

## SUMMARY OF THE CONSULTATION PROCESS

The following table lists the main points raised by consultees in relation to the draft Charities etc. (Amendments, Exemptions, Governance and Specified Amount) (Guernsey and Alderney) Regulations, 2022, and a brief note of the outcome.

### PART 1 – REGULATIONS

#### POINTS RAISED

#### OUTCOME

#### Regulation 2 – exemption from registration for organisations that do not carry out international activity

Definition of international activity to exclude the assistance to local person or their family members located elsewhere purely so that the person can receive assistance (e.g. at school or hospital in UK)

Point was incorporated – reg 1(2)(iii)

Definition of international activity for registration purposes for charities needs to exclude those whose only international activity is with UK or other CDs (in line with exemptions from some of the obligations) Also, the approach as between UK and other CDs is unclear/inconsistent across the reg s.

Opinion:  
Should not exempt them from registration as otherwise the authorities have no way of knowing about their existence, but their low risk is reflected in the carve out from some of the obligations applicable to international activity. This strikes appropriate balance.

Point about clarity/consistency is agreed, all relevant provisions should apply to all British organizations.

Point was incorporated - reg 1(3)(b) & reg 7(2)

#### Regulation 2 – exemption from registration for organisations that do not solicit funds etc. from the public

Definition of public in this context is too narrow and needs to include employees or volunteers of a relevant entity or non-voting members of church congregations, sports clubs, choirs etc. plus their family members and close associates

Point was incorporated – reg 2(4)(a) and (b)

Definition of close associates to include business colleagues etc.

Opinion: This is better dealt with in guidance, as a legal definition could end up being overly restrictive.

Conclusion: Incorporated in guidance documents.

People making bequests should not be treated as the public as this could bring private charitable trusts within scope.

Agreed, unless the relevant entity makes public requests for bequests.

Point was incorporated - reg 2(4)(d)

<b>Regulation 4 – constitutional documents</b>	
If local branches are allowed to rely on UK governing documents that could leave gaps, which would be unfair to other local organisations, so should have documents to fill in any gaps in UK docs	Agree and point was incorporated - reg 4(5)
Need for exemptions from some requirements for administered charities such as governing document or local trustees etc. (e.g., if the trust deed, will or statute requires foreign trustees)	Opinion: This should only apply if the conflicting requirements are already applicable at the point when the reg s come into force.  Point was incorporated - reg 4(6)
Impractical/unnecessary for the constitution to cover some aspects (e.g. number and functions of board members, and frequency of board meetings) if the organisation is administered by a TCSP.	Opinion: General carve out power not feasible as could lead to organisations making requests for carve out on convenience etc. grounds. Point is better addressed more specifically by revisions to the provisions about the contents of the constitution.  Conclusion: changes made to the schedule.
<b>Regulation 5– record keeping</b>	
Various views on threshold for keeping records on (non-international) contracts, ranging from £750 to £10,000	Conclusion: £5,000 has been chosen as the midpoint of the range.  Point was incorporated – reg 5
Should specify that time frame for non-financial record keeping at 5(4)(a) is 6 years from expiry, not commencement, of contract, term of office etc.	Agreed and point was incorporated – reg 5
<b>Regulation 6 – financial transparency etc.</b>	
Various views on threshold below which cash does not need to pass through bank accounts, some suggesting as much as £10,000	(1) A misunderstanding was identified in the responses, as some people suggested a high threshold on the grounds that this was needed to allow cash takings at fete stalls and so on. However, it would not be considered reasonably possible for individual payments to tuck shops, flag days to be made via a bank account and this is not expected (although the total takings should then be paid in).  Conclusion: guidance has been revised to make this clear.  (2) As the threshold only applies to payments that would ordinarily be made via a bank account, but where this cannot be achieved for some reason, a threshold of £1K is considered sufficient and this was incorporated – reg 6(1)(a)

<p>Involvement of at least two unconnected individuals for the release of funds could be overly burdensome without carve out for <i>de minimis</i> amounts or for urgent situations, especially for island only charities, who would need to train up 2 people to deal with internet banking etc. Also, most banks don't offer a dual release requirement for ebanking.</p>	<p>Conclusion: a provision was made for organisations to set <i>de minimis</i> threshold, provided that it is proportionate to their risks and the Registrar does not object.</p> <p>Provision was incorporated - reg 6(7).</p> <p>Also, the guidance has been revised to say that if overly burdensome/not feasible to have 2 signatories for internet banking etc, they can rely on other mechanism to involve a second person e.g. getting their agreement in advance.</p>
<p>Extra obligations in respect of funds from members not always possible, e.g. where member puts funds into collection box. Suggested modification to limit this to where reasonable possible.</p>	<p>Point was incorporated – reg 6(1)(c) (i)</p>
<p>Sometimes need to use personal accounts to avoid bank charges if paying in cash after an event – suggestion that this is allowed subject to a limit of £1K per transaction</p>	<p>Opinion: Agreed, however, this should also be subject to a requirement that it is done in the best interests of the organisation and with the consent of unconnected managing official.</p> <p>Point was incorporated – reg 6(4)</p>
<p>Making financial statements publicly available – views vary on when and how this should be required, as some organisations will need time to deal with this.</p>	<p>Conclusion: Implementation of this has been pushed back to beyond 2023 and is also subject to direction from P &amp; R.</p> <p>Point was incorporated – reg 6(1)e) and transitional provisions</p>
<p>Financial statements should only have to contain the information necessary to show and explain an organisation's financial position and should not have to include a balance sheet for voluntarily registered organisations.</p>	<p>Agreed. Point was incorporated – reg 1(3)(b)</p>
<p>Obligation to implement policies and procedures in line with accounting principles would be unnecessarily burdensome for smaller organisations, so voluntarily registered organisations should be exempt</p>	<p>Agreed. Point was incorporated – reg 6(5)</p>
<p><b>Regulation 8 – identification measures</b></p>	
<p>Identification measures at - 8(2) should not be necessary if sending funds to UK registered organisation, just a check that it is registered,</p>	<p>Agreed. Point was incorporated – reg 8(2)</p>
<p>There should be the power for the Registrar to disapply all obligations relating to a British registered organisation</p>	<p>Agreed. Point was incorporated – reg 8(1)(a)</p>
<p>Need to make provision for non –cash donations, should be asset that is tradable on open market, and total value of items donated during a year should be assessed in the same way as donations of money.</p>	<p>Agreed. Point was incorporated – reg 8(3)(a)(ii)</p>
<p>Threshold for significant amount for donations but views varied £7,500 to £50,000</p>	<p>Conclusion: £15K was selected as a mid-range compromise</p>

	Point was incorporated – reg 8(3)
Unrealistic to require identification measures to be taken before receiving a donation, as often a charity cannot tell who has paid funds into bank accounts	Opinion: The reg s do not require amendment, as the obligation is only to take such measures as are reasonable in all the circumstances, so would not require identification measures in this situation. Guidance can provide clarification.  Conclusion: Point was incorporated in the General Guidance.
<b>Regulation 12 – reporting obligation</b>	
Range of views on threshold figure for reporting obligation from £20K to £250K.  AGC & GAT suggested £100K	Conclusion: £100,000 threshold  Point was incorporated – reg 12
Query about whether suspicion should be reported to FIU and consent requested. Related query as to whether the reg s/guidance should explicitly refer to existing AML guidance.	Conclusion: Agreed and wording to be added to the guidance explaining that AML/CFT reporting obligations and other requirements are separate.  Point was incorporated in the guidance.
<b>Regulation 14 – interpretation</b>	
Need to define member to make it clear that it is people who can vote so have some control.	Agreed. Point was incorporated – reg 14
<b>Schedule – content of constitution</b>	
"Rules" governing should be changed to "Arrangements", to reflect the fact that churches etc. cannot control their own dissolution.	Agreed. Point was incorporated – paragraph 5
Rules governing administration of assets should not apply to funds in bank account.	Opinion: There is no policy reason to exclude bank accounts  Conclusion: no changes made to paragraph 6
Requirement for AGM and rules about other meetings are too prescriptive, need to leave more discretion to organisations.	Agreed. Point was incorporated - paragraphs 10 & 18
Requirement for members to elect whether financial statements should be audited etc. will not work for some churches so need to leave more discretion about this.	Agreed. Point was incorporated - paragraphs 11 & 12
Would be preferable to refer to statements being inspected or examined, rather than verified	Agreed. Point was incorporated - paragraphs 11 & 12

<p>Need for 3 unconnected managing officials is disproportionate, and will put off family members who like to work together</p>	<p>Opinion: 3 officials should be revised to say that at least 2 must be unconnected and one must be the treasurer – this will allow e.g. husband and wife teams to work together but will bring in an external element for balance</p> <p>Conclusion: Point was incorporated - paragraph 13 (a) (ii)</p>
<p>Requirement for chair, secretary and treasurer is too prescriptive, should be able to have equivalents irrespective of title</p>	<p>Agreed. Point was incorporated - paragraphs 13 (a) (i) &amp; 15 to 17</p>
<p>Wording should be made gender neutral, chair instead of chairman</p>	<p>Agreed. Point was incorporated - paragraphs 13 &amp; 15</p>
<p>3 separate officers – some responses support this but other feedback was that there is a need to provide for smaller charities which may need to have same person filling in more than one role.</p>	<p>Conclusion: To balance these views, dual roles for voluntarily registered organisations, should be allowed, except for the role of treasurer.</p> <p>Point was incorporated - paragraph 13 (a) (iii)</p>
<p>Limits on terms of office, length of service and re-election may make it hard to have able people on board given limited pool in Guernsey, also may not work for some churches etc. so need to say, "where appropriate".</p>	<p>Agreed. Point was incorporated - paragraph 13 (b) to (d)</p>
<p>May be problems if all board members need to be locally resident, should be a majority. Also, need to provide for people resident in Alderney, not just Guernsey.</p>	<p>Agreed. Point was incorporated - paragraph 13 (h)</p>
<p>The duty to ensure that the financial position is satisfactory etc. should be a duty to take all reasonable measures with the objective of ensuring this.</p>	<p>Agreed. Point was incorporated – paragraph 14(f)</p>
<p>Title of Regulations is misleading, as NPO includes charity</p>	<p>Opinion: The title needs to be, and is, consistent with that of the Ordinance, which was arrived at to meet industry requests for a more obvious reference to charities in the title.</p> <p>Conclusion: no changes were made.</p>

<b>PART 2 – GENERAL GUIDANCE</b>	
<b>ISSUE RAISED</b>	<b>OUTCOME</b>
<b>General points</b>	
More guidance needed on form and content of financial statements, accounting policies, financial crime risk assessments, and anti-financial crime policies	Conclusion: This will be dealt with in a separate work stream involving Registrar, AGC and others.
Need to specify legal status of guidance	Conclusion: The guidance is issued under a statutory power. Under general well-established legal principles of procedural fairness must be taken into account by the Registrar or the courts when exercising enforcement powers.
Guidance needed on how charities can retain charitable tax exemption if choose not to register	Conclusion: They will not retain it. This needs to be made explicit in guidance.  Point was incorporated – General Guidance FAQ 9
Guidance should make it clear that groups preaching hate will not be permitted to register.	Agreed. Point was incorporated – General Guidance FAQ 5
Guidance should stipulate that it is not necessary for a DBS check to be carried out unless the organisation engages with vulnerable people, as this extra bureaucracy would simply discourage volunteers.	Agreed. Point was incorporated – General Guidance FAQ 1
<b>Specific points on current wording</b>	
FAQ 6 - wording on soliciting or accepting donations should explicitly refer to non- cash donations.	Agreed. Point was incorporated – FAQ 6
FAQ 11 – wording about board members needs to be revised to allow for organisations administered by a TCSP.	Agreed. Point was incorporated – FAQ 6
FAQ 11 - recommendation of reference at least 4 managing officials for internationally active organizations seems too much for very small charities	Opinion: This is not mandatory, just a recommendation, and it is appropriate given the terrorist financing risks. Therefore, it should stay as it is.  Conclusion: no changes made.
FAQ 18/19 - guidance about identification of beneficiaries needs to be expanded.	Agreed. Point was incorporated.

**PART 3 –INTERNATIONAL GUIDANCE**

<b>ISSUE RAISED</b>	<b>OUTCOME</b>
FAQ 32 (previously 6) – need list of focus countries.	Note: As agreed by all the authorities during NRA process, this is not possible for reasons explained in guidance.  Conclusion: An explanation of why a list of countries has not been provided was added to FAQ 32.