



## CONSULTATION PAPER

### CHARITIES/NON PROFIT ORGANISATIONS

#### **The Charities etc. (Amendments, Exemptions, Governance and Specified Amount) (Guernsey and Alderney) Regulations, 2021, guidance notes and transitional provisions**

**25 AUGUST 2021**

#### **About this consultation**

This consultation is issued by the Guernsey Registry and is seeking views from stakeholders on the content of the following draft regulations and guidance notes:

- The Charities etc. (Amendments, Exemptions, Governance and Specified Amount) (Guernsey and Alderney) Regulations, 2021 (“**the Regulations**”)
- The Charities etc. (Guernsey and Alderney) Ordinance, 2021 – Guidance for all Charities and other NPOs (“**the general guidance**”)
- The Charities etc. (Guernsey and Alderney) Ordinance, 2021 – Guidance for Charities and other NPOs that carry out international activity (“**the international guidance**”)

Views are also sought on the approach to transitional provisions set out below.

#### **Transitional provisions**

The intention is to bring the Charities etc. (Guernsey and Alderney) Ordinance, 2020 and the Regulations into effect in a phased way with regulations on the transitional provisions made by the Policy and Resources Committee.

On the assumption that both sets of regulations are made at the end of November 2021, views are sought on the following approach:

1. The Registrar’s powers would be activated on the day the Regulations are signed by the Policy and Resources Committee;
2. Existing registered NPOs would **not** need to submit a new application as their registrations under the existing law will be carried over when the Ordinance comes

into effect; linked with this the Registry will also need to advise existing registered NPOs to consider whether they need to be registered under the new Ordinance and to instruct the Registry to cancel registrations where they are not needed;

3. Manumitted NPOs would need to apply for registration by the end of February 2022;
4. The financial crime risk assessment should be completed by the end of June 2022;
5. The constitution should be put in place by the end of December 2022;
6. Financial statements should be prepared in relation to the current financial year of the NPO and submitted within 12 months of the end of the financial year; this requirement would also apply in relation to future financial years;
7. Any other new requirements would commence on 1 March 2022;
8. To ensure there are no gaps, existing requirements for NPOs under the current law would remain in place and continue until the updated equivalent provisions in the Ordinance and Regulations come into force. For example, the current requirements for record keeping in the law have been modified in the Ordinance and Regulations and there should not be any gap in record keeping between the date on which the Committee signs the various regulations and the date on which the new provisions are required to be met.

### **How to submit comments to the consultation**

If you have any comments you wish to submit to this consultation, these can be made in writing by email to [enquiries@guernseyregistry.com](mailto:enquiries@guernseyregistry.com) and [policyandresources@gov.gg](mailto:policyandresources@gov.gg).

Comments should be made by the close of business on 20 October 2021.

*Draft for consultation purposes*

**The Charities etc. (Amendments, Exemptions,  
Governance and Specified Amount) (Guernsey and  
Alderney) Regulations, 2021**

*Made* , 2021  
*Coming into operation* See regulation 15  
*Laid before the States* , 2021

THE STATES OF GUERNSEY POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by sections 14, 17, 18 and 20 of the Charities etc. (Guernsey and Alderney) Ordinance, 2021<sup>a</sup>, and of all other powers enabling it in that behalf, hereby orders: -

PART I

AMENDMENT OF AND EXEMPTIONS FROM PROVISIONS IN ORDINANCE

**Amendment of Ordinance.**

1. (1) The Ordinance is amended as follows.
  
- (2) In section 10, for subsection (3)(b), substitute the following –  
" (b) " its activities involve raising or distributing assets outside

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<sup>a</sup> Ordinance No. of 2021.

the Bailiwick, other than distributions of assets that -

- (i) comprise expenditure incidental to the activities of the relevant entity,
- (ii) **in** the case of a relevant entity established for or in support of purposes within the Bailiwick, comprise occasional distributions of physical items such as clothing or equipment for or in support of those same purposes to parties outside the Bailiwick, or
- (iii) are *de minimis*."

**Commented [RK1]:** This amendment is to ensure that organisations such as the rugby club etc. who are domestically focussed are not treated as making distributions outside the Bailiwick (and therefore obliged to register) purely because they occasionally make donations of old kit etc. to deserving causes abroad (although they can still register voluntarily). However, charities that are set up in order to distribute physical items abroad will still have to register, because in some developing countries where use of formal financial channels is limited, physical items have significant value. The reason for making registration compulsory for these and not for domestic organisations that may make occasional distributions of the same type of items is because the volume of distributions from the former is likely to be much higher, so the risks are commensurately greater.

The other exemptions here, (i.e. for incidental expenditure and *de minimis* payments) were already in place in the Ordinance and have just been repeated here for ease of drafting. The scope of these exemptions is explained in guidance.

(3) In section **16**,

**Commented [RK2]:** The amendments here are to specify the time frame for provision of financial statements and to clarify what is expected of them

(a) for subsection (1)(b), substitute the following-

" (b) produce annual financial statements, and file those statements with the Registrar in such form and manner as the Registrar may specify in writing.", and

(b) after subsection (2), insert the following-

"(2A) Subject to subsection (2B), the financial statements referred to in subsection (1)(b) must

(a) contain a balance sheet and a full breakdown of

income and expenditure, and

(b) be filed with the Registrar within twelve months of the end of the financial year to which they relate.

" (2B) Where a registered organisation is within subsection (2C), its annual financial statement should comprise a record of

**Commented [RK3]:** This is a simplified requirement for registered organisations that are local branches of organisations registered in the UK, in acknowledgment of the fact that fewer details are required because the UK organisation will produce its own financial statements.

(a) all funds or other assets raised or accepted by it for or on behalf of, and

(b) all funds or other assets remitted by it to, its UK parent organisation.

(2C) An organisation is within this subsection if

(a) the only activity which it carries out within the Bailiwick is to

- i. raise or accept funds or other assets, or
- ii. provide services or facilities,

for or on behalf of a UK parent organisation, and

(b) it conducts that activity in line with, and subject to, the requirements of the constitution of the UK parent organisation within the meaning of subsection (2D).

(2D) A UK parent organisation is an organisation that is registered with the Charity Commission for England and Wales or with the Scottish Charity Regulator."

(4) In section 19, after "application for registration," insert "or to any documents required to be provided to the Registrar with such an application".

**Commented [RK4]:** This is to spell out that the obligation at section 19 to notify the Registrar of changes to information provided on registration extends to changes to accompanying documents e.g. a constitution.

**Exemption from registration.**

2. (1) For the purposes of these Regulations,

**Commented [RK5]:** The purpose of 2(2) is to exclude organisations that meet the financial thresholds from the need to register if they are purely domestic and do not accept donations etc. from the public (although they can still register voluntarily). This is because they are not a risk from an international standards or public protection perspective.

(a) references to the public do not include members of the relevant entity in question or their family members or close associates, and

The purpose of 2(1)(b) is to make it clear that something is not a donation if you get something in return, because that is essentially a commercial transaction so public protection issues do not arise.

(b) the organisation of fundraising events which involve the provision of goods, amenities or other forms of benefit in exchange for payment does not constitute the solicitation or acceptance of donations, funds or contributions.

(2) A relevant entity that comes within section 10(3) of the Ordinance is exempt from the obligation to apply for registration under section 10(1) if it –

(a) does not carry out international activity, and

(b) does not solicit or accept donations, funds or contributions from the public.

(3) For the avoidance of doubt, a party within paragraph 4 ("a government body") is exempt from the obligation to apply for registration under subsection 10(1) of the Ordinance.

**Commented [RK6]:** The purpose of this is remove the registration obligation from government bodies etc. as they are not a risk from an international standards or public protection perspective. They will still be able to register voluntarily.

(4) The parties within this paragraph are –

(a) the States,

(b) the States of Alderney,

(c) any entity established by the parties at (a) and (b) whose functions include receiving or providing funding for charitable purposes, and

(d) any persons employed by the parties at (a) to (c) when acting in the course of their employment.

#### Exemptions relating to financial statements.

3. (1) Without prejudice to the obligation to maintain financial statements at section 16 (1)(b) of the Ordinance, a voluntarily registered organisation is exempt from the obligation within that section to file annual financial statements with the Registrar.

**Commented [RK7]:** This exempts organisations that register voluntarily from the need to file financial statements with the Registrar, as they are low risk so this is not considered necessary from an international standards or public protection perspective.

## PART II

### GOVERNANCE OBLIGATIONS FOR REGISTERED ORGANISATIONS

#### Constitutional documents.

4. (1) Subject to paragraphs (2) and (5), a registered organisation

**Commented [RK8]:** The purpose of this is to make sure that all registered organisations, including those that are registered voluntarily, have some basic organisational etc. structures in place. This is to protect the public, given the expectation of reliability etc. that is conveyed by registration. In practice, the vast majority are likely already to have most of this in place and the regulation specifies that they can fill in any gaps by an additional document, rather than having to start again with a formal constitution. The range of information is in line with that expected of UK charities.

must have a written constitution or other governing document that makes provision for the matters set out in the Schedule ("**the required information**").

(2) For the purposes of paragraph (1), the required information may be contained in more than one governing document, and in those circumstances all such governing documents are included in references in these regulations to a governing document of a registered organisation.

(3) A registered organisation must provide a copy of its constitution or other governing document to the Registrar when applying for registration.

**Commented [RK9]:** Any changes to the constitution etc. will also have to be notified to the Registrar under section 19 of the Ordinance, which requires registered organisations to inform the Registrar of any changes to information submitted when applying for registration.

(4) References in these regulations to the members, boards and named officers of registered organisations include trustees, committee members or any other parties howsoever described whose functions, powers and duties correspond to those ascribed to members, boards and named officers in these regulations.

(5) Where a registered organisation is an organisation within section 16 (2C) of the Ordinance ("**a local branch**"),

**Commented [RK10]:** Section 16 (2C) deals with registered organisations that are simply local branches of organisations registered with the charity regulators in the UK. This provision exempts them from the need for a constitution as they are effectively covered by the constitution of the parent organisation.

(a) references to a constitution or other governing document are references to the constitution or other governing document of its UK parent organisation ("**the UK constitution**"), and

(b) the UK constitution is deemed to contain the required information.



**Record keeping etc.**

5. (1) Without prejudice to the record keeping obligations at section 16 of the Ordinance, a registered organisation must make, keep and retain records in respect of the following matters -

- (a) the names and principal residential addresses of its board members;
- (b) minutes of any board meetings and any annual or extraordinary general meeting of the members of the registered organisation, including papers relevant to such meetings;
- (c) any documents relevant to the obligations under Part III of these Regulations, if applicable;
- (d) where the registered organisation is affiliated to another organisation, including a UK parent organisation, documents that demonstrate or are otherwise relevant to that affiliation;
- (e) any contracts, other than a contract that is not within these regulations, that are entered into by or on behalf of the registered organisation, including tenders or any other documents that are relevant to such contracts;

(2) Subject to paragraph (3), a contract is not within these regulations if it is a contract for the sale of goods or the provision of services by or to the registered organisation and the price paid for those goods or services does not exceed [£ ].

**Commented [RK11]:** The purpose of this is to make sure that all registered organisations, including those that are registered voluntarily, keep adequate records. This is supplementary to the obligation to keep financial records under section 16 of the Ordinance, and is necessary from a public protection perspective (plus from an international standards perspective for those that operate overseas).

**Commented [RK12]:** The purpose of this is to make sure that it is not necessary to keep records on low value transactions, which would be unduly onerous.

**Commented [LPJ13]:** Views are sought on the financial threshold to be specified for this section.

- (3) Any contract between a registered organisation and
- (a) an international partner within the meaning of Regulation 10, or
  - (b) any other affiliated organisation

is a contract within these regulations.

- (4) The records referred to in referred to in paragraph (1) –
- (a) must be retained in a readily retrievable form for a period of not less than six years after the date of being made, and
  - (b) subject to paragraphs (5) and (6), must be made available to any member of the registered organisation upon request.

(5) Subject to paragraph (6), details of identity or other private information in respect of particular donors or potential donors to a registered organisation, or particular recipients or potential recipients of assistance from a registered organisation, may be treated as confidential at the discretion of the board.

(6) Nothing in paragraphs (4) and (5) prejudices any obligation or prohibition in respect of the provision of information that exists apart from these Regulations, whether imposed by statute, customary law, common law, contract or otherwise.

**Commented [RK14]:** This is to avoid deterring donors who wish their donations to be confidential, and to protect beneficiaries who may have given sensitive personal information (e.g. medical details) to the organisation to demonstrate that they qualify for assistance.

**Financial probity and transparency.**

6. (1) A registered organisation must put in place measures to ensure its financial probity and the transparency of its dealings to its members or other interested parties as appropriate, which include –

(a) a requirement for all funds given to or received from the registered organisation to pass, so far as is reasonably possible, through its bank account (and where this is not possible, for this fact and the reason why it was not possible to be recorded), other than funds which

(i) do not exceed a total of [£ ] in any twelve-month period and

(ii) which comprise payments made or received wholly within the Bailiwick in respect of purchases or other payments that are ancillary or incidental to the purpose of the registered organisation,

(b) measures to ensure that the involvement of at least two unconnected individuals is required for the release of funds,

(c) measures to ensure that

(i) as far as is reasonably possible assets of the registered organisation are kept separate from those of any third party (including a member of the registered organisation itself), and

**Commented [RK15]:** This applies to all registered organisations (including those that are registered voluntarily). Its purpose is to prevent mismanagement and deliberate abuse of finances etc. to protect public confidence and meet international standards, but only requires measures that are reasonable in the circumstances so are flexible enough to allow organisations to operate pragmatically (for example if members of a charity want to help out with loans etc).

**Commented [LPJ16]:** Views are sought on the financial threshold to be specified for this section.

**Commented [RK17]:** This exemption is to cover "petty cash" type payments, as it would obviously be too burdensome for them to have to pass through a bank account.

(ii) without prejudice to sub-paragraph (d), where a member of a registered organisation provides funds to or for the benefit of the registered organisation or its activities, details of that fact and any repayment to the member in question are clearly stated in, and apparent from, the records of the registered organisation,

(d) the adoption of policies and procedures which follow accepted principles of accounting and control, which are compliant with the record keeping obligations under these regulations or any other applicable legal obligations, and which include provision for the availability to the board of financial information,

(e) subject to paragraphs (2) to (4), the making available of annual financial statements within a reasonable time to any person upon request.

**Commented [RK18]:** This is to protect public confidence and to meet international standards about information for potential donors. It will not be retrospective so there will be no obligation for registered organisations that have not to date kept financial statements to go back and create them for previous years.

(2) The obligation at sub-paragraph (1)(e) applies for a period of not less than six years after the end of the financial year to which an annual financial statement relates.

(3) The obligation at sub-paragraph (1)(e) does not apply to a registered organisation that does not solicit or accept donations, funds or contributions from the public.

**Commented [RK19]:** This is to protect the confidentiality of what were previously unsubmitted organisations, i.e. private charitable trusts etc. that do not raise funds from the public, so the public do not need to see their financial statements.

(4) The obligation at sub-paragraph (1)(e) is subject to the

provisions governing the disclosure of information at regulation 5(5) and (6).

### PART III RISK MITIGATION

#### General obligation to mitigate risks

7. (1) Subject to paragraph (2), in this Part criminal purposes mean the financing of terrorism, money laundering, fraud, bribery and corruption.

(2) Criminal purposes do not include the financing of terrorism in the case of a registered organisation that does not carry out international activity or only provides funds or other assets or forms of assistance to an organisation that comes within the definition of a UK parent organisation (and for these purposes it is irrelevant whether or not the registered organisation is affiliated to that organisation).

(3) A registered organisation must put in place all necessary internal or other controls to ensure that neither it, nor its activities, can be used for criminal purposes.

(4) The controls referred to at paragraph (3) include the measures at regulations (8) to (11) where applicable, and such other measures are necessary to ensure that

(a) the funds or other assets of the registered organisation are fully accounted for,

**Commented [RK20]:** The obligations in this Part are necessary to meet international standards. They are risk based and only require organisations to take reasonable measures, so as not to be too burdensome and to give them the necessary flexibility to operate effectively. Examples of what would count as reasonable is set out in guidance.

**Commented [RK21]:** This is to reflect the fact that purely domestic organisations or those that only remit funds etc. to organisations registered in the UK are not considered to present any terrorist financing risk. This applies whether or not the local organisation is affiliated to the UK organisation, as the risk will still be low if the UK organisation is unconnected.

- (b) the funds or other assets of the registered organisation are used in a manner consistent with its purpose, mission and objectives,
- (c) the registered organisation fulfils all other obligations under its constitution or other governing document, if applicable, and
- (d) the registered organisation discharges any legal obligations to which it is subject.

**Identification measures**

8. (1) Subject to paragraph (2), a registered organisation must take such steps as are reasonable in all the circumstances to establish, verify and document

- (a) the identity of any person (other than an international partner) making a donation –
  - (i) from outside the Bailiwick of a significant amount, or
  - (ii) which the registered organisation considers to be unusual, whether because of its origin, nature or otherwise,
- (b) the identity, credentials, *bona fides* and good standing of any person (other than an international partner) to which the registered organisation provides funds or other assets

or forms of assistance if

- (i) the person in question is outside the Bailiwick and the funds or other assets or forms of assistance provided are significant, or
    - (ii) the provision of funds or other assets or forms of assistance is requested in a way which the registered organisation considers to be unusual, whether because of the circumstances or nature of the request, or otherwise,
  - (c) the identity, credentials, *bona fides* and good standing of any international partner within the meaning of regulation 10.
- (2) The identification measures at paragraph (1) do not apply to
- (a) a government body (which for these purposes includes Chief Pleas in the same way as it includes the States and the States of Alderney), or
  - (b) any affiliated organisation in the United Kingdom, Jersey or the Isle of Man.
- (3) For the purposes of paragraph (1),
- (a) a donation is of a significant amount if it exceeds [£ ]

**Commented [LPJ22]:** Views are sought on the financial threshold to be specified for this section.

donated in any given year (whether in the form of a single donation or in a series of donations),

(b) funds or other assets or forms of assistance are significant if their value exceeds [£ ] in any given year (whether in the form of a single distribution or in a series of distributions),

**Commented [LPJ23]:** Views are sought on the financial threshold to be specified for this section.

(c) where a party to whom the measures at paragraph (1) apply is an entity other than an entity within paragraph (4), a registered organisation should take such steps as are reasonable in all the circumstances to apply the measures at paragraph (1) to the individuals who own or control the entity, and

(d) the establishment of the credentials and good standing of a person includes consideration, as far as reasonably possible, of whether there is reason to believe that the person, or , in the case of an entity, any individual who owns or controls the entity, would intentionally or inadvertently apply any funds or assets or other form of assistance received for criminal purposes, or enable another person to do so.

(4) An entity is within this paragraph if it is –

**Commented [RK24]:** For all entities in this paragraph, information on their underlying owners will already be in the jurisdiction so it is not necessary for the organisation to obtain it.

(a) a Guernsey legal person,

(b) an Alderney company,



- (c) licensed by, or registered with, the Commission,
- (d) administered by a corporate services provider, or
- (e) a company listed on a recognised stock exchange within the meaning of the Beneficial Ownership (Definition) Regulations, 2017,<sup>b</sup> or a majority subsidiary of such a company,

(5) The identification measures at paragraph (1) should be taken before accepting a donation or providing funds or other assets or forms of assistance, as the case may be (or, where it is not reasonably practicable to do so, as soon as possible thereafter).

(6) Where a registered organisation is unable to carry out the identification measures required by this regulation or as a result of carrying out those measures has concerns about the risks of it, or its activities, being used for criminal purposes, it should put in place such measures as are reasonable in all the circumstances to mitigate those risks, whether by refusing to accept a donation, deciding not to provide the funds or other assets or forms of assistance, or otherwise.

- (7) A registered organisation must record in a register
- (a) the names and location of any persons in respect of whom it takes identification measures under paragraph (1),
  - (b) the amount of any donation received from, or funds or other

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<sup>b</sup> G.S.I. No. 38 of 2017; as amended by G.S.I. No. 51 of 2017; G.S.I. No. 99 of 2017; and G.S.I. No. 121 of 2017.

assets or form of assistance provided to, that person as the case may be, and

- (c) if applicable, a summary of
  - i) the information verifying the credentials, *bona fides* and good standing of that person, and
  - ii) any measures taken to mitigate the risks associated with receiving a donation from, or providing funds or other assets or form of assistance to, that person as the case may be.

#### Anti-financial crime policy.

9. (1) A registered organisation that carries out international activity and is not a local branch must have a written policy (" **anti-financial crime policy**") on addressing the risks to the registered organisation of it, or its activities, being used for criminal purposes.

**Commented [RK25]:** This is to ensure that internationally active organisations think about their financial crime risks.

(2) For the avoidance of doubt, addressing the risks referred to in paragraph (1) includes addressing such risks in dealing with an international partner within the meaning of regulation 10.

(3) A registered organisation that is obliged to have an anti-financial crime policy by virtue of paragraph (1) must provide a copy to the Registrar when applying for registration.

**Commented [RK26]:** Any changes to the anti-financial crime policy will also have to be notified to the Registrar under section 19 of the Ordinance, which requires registered organisations to inform the Registrar of any changes to information submitted when applying for registration.

#### International partners.

10. (1) Subject to paragraph (4), an international partner is an affiliated organisation or any other entity or individual with which a registered organisation has arrangements in place for the purposes of

**Commented [RK27]:** The purpose of this is to ensure that local charities which rely on international parties to distribute assets have reasonable checks and controls in place (but this is not necessary in the case of affiliated organisations in the UK or the other CDs). What is reasonable is risk based, depending on the areas and types of activity involved, and this is explained in the dedicated guidance.

This does not apply to parties in the UK or CDs, because they are registered and therefore subject to oversight in those jurisdictions.

providing funds or other assets or other forms of assistance outside the Bailiwick.

(2) A registered organisation must put in place such procedures and controls in respect of its dealings with any international partner as are reasonable in all the circumstances for the purposes of preventing the registered organisation or its activities being used for criminal purposes as a result of those dealings.

(3) For the avoidance of doubt, the measures referred to in paragraph (2) may include a decision not to have any, or any further, dealings with an international partner.

(4) An international partner does not include parties that are based in the United Kingdom, Jersey or the Isle of Man.

**Reviews etc.**

11. (1) A registered organisation must
- (a) review annually its compliance with
    - (i) the obligations applicable to it under the Ordinance and these regulations ("legal obligations"), and
    - (ii) its anti-financial crime policy, if applicable,
  - (b) where it identifies any failure of compliance with legal obligations or with its anti-financial crime policy if applicable (whether as a result of a review carried out under this

**Commented [RK28]:** This is to ensure that registered organisations keep abreast of their financial crime risks and take any necessary remedial measures.

**Commented [RK29]:** It is envisaged that there will be a tick box on the AV form for organisations to confirm that they have done this.

regulation or otherwise), put in place any necessary mitigating measures,

- (c) review periodically, and update as necessary, its constitution or other governance document and its anti-financial crime policy if applicable, and
- (d) record the findings of the reviews referred to in this regulation and any actions taken as a result in the records of the registered organisation.

#### PART IV

#### REPORTING OBLIGATION; SPECIFIED AMOUNT

##### **Specified amount.**

12. The specified amount for the purposes of the reporting obligation at section 18 of the Ordinance is [£ ];

**Commented [RK30]:** This is the obligation to report to the Registrar payments made outside the Bailiwick over a specific amount. It does not apply to physical items (so would not cover rugby shirts etc.) or to incidental expenditure or *de minimis* payments.

**Commented [LPJ31]:** Views are sought on the financial threshold to be specified for this section.

#### PART V

#### GENERAL PROVISIONS

##### **Enforcement and Effect.**

13. (1) Section 23 of the Ordinance applies to a failure by a registered organisation to comply with the duties applicable to it under these Regulations in the same way as it does to failure to comply with any of the duties applicable to it under Part IV or Schedule 6 of the Ordinance.

(2) The duties imposed by these Regulations are without prejudice to any other obligations that may be applicable to a registered organisation under any enactment.

**Interpretation.**

14. In these Regulations, except where the context requires otherwise -

"**affiliated organisation**" means an organisation to which the registered organisation is affiliated, and includes a UK parent organisation,

"**anti-financial crime policy**"; see regulation 9,

"**corporate services provider**" has the same meaning as in the Guernsey Companies Law 2008,

"**criminal purposes**"; see regulation 7,

"**government body**"; see regulation 2 and regulation 8.

"**international activity** " means activity that engages the obligation to register under subsection 10(3)(b) of the Ordinance,

"**international partner** "; see regulation 10,

"**legal obligations**"; see regulation 11,

"**local branch**"; see regulation 4

"**the Ordinance** " means the Charities etc. (Guernsey and Alderney) Ordinance, 2021,

"**required information**"; see regulation 4,

"**UK constitution**"; see regulation 4,

"**voluntarily registered organisation**" means a registered organisation that has registered under section 10(2) of the Ordinance,

and other terms used both in these Regulations and in the Ordinance shall have the same meanings as in the Ordinance.

**Citation and Commencement.**

15. These Regulations may be cited as the Charities etc. (Amendments, Exemptions, Governance and Specified Amount) (Guernsey and Alderney) Regulations, 2021 and shall come into force on **tbc**.

## SCHEDULE

### Regulation 4

#### CONSTITUTION ETC.

The constitution or other governing document of a registered organisation must include the following -

1. The name of the organisation
2. Its legal status (e.g. company, unincorporated association, foundation)
3. Its purpose and mission or objectives
4. If applicable, its relationship to other non-profit organisations, whether as a member of an affiliation network or otherwise
5. Rules governing its dissolution
6. Rules governing the administration of its assets, if any
7. Rules governing the amendment of its constitution or other governing document
8. The nature or, if applicable the identity, of its members
9. Membership rules such as eligibility, suspension and expulsion
10. A requirement for an annual general meeting and rules for proceedings at this or any other members' meeting, including provisions for quorum and voting (such that at least two unconnected members must be present, with a casting vote by a third unconnected person such as the Chairman of the meeting)
11. The rights of members to elect whether or not the annual financial statements should be independently audited or verified, as befits the organisation's size, nature and complexity
12. The rights of members to see the annual financial statements of the organisation within a reasonable period following the end of the accounting period. Such statements should be either independently

audited or appropriately verified independently of the organisation, if required by the membership

13. Procedural rules for eligibility for election of board members and for their election by the membership, including

- a. minimum number of members of the board (which must comprise at least three unconnected people to occupy the roles of Chairman, Secretary and Treasurer)
- b. terms of office
- c. maximum length of service
- d. limits on re-election
- e. conflict of interest provisions
- f. provisions for retirement, dismissal and replacement of board members
- g. remuneration of board members (if applicable)
- h. a requirement that the board members must be Guernsey residents

14. Duties and powers of the board, including

- a. a requirement for board members to be persons of integrity and probity who have suitable and appropriate skills and experience
- b. a duty to act in good faith at all times, with a general duty of care
- c. a duty to act only in accordance within the powers afforded by the Constitution
- d. a duty to ensure that there are measures in place to enable the organisation to achieve its purpose and mission or objectives effectively, to fulfil its other obligations under its constitution and to discharge any legal obligations to which it is subject
- e. a duty to review the activities of the organisation, as well as its own performance, from time to time to ensure that the organisation continues to achieve its purpose and mission or



objectives effectively, to fulfil its other obligations under its constitution, and to discharge any legal obligations to which it is subject, as required by regulation 11

- f. a duty to ensure that the financial position of the organisation is satisfactory and prudent for the purposes of the organisation's mission or objectives

15. Duties and powers of the Chairman

16. Duties and powers of the Secretary

17. Duties and powers of the Treasurer

18. Rules concerning frequency of, and proceedings at, meetings of board members, including provisions for quorum and voting (such that there must be at least two board meetings a year and that two unconnected board members must be present, with a casting vote by a third unconnected person such as the Chairman).

Dated this    day of, 2021

P. T. R. FERBRACHE

President of the Policy & Resources Committee

For and on behalf of the Committee

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend and provide some exemptions from the requirements under the Charities etc. (Guernsey and Alderney) Ordinance, 2021. They also set out requirements of good governance and risk mitigation applicable to charities and other non-profit organisations that are registered under the Ordinance, in order to promote transparency, integrity and public confidence in their administration and management. Finally, the Regulations specify the threshold for reporting obligation under the Ordinance in respect of payments outside the Bailiwick.

The Regulations shall come into force on tbc.

*Draft for consultation purposes*

**THE CHARITIES ETC. (GUERNSEY AND ALDERNEY) ORDINANCE, 2021 –  
GUIDANCE FOR ALL CHARITIES AND OTHER NPOS  
("THE GENERAL GUIDANCE")**

**Introduction**

This guidance is issued by the Registrar of Charities and other Non Profit Organisations under section 45 of the Charities etc. (Guernsey and Alderney) Ordinance, 2021 ("**the Ordinance**"). It applies to all charities and other non-profit organisations ("**NPOs**") and provides information on some of the requirements for Guernsey and Alderney NPOs set out in Ordinance and the Charities etc. (Amendments, Exemptions, Governance and Specified Amount) (Guernsey and Alderney) Regulations, 2021 ("**the Regulations**"). Charities and other NPOs which are internationally active are also subject to a separate guidance paper issued by the Guernsey Registry which has been prepared to address the greater risk of that international profile.

The legislation has three separate but equally important objectives. The first is to promote accountability, integrity and public confidence generally in the administration and management of the sector. The second is to meet international standards aimed at preventing the third sector from being abused for criminal purposes (primarily terrorist financing, money laundering, fraud, bribery and corruption). The third is to give comfort to donors and others providing funding to a particular charity or NPO that their donations will be used to achieve the purposes of the organisation in question.

These factors do not apply in the same way across the third sector because different parts of the sector present different levels of risk. For example, while overall the risk of Guernsey and Alderney charities and NPOs being abused for criminal purposes is considered to be low, abuse of this kind is more likely to affect organisations that are internationally active than those that are domestically focused. In addition, risks vary between different types of domestically focused organisation. There is obviously much less risk of public confidence etc. being undermined in the case of organisations that have low value assets or do not engage with the public than there is with organisations that have substantial assets and solicit or accept funds from the public. Similarly, while organisations that do not meet the criteria for registration all have the same risk profile from a criminal perspective, for those that choose to register voluntarily public expectations of good governance etc. are higher than for those that do not, by virtue of the respectability that registration confers.

For these reasons, the legislation effectively creates a risk based sliding scale of requirements applicable to different types of organisation or activity.

The purpose of this guidance is to assist different types of charities and NPOs to understand the requirements applicable to them under the legislation. However, it is not intended to replace the legislation and it does not cover all matters addressed in the legislation. It is

therefore important that organisations familiarise themselves with the legislation to ensure that they are fully aware of their obligations.

The guidance takes the form of FAQs and is divided into four parts. The first part gives a high level overview of the effect of the legislation. The second part deals with registration requirements under the legislation. The third part deals with the basic governance measures that registered organisations are required to take under the legislation<sup>1</sup>. The fourth part deals with the additional governance measures that organisations must have in place to mitigate the risks of being used for criminal purposes.

This guidance does not include some additional requirements that are applicable to organisations that are internationally active, as they are dealt with in separate guidance specifically aimed at international activity and its risks.

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<sup>1</sup> Governance for these purposes does not mean administrative matters such as the process for registration or annual validation.

## **PART I - OVERVIEW OF LEGISLATION**

### **FAQ 1 – What obligations apply to charities/NPOs under the legislation?**

Registration under the legislation is compulsory for charities/NPOs that both meet a financial threshold and engage with the public organisations, and for all charities/NPOs that carry out international activity whether or not they meet these other requirements. Charities/NPOs that are not required to register may do so voluntarily.

Registered organisations are subject to governance measures, which fall into two categories. The first is basic governance measures, which set out the minimum standards expected of all charities/NPOs on the register. These measures reflect what most charities/NPOs are already doing in practice. The second is measures to mitigate financial crime risks, which are more risk-based and contain some additional requirements for charities/NPOs that carry out international activity. Again, these measures reflect what many charities/NPOs are already doing in practice.

There is also a requirement to report to the Registrar payments made outside the Bailiwick in excess of [*£ threshold subject to consultation*]. There is no obligation to report activity that does not comprise making a payment such as the donation of physical items. Furthermore, the reporting obligation does not apply to payments that are incidental to the purposes of the charity/NPO or are made to an affiliated organisation in the UK, Jersey or the Isle of Man. Therefore, while technically this reporting obligation applies to all registered organisations, in practice it will only be relevant to organisations that are internationally active.

Basic governance measures in broad terms are requirements for registered organisations to:

1. have a constitution or other governing document and provide a copy to the Registrar;
2. maintain financial records demonstrating that an organisation's assets are being applied in line with its objectives;
3. keep annual financial statements (and in some cases file them with the Registrar);
4. make and keep records of meetings, decisions, contractual documents etc;
5. put in place standard measures to ensure financial probity and transparency (e.g. as far as possible passing funds through their bank accounts).

Risk mitigation measures, again in broad terms, are requirements to:

1. put in place controls to ensure that it and its activities cannot be used for the purposes of money laundering, fraud, bribery and corruption;
2. identify donors and beneficiaries in certain situations;
3. periodically review compliance with the obligations under the legislation and take steps to address any issues of non-compliance.

There are exemptions from some of these obligations for certain types of registered organisation. For example, the obligation to have a constitution etc. does not apply to branches of UK-registered charities, and the obligation to file annual financial statements with the Registrar does not apply to organisations that register voluntarily. In addition, even where

a registered organisation is not technically exempt from some obligations, in practice those obligations will not apply to low risk organisations because they are limited by risk-based criteria. For example, an organisation with a purely domestic focus is unlikely to receive payments from outside the Bailiwick, which is one of the criteria for carrying out identification measures on donors.

Charities/NPOs that are not required to register and do not choose to do so voluntarily are not subject to any obligations under the legislation.

## **PART II - REGISTRATION**

### **FAQ 2 - What constitutes a charity under the legislation?**

An organisation is a charity if all of its purposes are charitable (or are ancillary or incidental to its charitable purposes), **and** it provides benefit for the public or a section of the public by carrying out its purposes.

### **FAQ 3 - What are charitable purposes?**

The “charitable purposes” are set out in Schedule 4 of the Ordinance.

### **FAQ 4 - What constitutes an NPO under the legislation?**

An organisation is an NPO if it does not fit the criteria to be a charity but is established solely or principally for the non-financial benefit of its members or for the benefit of society. An example of an NPO would include a private members club.

### **FAQ 5 - Which charities/NPOs need to be registered?**

Organisations must be registered if they are based in Guernsey or Alderney and they fall into one or both of the following categories:

Category 1 - organisations that have gross assets and funds of £100,000 or over, or a gross annual income of over £20,000 (“**the financial threshold**”). However, there is an exemption from this requirement for organisations that meet the financial threshold but do not solicit or accept donations, funds or contributions from the public (see FAQ 6).

Category 2 - organisations that engage in international activities, in other words those that raise or distribute assets abroad (see FAQ 7). Organisations in this category must be registered, regardless of whether they meet the financial threshold or solicit or accept donations etc. from the public.

### **FAQ 6 – What counts as soliciting or accepting donations etc. from the public?**

An organisation solicits or accepts donations etc. from the public if, in the normal course of its activities, it applies for or accepts sponsorship, grants or donations from the public, expects to do this or holds itself out as doing this. Holding itself out as doing this would include

activities such as having a website through which donations can be made or making reference in its publicity material to having received sponsorship or a grant.

An example of the type of organisation that would fall outside this test is a private charitable trust or a purpose foundation set up as a restructuring vehicle. Another is a club or group that only receives funds from within its membership, for example by subscriptions, as the legislation specifies that public does not include the members of an organisation itself or their family members or close associates. The legislation also specifies that the solicitation or acceptance of donations etc. from the public does not apply to fundraising that involves providing something in exchange for a payment. Providing something in exchange for payment would not include benefits that are incidental to a donation etc. (e.g. free tickets to sponsors) but would cover situations where a payment is received for a specific benefit or item, for instance where an organisation puts on a concert, organises a quiz night, sells Christmas cards or holds a gala dinner. Organisations that only raise funds in this way are not treated under the legislation as soliciting or accepting donations etc. from the public. This is because they are effectively operating in the same way as a commercial organisation, so the need to protect the public does not arise in the same way as for organisations which rely on goodwill.

However, in all these examples the organisation will still be required to register if it engages in international activity (see FAQ 7).

#### **FAQ 7 – What counts as international activity?**

An organisation engages in international activity if, in the routine course of its activities, the organisation receives (or expects to receive) assets from parties outside the Bailiwick, or provides (or expects to provide) assets to parties outside the Bailiwick. This will apply to local charities/NPOs that are branches or affiliate members of an organisation based elsewhere, if they receive funding from or raise funds for that organisation. It will also apply to organisations that are established for the specific purpose of providing assistance to other parts of the world.

However, it is important to be aware that there are three situations in which distributing assets outside the Bailiwick does not count as international activity, so does not engage the obligation to register.

The first is where the assets being distributed comprise incidental expenditure, such as payment for the purchase of equipment from a foreign supplier, or for hiring a coach to transport a sports team that is touring abroad. Another example would be a payment to an affiliated organisation outside the Bailiwick for purely administrative purposes, e.g. a registration fee.

The second is where the payment is in line with the purposes of the organisation but is *de minimis*, or in other words is of a very low amount. An example would be where an organisation exists to provide support for young musicians, if one of its officers is on tour abroad with the members of an orchestra and he or she gives them money to purchase refreshments. As this would technically be in line with the purposes of the organisation it

would not be an incidental expense, but the low sums involved mean that it would be considered *de minimis*.

The third is where the purposes of the organisation are domestically focused, but it sometimes distributes physical items such as clothing or equipment overseas for the support of purposes in another country that are linked to its purposes in the Bailiwick. Examples would be a local sports club that at the end of the season sends its used kit to a team in a developing country, or a PTA that sends textbooks to a school in a deprived area. This exemption is on the basis that although physical items like this have a potentially high value in certain parts of the world, the volume of donations from a domestically focused charity/NPO is likely to be low (in contrast to charities/NPOs specifically set up for this purpose and which are required to register).

Therefore, organisations whose only international activity comes within one or other of these three categories do not need to register, unless they both meet the financial threshold and solicit or accept donations from the public (see FAQs 5 and 6).

#### **FAQ 8 – Can a charity/NPO that is not obliged to be registered register voluntarily?**

A charity or NPO based in in Guernsey or Alderney that is not required to be registered may apply for voluntary registration. Voluntary registration brings with it most of the same governance obligations as compulsory registration. This is to protect the public in view of the credibility conferred by registration.

### **PART III – BASIC GOVERNANCE OBLIGATIONS**

#### **FAQ 9 - Do registered charities/NPOs need to have a constitution?**

A registered charity/NPO that is a branch of a UK organisation registered with the Charity Commission for England and Wales or with the Scottish Charity Regulator and whose only activity within the Bailiwick is to raise funds etc. for the UK organisation does not need to have its own constitution but can rely instead on the constitution of the UK organisation.

All other registered charities/NPOs (including those that are voluntarily registered) must have constitutional documentation that, as a minimum, contains the information set out in the Schedule to the Regulations. This covers matters such as the purposes of the organisation, its membership, the number of board members (or other managing officers such as trustees, depending on the nature of the organisation) the appointment, removal and replacement of managing officers, meetings and voting rights, and provisions governing the administration of assets (for most organisations, this is likely to be just a requirement to have a bank account with specified signatories). Copies of constitutional documentation must be provided to the Registrar when applying for registration.

It is recommended that this documentation takes the form of a constitution, but it need not do, and it may comprise more than one document. The key point is that all the required information is covered and is done so in documents that have official status. The way this is achieved may vary depending on the type of organisation involved. For example, for an organisation that is a company, much of the required information is likely to be covered in its



memorandum and articles of association, and the same would apply to trust deeds in the case of trusts. In this situation, it would be acceptable to amend those documents to fill in any gaps in the required information, or to append a further document that contains the missing information.

All registered charities/NPOs must review their constitutional documentation periodically and update it as necessary. If any changes are made to the documentation, updated copies must be filed with the Registrar.

#### **FAQ 10 - How many managing officers does a registered charity/NPO need?**

The constitutional documentation of registered charities/NPOs (including those that are voluntarily registered) must require them to have a minimum of 3 managing officers who are unconnected, i.e. not related to each other. The specific roles filled by managing officers will depend on the nature of the organisation but would generally be the directors in the case of a company, the trustees in the case of a trust, or the committee members in the case of an unincorporated association other than a trust (e.g. a PTA).

It is recommended that charities/NPOs operating outside the Bailiwick should have a minimum of 4 managing officers who are not related to each other. This is to reflect the greater risks involved and the need to widen the pool of people with a proper understanding of the activities of the organisation.

Similarly, while local branches of UK parent organisations are not obliged to have a constitution so are not subject to the requirement for a minimum number of managing officials, it is recommended that they have at least 2, both as a matter of good governance and to make it easier for them to comply with the requirement for 2 people to be involved in the release of funds (see below).

#### **FAQ 11 – What records do registered charities/NPOs need to keep?**

Registered charities/NPOs (including those that are voluntarily registered) must make, keep and retain records of all financial transactions so that they can evidence the use of their funds.

They should also keep records of the following:

1. names and addresses of managing officers;
2. minutes of meetings of the managing officers and any other meetings of the members of the charity/NPO;
3. records relating to international activity, if relevant;
4. if the charity/NPO is affiliated to another organisation, details of its relationship with the affiliate organisation and of the affiliate itself, including where it is registered;
5. details of any contracts the charity/NPO has entered into for goods or services with a value of [*£ threshold subject to consultation*] or more.

The records must be kept for a minimum of 6 years in a form that will enable them to be accessed easily.

## **FAQ 12 – What requirements are there about accounts or financial statements?**

There is no obligation under the legislation to maintain audited accounts. However, all registered charities/NPOs, including those that are voluntarily registered, must prepare annual financial statements. For those that are local branches of a UK-registered parent organisation, the financial statements only need to record the funds or other assets raised or received on behalf of the UK parent organisation, and the funds or other assets that have been remitted to it. For other registered charities/NPOs, the financial statement should contain a breakdown of income and expenditure and include a balance sheet.

All registered charities/NPOs that solicit or accept donations from the public, including those that are voluntarily registered, must provide copies of their annual financial statements for up to 6 years to any person upon request. This is to ensure that potential donors and other interested parties can have confidence in the charity/NPO. However, details of particular donors or beneficiaries may be kept confidential, at the discretion of the board.

In addition, all charities/NPOs that are required to be registered must file their annual financial statements with the Registrar within 12 months of the end of the financial year that they relate to. Voluntarily registered charities/NPOs are **not** required to file their annual financial statements with the Registrar.

## **FAQ 13 – What financial controls do registered charities/NPOs need to have?**

All registered charities/NPOs (including those that are voluntarily registered) must comply with any financial controls that are set out in their constitutional documentation. In addition, registered charities/NPOs have a general obligation to put in place measures to promote probity and transparency, which must include some specific measures identified in the legislation.

The first is a requirement for funds to pass through a bank account. However, there are two points to note here. First, there is an exemption for payments of up to [*£ threshold subject to consultation*] in any twelve-month period that are made within the Bailiwick and are incidental to the purposes of the charity/NPO. This is to cover "petty cash" types of payments where it is not feasible to use a cheque or arrange a bank transfer, e.g. where an organisation is in the middle of hosting an event and additional supplies need to be purchased urgently. Second, the obligation is only to use a bank account as far as is reasonably possible. In some situations using a cheque or bank transfer may be difficult, especially for internationally active charities or NPOs that operate in countries where most people do not have bank accounts and the use of cash is the norm. In those circumstances, the charity/NPO should do the best it can to avoid using cash, but it is recognised that there will be situations where this will not be possible. In these cases, a log of cash transactions and the reasons for them should be maintained.

The second is measures to ensure that at least two unconnected people are involved in the release of funds. This could be a simple requirement for the agreement of two people before any transfer of funds, or by a division of functions to ensure that one person has to approve the release of funds and another has actually to release them. The general expectation is that

the two people would be managing officers of the charity/NPO, but if the charity/NPO is a branch of a UK parent organisation and only has one managing official, that person should make arrangements with a suitable individual for that individual to approve any transfers of funds etc. before he or she makes them.

The third is a requirement to ensure as far as is reasonably possible that the assets of a registered charity/NPO are kept separate from those of any third party. Third parties in this context include the managing officers or members of the organisation itself. It is generally expected that a registered charity/NPO will have its own bank account and that payments to or from the organisation will be made via that account rather than via the account of a third party. At the same time, it is recognised that there may be circumstances in which that is not possible or practicable for some reason (e.g. where a charity/NPO has only just been set up and does not yet have its own bank account). In that situation, clear and detailed records should be made of any payments made to or by a third party on behalf of the organisation. Similarly, if a managing officer or other member makes a loan to an organisation (for example to get it off the ground when it is first established), this must be clearly recorded, along with details of any repayment by the organisation.

The fourth is having policies and procedures that follow accepted principles of accounting and control and which include making financial information available to the board. The degree of detail required by these policies and procedures will vary depending on the nature of the charity/NPO but in general terms, the lower the value of an organisation's assets, the more simple and high level their policies and procedures can be.

#### **PART IV – RISK MITIGATION MEASURES**

##### **FAQ 14 – What are the risks that mitigating measures should address?**

Mitigating measures should address the risk of a registered charity/NPO being used for criminal purposes. This means money laundering, fraud, bribery and corruption. For charities/NPOs that carry out international activity (other than remitting funds to a UK-registered charity/NPO), this also means terrorist financing. This is in recognition of the higher risk profile arising from international activity and is the subject of separate guidance.

##### **FAQ 15 – What mitigating measures should be put in place?**

There is a general obligation to put in place controls to ensure that funds and assets are fully accounted for, that funds and assets are used in accordance with the aims etc. of the organisation, and the organisation complies with all of its legal and constitutional obligations. This general obligation is underpinned by specific obligations in relation to identification of donors and beneficiaries and carrying out compliance reviews. These general and specific requirements are looked at below. (For internationally active charities/NPOs, there are also specific requirements about anti-financial crime policies and dealing with international partners, which are looked at in separate guidance relating to international activity.)

##### **FAQ 16 – What general controls should be put in place?**

As a starting point, it is recognised that many registered charities/NPOs already have measures in place to address particular financial crimes such as fraud or bribery and corruption, and in most cases these measures will be sufficient to address other forms of financial crime (other than terrorist financing - this is looked at in separate guidance for internationally active organisations).

It should also be noted that for most domestically focussed charities/NPOs, the basic governance measures outlined above will be sufficient to mitigate the risk of being abused for criminal purposes. For these organisations, more will usually only be required if there is something about their profile or activities that makes them particularly vulnerable to abuse. Examples might be where a domestic charity/NPO operates in an area of activity that is known to be targeted by criminals, or if it has assets of a very high value and its managing officials have little financial experience. All organisations that carry out international activity (other than remitting funds to a UK-registered organisation) will usually be expected to have additional controls in place, in order to address the greater risks of being abused for criminal purposes that result from the fact that they have less control over the use of their assets.

If additional controls are required, they may include all or some of the following measures, depending on the particular circumstances of the charity/NPO:

1. segregation of duties where possible;
2. regular bank reconciliation checks;
3. multiple signatories for all bank account activity;
4. having professionally audited accounts;
5. restricting full access to all areas of the accounting system;
6. regular review of and spot checks on payroll records to ensure consistency with staff movements;
7. reconciliation of supplier statements, invoices and creditor balances;
8. documented authority thresholds for the approval of and payments to suppliers;
9. random checks to ensure expenditure below key thresholds is legitimate;
10. procedures to address any employee/trustee connections with suppliers.

#### **FAQ 17 – When should identification measures be carried out?**

If a registered charity/NPO receives a donation from outside the Bailiwick or provides assets etc. to a person outside the Bailiwick (**a beneficiary**) and the sums involved exceed [*£ threshold subject to consultation*] in any one year (whether in the form of a single payment or a series of payments), it must carry out identification measures in respect of the relevant donor or beneficiary.

In addition, all registered charities/NPOs must carry out identification measures on their donors or beneficiaries in situations which the charity/NPO considers to be unusual. An example would be where the charity/NPO is requested to use cash in circumstances where it would expect to use a bank account, or if a payment is made or received via a third party for no obvious reason. In practice, it is not expected that this situation will arise very often in respect of payments made or received within the Bailiwick, so the occasions on which a

domestically focused charity/NPO has to carry out identification measures are likely to be very limited.

There are also some risk based exemptions for affiliated organisations in the UK, Jersey or the Isle of Man, and for the governments of the Bailiwick or persons linked with them. There is no obligation to carry out identification measures in respect of any parties in these categories.

If identification measures are required, they should generally be taken before the registered charity/NPO receives or makes the donation or distribution in question. If this is not possible, they should be taken as soon as possible afterwards.

#### **FAQ 18 – What are the identification measures that should be carried out for donors?**

For donors to which the identification measures apply (see FAQ 17) charities/NPOs are required to take reasonable measures to establish, verify and document their identity.

What is reasonable will depend on the circumstances, and where the donor is an individual, this will usually be very straightforward. Where the donor is an entity, the charity/NPO should take reasonable measures to identify the individuals who own or control the entity making the donation. However, this is not necessary if the entity is a Guernsey legal person, an Alderney company, is regulated by the Guernsey Financial Services Commission ("GFSC") or is administered by a corporate services provider regulated by the GFSC. The reason for this exemption is that for these entities, the information on those who own or control them is already available within the jurisdiction.

For entities that are not exempt, the charity/NPO is not obliged to carry out measures equivalent to customer due diligence. Instead, the obligation to carry out reasonable measures will generally be met by making an enquiry of the entity about its owners/controllers or looking at information in the public domain (e.g. the website of the entity or a public register such as the register at Companies House in the UK). There will usually only be a need to do more than this if there is something suspicious about the entity (e.g. if it appears unable to answer simple questions for no obvious reason, or there is information in the public domain raising doubts about its probity).

#### **FAQ 19 – What are the identification measures that should be carried out for beneficiaries?**

For beneficiaries to which the identification measures apply (see FAQ 17) charities/NPOs are required to take reasonable measures to establish, verify and document their identity, and also their credentials, *bona fides* and good standing. This is therefore a two stage process.

The first stage is to identify the parties to whom the funds or other assets or forms of assistance will be provided. This includes both direct and indirect recipients. A direct recipient is the person to whom the distribution is made, even if it does not give them any personal advantage, and this includes persons who act as conduits or intermediaries. An indirect recipient is someone who will ultimately benefit from a distribution. For example, if a distribution is made to the spouse of a sick person to enable the spouse to buy that person a wheelchair, the spouse is a direct recipient and the sick person is the indirect recipient. There

will of course also be cases where a distribution is provided directly to the person who will benefit from it.

In the case of distributions for the ultimate benefit of a group of individuals, it will only be reasonable to apply identification measures to the members of the group if the group is such that its individual members can be easily identified. An example is where a distribution is for the benefit of a small and limited group, such as the members of a nuclear family. Different considerations apply where a distribution is for the benefit of a potentially large or unlimited group (e.g. the pupils of a school or the patients in a hospital). In that situation, the members of that group cannot be easily identified so the identification duties do not apply to them, but will apply to the person to whom the distribution is provided directly (e.g. the principal of a school or the administrator of a hospital).

In the case of a distribution to an entity, the identification measures apply to the individuals who own or control that entity, subject to the exemptions for entities with a local connection as outlined under FAQ 18.

The second stage is to confirm the credentials etc. of a party who has been identified under the first stage. Essentially this means determining, as far as is reasonably possible, whether there is reason to believe that assets etc. provided to them would be used for criminal activity. This could arise not only where criminal activity is likely to be deliberate on the part of the individual or entity receiving the distribution, but also where that individual or entity is likely advertently or inadvertently to cause or facilitate criminal activity. An example would be where the potential recipient is dominated by a third party who is suspected of being involved in crime, so is unlikely to be able to stop that third party from abusing the distribution. Another example would be where the intended recipient is an entity that is known to have very weak financial controls and is highly vulnerable to fraud or corruption.

When considering what identification measures to take, it should be remembered that the obligation is to take reasonable measures, and what is reasonable will vary depending on the circumstances. For example, if the distribution is being made to an individual or entity with whom a charity/NPO has a longstanding relationship, the measures that it will need to take are likely to be much less than if it is helping an individual or entity for the first time. Similarly, in some cases it may be fairly easy to look into the suitability of potential beneficiaries if they are in the Bailiwick or in another jurisdiction where there is a reasonable amount of easily accessible public information, but this may well not be feasible if the potential recipients are in a part of world where there is a much more limited infrastructure. In this latter situation, unless the charity/NPO is directly involved in making distributions in the relevant country so is in a position to make enquiries about potential recipients, it will almost certainly have to rely on an affiliated organisation or other international partner for this. That is likely to be the case for many charities/NPOs that carry out international activities. Therefore, for these charities and NPO the obligations in the Regulations that relate to international partners are particularly important. These are looked at in separate guidance relating to international activity.

It should also be stressed that charities/NPOs are not required to take measures that are equivalent to customer due diligence. As explained in the context of donors, identifying the

owners or controllers of an entity will not usually require more than making an enquiry of the entity or looking at information in the public domain.

#### **FAQ 20 – What should charities/NPOs do after taking identification measures?**

The names of the donors and the amount of the donation should be entered into the records of the charity/NPO in a register. However, there may be donors who wish their identity or the amount of their donations to be treated as confidential. In this situation, a charity/NPO may agree to record the details in such a way that protects confidentiality, for example by maintaining a confidential section of the register that is available to managing officers but not to the wider membership.

The names of beneficiaries and the value of distributions made to them should also be recorded in a register, together with a summary of the findings with regard to their credentials and so on. As with donors, where necessary this should be done in a way that respects confidentiality, particularly where sensitive information is involved (e.g. a person's financial or medical details).

If a charity/NPO cannot carry out the required identification measures for any reason, or has concerns that accepting a donation or making a distribution to a beneficiary may expose it to the risk of being abused for criminal purposes, it should put in place mitigating measures. This might be making further enquiries, applying conditions or extra controls to the donation or distribution, or in some cases deciding to decline the donation or not to make the distribution. Where a donation or a distribution proceeds but is made subject to mitigating measures, a summary of those measures should be recorded in the register.

#### **FAQ 21 – What reviews should charities/NPOs undertake?**

Registered charities/NPOs should review their compliance with the legislation (and their anti-financial crime policies if they carry out international activity) annually. If they detect any failures of compliance they should put in place mitigating measures.

Registered charities/NPOs should also review their constitutional documentation periodically and update it as necessary. This will apply to all registered organisations except those that are local branches of UK parent organisations and are covered by the constitutional documentation of the UK parent organisation. The same should be done by internationally active charities/NPOs in respect of their anti-financial crime policies.

These reviews are important to ensure that registered charities/NPOs keep abreast of their risks and take account of any changes to their circumstances. The scale of the reviews will depend on the complexity of the activities of the charity/NPO, but in general this is expected to be a fairly high level exercise rather than a detailed investigation.

The charity/NPO should enter the findings of these reviews and any action taken as a result in its records.





**THE CHARITIES ETC. (GUERNSEY AND ALDERNEY) ORDINANCE, 2021 –  
GUIDANCE FOR CHARITIES AND OTHER NPOS THAT CARRY OUT  
INTERNATIONAL ACTIVITY**

**Introduction**

This guidance is issued by the Registrar of Charities and other Non Profit Organisations ("**the Registrar**") under section 45 of the Charities etc. (Guernsey and Alderney) Ordinance, 2021 ("**the Ordinance**"). It relates to mitigating measures applicable to Guernsey and Alderney charities and other non profit organisations ("**NPOs**") which carry out international activity, that is, which provide or receive money or other assets to or from parties outside the Bailiwick.

These mitigating measures are required under Part III of the Charities etc. (Amendments, Exemptions, Governance and Specified Amount) (Guernsey and Alderney) Regulations, 2021 ("**the Regulations**"). While they are relevant to money laundering, fraud, bribery and corruption, they are also intended to address a specific international concern about third sector organisations being used for terrorist financing purposes. It is the actual use of charities/NPOs in some countries to finance terrorism that has triggered this concern and, therefore, international standards to address it. Every jurisdiction in the world is expected to meet these standards and is periodically measured for compliance with them.

This guidance, which takes the form of FAQs, has been issued to assist parties that carry out international activity to understand the additional mitigating measures that they need to put in place to deal with terrorist financing. However, it does not replace the Ordinance and the Regulations. It is also important to be aware that the additional mitigating measures are further to, and do not replace, the other governance obligations and mitigating measures applicable to registered organisations under the Ordinance and the Regulations. These other governance obligations and mitigating measures are subject to separate guidance issued by the Registrar ("**the general guidance**") which applies to all registered charities/NPOs. Therefore, in addition to consulting this guidance, charities/NPOs that carry out international activity must be familiar with all obligations under the Ordinance and the Regulations.

## **FAQ 1 – What obligations are relevant to mitigating risks?**

Broadly speaking, the following requirements are key to addressing the risk of a charity/NPO being used for criminal purposes:

1. identification measures for donors;
2. identification measures for beneficiaries;
3. restricting use of cash;
4. conducting internal compliance reviews;
5. identification measures and other controls when dealing with non-UK international partners;
6. anti-financial crime policy dealing with terrorist financing, money laundering, fraud and corruption.

Requirements (1) to (4) are dealt with under the general guidance. Requirements (5) and (6) are addressed in this guidance.

All of the requirements are risk-based and for that reason, the identification measures do not apply to any dealings with affiliated organisations that are based in the UK, Jersey or the Isle of Man. This exemption is likely to cover the vast majority of dealings between local charities/NPOs and parties in the UK, which means that in practice, the identification measures will be primarily relevant to dealings with parties outside the British Isles.

The identification measures and other controls outlined above broadly reflect the measures which the Guernsey Overseas Aid & Development Commission ("**OADC**") requires applicants for funding to have in place so should be familiar to charities/NPOs that have previously applied for funding from the OADC. In addition, this guidance and the general guidance may be helpful to charities/NPOs that have not previously applied for funding from the OADC but intend to do so in future.

## **FAQ 2 – How does this guidance relate to existing controls that charities/NPOs may have?**

Experience to date is that Bailiwick charities/NPOs that carry out international activity are generally alive to the risks of fraud, bribery and corruption arising from that activity and have taken steps to address those risks. Their members are clearly highly committed individuals who wish to see donations and the work of volunteers doing the most good possible and for their funds not to be siphoned off for criminal purposes. Some but not all local charities/NPOs include volunteers who have worked in sectors of the economy where risk considerations are formal, and where processes have been put in place to address those considerations.

Therefore, many charities/NPOs will already have anti-fraud and/or anti-corruption measures in place that will address some of the requirements for identification measures and other controls. One of the purposes of this guidance is to encourage charities/NPOs more explicitly to consider risks and to articulate those risks. Articulation, i.e. writing the risks down, should itself lead to improved controls. It should also be appreciated that while controls to address fraud and corruption risks are positive in helping to prevent terrorist financing, from an international perspective the key feature is for charities/NPOs which are vulnerable to

terrorist financing abuse to recognise that vulnerability. Actively thinking about and addressing the risks of terrorist financing is a different approach from relying on anti-fraud and anti-corruption controls, although there will be common features.

### **FAQ 3 – What constitutes international activity?**

An organisation engages in international activity if, in the routine course of its activities, the organisation receives (or expects to receive) money or other assets from parties outside the Bailiwick or provides (or expects to provide) money or other assets to parties outside the Bailiwick. This will include local charities/NPOs that are branches or affiliate members of an organisation based elsewhere, if they receive funding from or raise funds for that organisation. It will also apply to organisations that are established for the specific purpose of aiding other parts of the world.

However, it is important to be aware that there are three situations in which distributing assets outside the Bailiwick does not count as international activity.

The first is where the assets being distributed comprise incidental expenditure, such as payment for the purchase of equipment from a foreign supplier, or for hiring a coach to transport a sports team that is touring abroad. Another example would be a payment to an affiliated organisation for purely administrative purposes, e.g. a registration or subscription fee.

The second is where the payment is in line with the purposes of the organisation but is *de minimis*, or in other words is of a very low amount. An example would be where an organisation exists to provide support for young musicians, if one of its officers is on tour abroad with the members of an orchestra and he or she gives them money to purchase refreshments. As this would technically be in line with the purposes of the organisation it would not be an incidental expense, but the low sums involved mean that it would be considered *de minimis*.

The third is where the purposes of the organisation are domestically focused, but it sometimes distributes physical items such as clothing or equipment overseas for the support of purposes in another country that are linked to its purposes in the Bailiwick. Examples would be a local sports club that at the end of the season sends its used kit to a team in a developing country, or a PTA that sends textbooks to a school in a deprived area.

Charities/NPOs whose only international activity comes within one or more of these three exceptions do not carry out international activity for the purposes of the additional governance obligations in the Regulations. Accordingly (and assuming that they are registered) they only have to meet the requirements covered by the general guidance.

### **FAQ 4 – What are the overall risks to charities/NPOs from international activity?**

Global bodies such as the Financial Action Task Force ("**FATF**") and the United Nations have raised concerns about the legitimate assets of charities or NPOs in one country being abused for criminal purposes elsewhere. As mentioned above, this concern primarily relates to

terrorist financing, which includes the financing not only of acts of terrorism but also of terrorist recruitment and training. While terrorist financing is the main area of global concern about abuse of internationally active third sector organisations, there are also concerns about these organisations being abused for the purposes of money laundering, fraud and corruption. For this reason, the additional mitigating measures required in Part III of the Regulations are not limited to terrorist financing but are also intended to address these other forms of financial crime.

One of the FATF requirements is for each jurisdiction to assess its terrorist financing risks. The Bailiwick authorities have assessed the terrorist financing risks for charities/NPOs within the jurisdiction (as part of a process commonly referred to as the National Risk Assessment) and their findings are set out in a publicly available report ("**NRA report**"). The NRA report includes specific sections on charities/NPOs, as well information on money laundering, fraud and corruption. The publication of the NRA report was preceded by guidance on the terrorist financing risks to the Bailiwick issued by the States of Guernsey Policy & Resources Committee ("**P & R guidance**") which included matters relevant to charities/NPOs. The NRA report and the P & R guidance have been published on the International Compliance section of the Guernsey Registry website.<sup>1</sup> Charities/NPOs should familiarise themselves with these documents if they have not already done so. The basic fact is that no matter how remote a jurisdiction considers the risks of abuse of its charities/NPOs to be, each jurisdiction must play its part in supporting international efforts in this area.

#### **FAQ 5 – What are the particular terrorist financing risks that affect internationally active charities/NPOs?**

As explained in the NRA report, while overall the terrorist financing risk for Bailiwick charities/NPOs is low, terrorist financing is most likely to happen by distributions from Bailiwick charities or NPOs being diverted before or at the point of delivery in a different country. This delivery may be direct or, more commonly, through an affiliated organisation or other international partner.

The internationally active Bailiwick charities/NPOs that are most vulnerable to terrorist financing are those where their distributions are to or for the benefit of parties in countries that are exposed to terrorism or terrorist financing. The risk is increased where they make high value distributions of cash or other financial assets, or they rely on an international partner to carry out checks on the ground and the international partner is a small or unregulated organisation, or not regulated in a meaningful way.

It is also important to be aware that although the terrorist financing risks primarily arise from the destination or use of assets rather than their origin, the possibility of a Bailiwick charity/NPO unwittingly being used as a vehicle for raising or channelling funds to support terrorism abroad cannot be ruled out. Therefore, the origin of the assets of a Bailiwick charity/NPO is also relevant, albeit to a lesser degree than the destination or use of those assets.

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<sup>1</sup> Available here: [International Compliance - Guernsey Registry](#)

## **FAQ 6 – What parts of the world are considered to present a terrorist financing risk?**

Exposure to terrorism or to terrorist financing is not confined to conflict zones. It may also arise in a country where a section of the population is targeted for support and cover by terrorist organisations. In this situation, the abuse may be for multiple purposes, including the provision of general logistical support to a terrorist organisation. For convenience, countries that are likely to be exposed to terrorism or to terrorist financing are referred to in the NRA report and the P & R guidance as **focus countries**. These are countries or jurisdictions that fall into one or more of the following categories:

1. countries that present active terrorism or terrorist financing threats because there are areas of conflict within their borders;
2. countries that border or have other strong geographical links to countries that have an active terrorism or terrorist financing threat;
3. countries with a section of the population that is actively targeted by terrorist organisations for support and cover because it may be sympathetic to regional or terrorist actors (whether because of diaspora links or otherwise);
4. countries that are involved in state-sponsored terrorism;
5. countries with a secondary terrorism or terrorist financing threat, i.e. where there may not be an active terrorism or terrorist financing threat but where there is a heightened threat of crimes whose proceeds are typically used by organised criminal groups to fund terrorism (e.g. corruption and drug trafficking).

It is not possible for the Bailiwick authorities to give a list of focus countries, due to the rapidly evolving international situation with regard to terrorism and the danger of any list of countries being treated as exhaustive. However, there are links to information sources in the NRA report and the P & R guidance which charities/NPOs may find useful in assessing whether any jurisdictions with which they have links are focus countries. In addition to these sources, charities/NPOs should consider other publicly available information to check whether they should treat a particular country as a focus country.

## **FAQ 7 – What sort of assets are most likely to be abused for terrorist financing?**

The risks of distributions being diverted for terrorist financing purposes are greater if those distributions are in the form of financial assets than if they comprise physical items. However, it is important to be aware that there are still risks attached to the distribution of physical assets, as these may be sold to raise funds or to provide logistical support for terrorist organisations, particularly in countries where most people do not have bank accounts. This is a particular risk with items such as medical supplies for which there is likely to be a ready market.

## **FAQ 8 – What counts as an international partner?**

An international partner may be an affiliated organisation or other organisation that is separate from a charity/NPO but has an agreement with it to collaborate in some way. It may also be an individual. International partners usually operate “on the ground” where distributions are to be made. The risks from dealing with international partners may vary

considerably, depending on the profile of the international partner and the areas in which it operates.

#### **FAQ 9 – How do the Regulations deal with different types of international partners?**

The different risks presented by international partners are reflected in the Regulations in two ways.

First, there are no requirements to take measures relating to international partners based in the UK, Jersey or the Isle of Man. This is in recognition of the oversight mechanisms in place for charities/NPOs registered in those jurisdictions. In practice, the exemption for these international partners is likely to cover most local charities or NPOs that carry out international activity, given the number that are affiliated to UK organisations (typically to UK branches of international organisations, e.g. ActionAid).

Second, for international partners where the mitigating measures do apply, they only extend to what is reasonable in the particular circumstances relating to the international partner in question. This gives charities/NPOs the flexibility to implement these measures in the way that is best suited to their specific situation, as it is recognised that what is appropriate to address the risks in one case may not be appropriate to address the risks in another. For example, the controls that a charity/NPO should have in place if it makes distributions via a small partner organisation in a focus country would almost certainly be excessive if applied by a charity/NPO making distributions in a country with a very low crime rate via a large well-established organisation. Similarly, the measures that are appropriate for a charity/NPO that only distributes physical items abroad are unlikely to be sufficient for a charity/NPO that makes financial distributions.

#### **FAQ 10 – What identification measures have to be taken in relation to international partners?**

The identification measures for international partners are the same as for beneficiaries, except that there is no threshold (see the general guidance). Again, what is reasonable depends on the circumstances. If an international partner is a household name (i.e. a large scale reputable international organisation such as UNICEF), it will generally be sufficient just to carry out an internet search to check whether anything has happened to undermine the good standing of the organisation (in particular the branch to which the charity/NPO is affiliated).

However, for most charities or NPOs with an international partner that fits that profile, the international partner will be the UK branch of the organisation in question so will be exempt from the identification measures. In practice therefore, identification measures are most likely to be required for smaller organisations that are not as well known. For these organisations, more detailed checks would need to be carried out, such as doing online searches about their individual officers or members and requesting sight of their governance requirements or other measures that they have in place to prevent abuse.

### **FAQ 11 – What controls should be put in place in dealings with international partners?**

Ordinarily, arrangements with an international partner should be agreed in writing in advance of any distributions being made, and the agreement should cover, at a minimum, the nature and purposes for which distributions will be made. It is recognised that there may be exceptional circumstances where advance agreement is not practical due to the urgency of the situation (e.g. if it is necessary to engage immediately with a third party on the ground to deal with a sudden humanitarian emergency), or where no written agreement at all is possible (e.g. if the charity/NPO is dealing with individuals in a part of the world where literacy rates are extremely low). Subject to this, the general expectation is for written agreements in advance.

It is also expected that dealings with international partners are properly reflected in the records of the charity/NPO and that those records are consistent with any records kept outside the Bailiwick, including by the international partner.

These measures will usually be sufficient to address the risks of financial crime if the international partner is a large very well-known organisation with a good reputation, or if the distribution takes the form of physical items rather than financial assets.

### **FAQ 12 – Should a charity/NPO require an international partner to take specific measures?**

There are two situations where, in addition to the measures outlined above, a charity/NPO must ensure that the international partner has particular measures in place to mitigate the risk of terrorist financing or other forms of financial crime. The first is where the charity/NPO makes distributions to or via an international partner that is operating in a focus country (see FAQ 6). The second is where the charity/NPO considers the international partner to be high risk for any other reason (e.g. where there have been previous instances of the international partner not being able to account for the use of funds).

The further measures that are appropriate will depend on the particular circumstances and the profile of the international partner in question. For example, more stringent measures would generally be expected for an international partner that handles large sums of money than for one that only makes distributions of physical items. However, as a general rule, the further measures should cover the following matters:

1. Policies and procedures to prevent terrorist financing and other financial crime (including, at a minimum, checks on parties to whom distributions will be made);
2. Good governance and financial management measures, such as:
  - segregation of duties where possible;
  - regular bank reconciliation checks;
  - more than one signatory for all bank account activity;
  - restricting full access to all areas of the accounting system;
  - regular review of and spot checks on payroll records to ensure consistency with staff movements;

- reconciliation of supplier statements, invoices and creditor balances;
- documented authority thresholds for the approval of and payments to suppliers;
- random checks to ensure expenditure below key thresholds is legitimate;
- procedures to address any employee/trustee connections with suppliers;
- proper controls including a full documentary audit trail, for monitoring expenses;

3. Periodic feedback on its activities to the charity/NPO.

**13 – What should a charity/NPO do after taking after taking identification measures and putting in place controls with regard to international partners?**

Details of the information obtained as a result of carrying out identification measures on an international partner and all the controls that have been put in place must be entered in the records of the charity/NPO. As explained in the general guidance with regard to donors and beneficiaries, this may be done in a way that protects confidentiality.

If a charity/NPO cannot carry out the required identification measures for any reason, or has concerns that the controls in place are insufficient to mitigate the risks attached to dealing with an international partner, it should put in place other mitigating measures. This might be making further enquiries, applying extra conditions or controls to particular assets provided to the international partner, or in some cases deciding to exit the relationship with the international partner. Here too, full information should be entered in the records of the charity/NPO.

**FAQ 14 – What is the scope of the obligation to have an anti-financial crime policy?**

All charities/NPOs that carry out international activity must have an anti -financial crime policy. This should be a written document that:

1. summarises the risks of terrorist financing, money laundering, fraud and corruption that arise from the international activity carried out by the charity/NPO; and
2. sets out ways to address those risks.

The document can be fairly high level. What is important is that the charity/NPO has a record documenting that it has thought about its particular risks and how it will deal with them.

It is also important that the document remains up to date and that charities/NPOs review their compliance with this policy, and with their obligations under the legal framework more generally. Further information about reviews is set out in the general guidance.