

CONSULTATION PAPER.

CHARITIES AND OTHER NON PROFIT ORGANISATIONS (“NPOs”)¹.

ISSUED BY: THE REGISTRAR OF NON PROFIT ORGANISATIONS (“THE REGISTRAR”)

DATE OF ISSUE: 4 APRIL 2014

RESPONSES REQUIRED BY 2 MAY 2014

PURPOSE OF THIS CONSULTATION

The Registrar is seeking comments in relation to the oversight of Charities and NPOs (collectively referred to here as NPOs) and in particular on proposals to:

- (i) widen the regulation making powers in The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 as amended (“the Law”);**
- (ii) amend the Law to give greater clarity and consistency with regard to criminal penalties; and**
- (iii) make certain amendments in respect of the disclosure of information.**

Submissions should be made in writing to:

R Gray
Registrar of Non Profit Organisations,
PO Box 37,
2 Cornet Street,
St Peter Port,
Guernsey
GY1 3AZ.

¹ "Charity" means:

- (a) any organisation established for charitable purposes only, and
- (b) where any property or fund the income whereof is applicable to charitable purposes only is entrusted to any person, means, in relation to that property or fund and the income thereof, that person.

"Non profit organisation" means any organisation established solely or principally either for the non-financial benefit of its members or for the benefit of society or any class or part of society and, without limitation, includes any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works, and includes a charity.

BACKGROUND

In 2011 the International Monetary Fund (IMF) published a report on the Bailiwick's compliance with the Financial Action Task Force ("FATF") Recommendations. The report made some recommendations in respect of the framework for dealing with NPOs.

In February 2012, new FATF Recommendations were issued which were followed up in February of last year by a new Methodology (collectively "the new FATF standards").

The new FATF standards make a number of changes that affect NPOs including the introduction of internal governance measures.

Therefore, consideration is being given to the steps that are necessary in order both to meet recommendations made by the IMF in relation to the existing FATF standards, and to comply with the new FATF standards going forward.

The following have been identified as areas which need to be further addressed;

- NPO governance issues, such as due diligence, internal controls and record keeping, together with monitoring and enforcement of compliance.
- Clarification and consistency of the penalties for non-compliance available under the Law.
- The inclusion of manumitted² organisations within the NPO framework. **(This will be considered in a second Consultation exercise and is only mentioned here for completeness.)**

In addition, it is necessary to amend certain disclosure of information powers following the appointment of a Registrar of NPOs in Sark and in the light of the expected transfer of responsibility for NPOs from the Director of Income Tax to the Guernsey Registry.

This consultation paper sets out some proposals for legislative changes in order to address these matters, on which comments are sought. The aim behind the proposals is to put in place a legal framework that will deal with some existing issues as well as permitting consideration over time of how to achieve compliance with the new FATF standards in a pragmatic manner that secures the continued effective operation of the NPO sector.

THE EXISTING FRAMEWORK

A copy of the Law can be found at:

<http://www.guernseylegalresources.gg/article/91269/Charities>.

The legal framework requires NPOs based in Guernsey, Alderney, Herm or Jethou with gross assets and funds of, or over, £10,000 or gross annual income of, or over, £5,000 and which are not manumitted organisations to be registered on the register of NPOs. The register is

² Manumitted – in general terms this means any non-profit organisation which is administered, controlled or operated by a person who holds a license granted by the GFSC under its regulatory laws and who administers controls or operates the organisation in the course of these regulated activities.

maintained by the Registrar, who publishes the name and address of each NPO. Registrations must be renewed at the commencement of each calendar year.

Registered NPOs are subject to requirements under the Law. They must:

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

The Treasury and Resources Department may by regulation exempt any, or any class or description of, registered or manumitted organisations from complying with any of the obligations in respect of making, keeping and retaining records and of filing annual statements with the Registrar:

- (a) if they have assets, funds or income below a certain amount to be specified in the regulations, or
- (b) if their assets, funds and income are, except to such extent as may be specified in the regulations, applied or used exclusively within the Bailiwick.

The Charities and Non Profit Organisations (Exemption) Regulations, 2008 have been made by the Treasury and Resources Department and exempt the following classes and descriptions of registered NPOs from the duty to file annual financial statements:

- (a) those which have –
 - (i) gross assets and funds of less than £100,000 (or any equivalent amount), or
 - (ii) a gross annual income of less than £20,000 (or any equivalent amount) , and
- (b) those whose assets, funds and income (other than assets, funds or income applied or used exclusively for the purpose of administering or running the organisation) are applied exclusively within the Bailiwick.

THE PROPOSED CHANGES

1. INTERNAL GOVERNANCE ISSUES

The new FATF standards reiterate the requirements in the existing FATF standards for NPOs to maintain information on the purpose and objectives of their stated activities and to maintain records for domestic and international transactions. In addition, the new FATF standards include certain other governance requirements that previously featured only in FATF guidance and so were not directly considered during the IMF evaluation in 2010. These are requirements to;

- issue annual financial statements that provide detailed breakdowns of income and expenditure.
- have controls in place to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities.
- follow a "know your beneficiaries and associated NPOs" rule.

While certain aspects of these requirements, such as the need to file annual returns, are covered to some extent by Guernsey's existing NPO framework, other aspects such as a "know your beneficiaries and associated NPOs" rule are not. It might be possible to deal with some of these aspects using the regulation-making powers at section 4 of the Law, but as these powers are restricted to record-keeping and related issues, the Law will need to be amended to give the Treasury and Resources Department regulation-making powers that are wide enough to cover all necessary matters. This will include provisions in respect of the monitoring and enforcement by the Registrar of any new requirements that are introduced, together with appropriate underpinning sanctions.

However, because Guernsey will not be judged against the new FATF standards for some time, new regulations do not need to be introduced urgently and their precise form can be considered over time. This approach would have the benefit of enabling Guernsey to see how the implementation of the new FATF standards is judged in some other jurisdictions that will be assessed against those standards in the next year or so.

In order to address the matters regarding internal governance issues and monitoring and enforcing compliance, it is recommended that the Law be amended now to permit the making in due course of regulations by the Treasury and Resources Department to cover all necessary matters.

2. SANCTIONS FOR NON-COMPLIANCE

The Law provides for a range of criminal and administrative sanctions for non-compliance. There are some areas where it would be of benefit to clarify the scope of these sanctions and make them more consistent. For example, the Registrar's information-gathering powers in section 1C and Schedule 1 of the Law are underpinned by criminal penalties in respect of the provision of misleading information, but there are no express penalties for an outright failure to provide information that the Registrar has requested. Similarly there are criminal penalties for failing to maintain records but no express penalties for failing to renew registration. In fact, failure to comply with any of these requirements is indirectly susceptible to criminal sanction, because in those circumstances the Registrar would be able to strike an NPO off the Register, and this would mean that the NPO would then be committing a criminal offence if it continued to operate. However, it would clearly be preferable in the interests of greater transparency and effectiveness if potential liability to criminal sanction for all breaches were explicit on the face of the Law.

It is recommended that the Law be amended to make criminal sanctions for failing to comply with the different requirements imposed on NPOs explicit and consistent.

3. DISCLOSURE POWERS

Registration by NPOs brings certain tax benefits and for this reason the Director of Income Tax was appointed as Registrar when that office was first established. The Treasury and Resources Department have agreed the transfer of the appointment of the office of Registrar to the Guernsey Registry, with the office of Registrar being held by the person who currently holds the offices of Registrar of Companies and Registrar of Foundations; this transfer will take place on 30 June 2014. Clearly it will be important for the effective discharge of their functions that the Director of Income Tax and the new Registrar can share information relating to NPOs. There are some general provisions governing the sharing of information that could be invoked in some circumstances, but in the absence of specific information – sharing gateways there will be a risk that in some cases where information needs to be shared, this cannot happen because the particular circumstances do not come within the existing provisions. Therefore specific information –sharing gateways should be introduced into the Law and also into the Income Tax (Guernsey) Law, 1975 (“the Income Tax Law”) to complement the existing gateways in those enactments.

A further amendment to the Law is necessary to deal with disclosure to corresponding authorities within the Bailiwick. Under paragraph 13 of Schedule 1 of the Law, the Registrar is empowered to disclose information for the purposes of enabling or assisting an authority exercising functions equivalent to his in a place outside the Bailiwick. However, since this provision was enacted Sark has appointed its own Registrar of NPOs and therefore the reference to authorities outside the Bailiwick needs to be amended to ensure that the disclosure powers may be used to assist the Sark’s Registrar of NPOs as necessary.

It is recommended that

- **the Income Tax Law be amended to permit information to be disclosed to the Registrar; and**
- **the Law be amended to permit disclosures to be made to the Director of Income Tax and to corresponding authorities inside the Bailiwick as well as outside.**

CONSULTATION FEEDBACK

The Registrar is seeking comments in relation to the foregoing and in particular on the proposals to:

- (i) **widen the regulation making powers in The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 as amended (“the Law”);**
- (ii) **amend the Law to give greater clarity and consistency with regard to criminal penalties; and**
- (iii) **make amendments in respect of the disclosure of information**

as outlined above.

Submissions should be made in writing to:

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CONFIDENTIALITY

Submissions will be used solely for the purposes of this consultation as set out above. They will be considered by the Registrar who may wish to use them for additional consultation with other interested bodies (including, but not limited to, the Policy Council, the Fiscal and Economic Policy Group, the Treasury and Resources Department, the Registrar of Companies, Registrar of Foundations, Guernsey Border Agency, Guernsey Financial Services Commission and the Law Officers of the Crown (for legislative drafting purposes). Those making submissions should clearly indicate, within the body of the submission, if they wish their contributions to remain anonymous for such additional consultation purposes.

Respondents are asked not to include any Personal Data, as defined in section 1 of the Data Protection (Bailiwick of Guernsey) Law, 2001. Should any Personal Data be included in the responses received the Registrar will process such data in accordance with the published Data Protection Policy.

Closing date for responses to the Registrar is: **2 May 2014**