements would be increased to £250 for each and every calendar month for which the NPO is in default of the obligation; a failure to respond to the Registrar's requests for information would increase to £250 for each calendar month for which the information is not provided. These increases

are considered appropriate for penalties of an administrative nature, bearing in mind that criminal sanctions involving much higher financial penalties are also available.

- 4.8.10 In order to create a more dissuasive framework overall, rather than limiting the Registrar to powers of strike off and financial penalties, it is proposed that the Registrar's powers of sanction should also be increased by adding to them the ability to issue private (i.e. non-public) warnings to senior officers, controllers and directors of an NPO and an NPO itself; power to make public statements in relation to such persons; and the power to disqualify individuals from being owners, senior officers controllers or directors of NPOs. The exercise of these powers will be subject to appropriate safeguards including notice periods and appeal provisions, in line with the existing protections under the Law.
- 4.8.11 In order to support the legal framework, the Registrar should have additional powers, specifically the power to require documents, accounts and other information from NPOs, their owners, controllers or directors or from third parties. The Registrar should also have the power to visit the premises of NPOs and require information and documents to be provided to him or her. The information gathering powers should be wide enough to enable the Registrar to determine any matter relating to particular NPOs or their owners, controllers or directors (including whether all NPOs that should be registered are in fact registered). The powers should also cover wider issues such as risk (including the obtaining of statistics to enable the Registrar and other AML/CFT authorities to understand and assess the scope and scale of the activities of the NPO sector or of particular NPOs as necessary) and public interest or similar considerations. There should also be the necessary information sharing gateways in place for this purpose, as well as to enable information to be shared with other authorities such as the Guernsey Financial Services Commission to assist them in the discharge of their functions, and with any other parties that have functions relevant to the third sector, such as the SIF indicated above at paragraph 3.2.2.

4.9 ***Guidance and Standard Forms***

- 4.9.1 In order to assist NPOs in the discharge of their various obligations, it is recommended that provision be made for the Registrar to issue statutory guidance and standard forms to be completed when submitting information to the Registrar, including forms confirming or describing adherence to the governance regulations.

5. **Legal Framework**

- 5.1 The way in which the NPO registration regime has evolved has given rise to a number of amendments to the Law, in particular its extension to Alderney in 2011. As a result of Alderney coming within its scope later than the other islands, it is not obvious from the title of the legislation that it includes Alderney. In addition, the changes to the regime that are now envisaged may make the legislation less easy to follow and therefore affect the ease with which the obligations on NPOs can be understood. For these reasons it is proposed that the Law be repealed and replaced with new legislation which is expressed to apply to both Guernsey and Alderney, and which

incorporates the features of the existing regime with the envisaged new provisions in a way that makes the entire framework readily understandable.

- 5.2 Consequential amendments will be needed to ensure that all necessary information-sharing gateways are in place across the legal framework, as indicated above. In addition, in view of the exemption from the obligation to provide information about the persons who own, direct or control the activities of an NPO where this has been provided under beneficial ownership legislation, it is recommended that the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 is amended as required, to ensure that the enforcement powers for failing to provide the necessary information which the Registrar of Beneficial Ownership may apply to legal persons that are NPOs are consistent with the enforcement powers which the Registrar may apply to NPOs that are not legal persons.

6. Transitional Provisions

- 6.1 Transitional provisions should be included to ensure that NPOs have time to make any changes necessary to meet the revised framework, including new regulations. Different provision may be made for different categories or types of NPO or on the basis of risk.

7. Engagement and Consultation

- 7.1 As indicated above, when reviewing the existing registration regime and considering the need for change the Committee liaised closely with members of the NPO Working Group (which includes representatives of the Committee, the Registrar, the Revenue Service, the Guernsey Financial Services Commission, the Law Officers Chambers and Law Enforcement) and the AGC. In addition, in January 2018 a consultation paper outlining proposed changes was issued by the Committee to the AGC (who shared it with individual NPOs), the Guernsey Association of Trustees and the Guernsey Bar. The consultation process has led to a two phased response. The first was the issuing of guidance for the NPO sector and the second was this Policy Letter. This Policy Letter takes into account the responses received, as well as further input provided in subsequent discussions between the Committee, the AGC, the Guernsey Community Foundation, the Overseas Aid & Development Commission, the Registrar, the Revenue Service, the Guernsey Financial Services Commission, GAT and the Guernsey Bar.

8. Alderney

As the Law applies to Alderney NPOs, the Policy & Finance Committee of the States of Alderney has also been consulted. This Committee supports the proposals in this Policy Letter.

9. Resources

- 9.1. The proposals above, including the provisions of the various regulations, will lead to new governance, control and other responsibilities for charities and other NPOs.

They will also lead to revised responsibilities for, and a new approach by, the Registry in conducting an oversight role. The Committee and the Registry are of the view that, in total, three additional staff will be required for the Registry, on a permanent basis, in order to exercise its oversight responsibilities properly. It is envisaged that these three additional members of staff will be recruited in stages with funding of £135,000 included in the 2020 Guernsey Registry budget and a further additional amount of £50,000 will be required in 2021. This approach should enable the Registry to ensure a smooth transition when the law comes into force. This increased expenditure will reduce the overall surplus of the Guernsey Registry which is transferred to General Revenue by a commensurate amount.

- 9.2. Additional IT resources will also be required for the Guernsey Registry so that it can exercise its new responsibilities efficiently. This includes enabling both it, and those acting on behalf of NPOs, to move from a mainly paper-based system to a system in which relationships can be managed through a comprehensive modern IT system, which will be sensitive to the profile of the third sector. Investment in IT is essential to the successful delivery of the changes proposed, which will help to strengthen the governance of NPOs and support them in more effectively managing risk, while enabling the States to comply with international standards. Initial market testing has taken place for the provision of the necessary IT in order to inform the accurate determination of detailed market costing/procurement processes. The requirements include the development of a comprehensive modern records system, which can stand alone, incorporated into or work with the Registry's IT platform. It is estimated that the one-off cost of the new system will be no more than £300,000 and this would be funded through a minor capital vote.

10. Recommendations

- 10.1 The States are asked to decide whether they are of the opinion:-
- 10.1.1 to agree to the introduction of a single register of NPOs and the repeal of the requirement for the Registrar to maintain a separate register of charities;
 - 10.1.2 to agree to amend the definition of NPOs by the introduction of a charitable purposes test, which may be amended by regulations made by the Committee after consultation with the Registrar;
 - 10.1.3 to agree to amend the criteria for registration to bring them in line with the risks posed by the NPO sector;
 - 10.1.4 to agree to the introduction of a power for the Committee to make regulations, after consultation with the Registrar, exempting types or classes of NPO from the requirement for registration or from particular obligations attaching to registration, including NPOs who register voluntarily, and making changes in respect of the thresholds or any exemptions that have been put in place;

- 10.1.5 to agree to the widening of the Registrar’s powers to refuse applications for registration;
- 10.1.6 to agree to the introduction of restrictions on the persons who may act as owners, controllers or directors of NPOs;
- 10.1.7 to agree to the introduction of a power for the Committee to make regulations, after consultation with the Registrar, in respect of governance measures applicable to NPOs, including in respect of ethical standards;
- 10.1.8 to agree to the introduction of wider information–gathering and oversight powers for the Registrar and information sharing gateways between the Registrar and other parties;
- 10.1.9 to agree to the introduction of an exemption from the requirement to provide information about the owners, controllers or directors of NPOs that are Guernsey or Alderney legal persons where that information has already been provided under the registration requirements applicable to those legal persons upon and subsequent to incorporation, and to any amendments to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 that may be necessary to ensure consistency of sanctioning powers;
- 10.1.10 to agree to changes to the sanctions applicable for non-compliance with the registration requirements;
- 10.1.11 to agree to the introduction of a reporting requirement in respect of certain categories of transaction and a power for the Committee to make regulations, after consultation with the Registrar, amending the categories of transaction exempt from this requirement;
- 10.1.12 to agree to the repeal of the Law and the introduction of new legislation consolidating the registration framework applicable to Guernsey and Alderney; and
- 10.1.13 to direct the preparation of such legislation as may be necessary to give effect the foregoing, including any necessary consequential and incidental provision.

11. Compliance with Rule 4

- 11.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 11.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty’s Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.

11.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions accompanying this policy letter are supported unanimously by the Policy & Resources Committee.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens.