COLLAS CRILL

Time is ticking: Guernsey charities to comply with new law by 31 July 2022

JULY 2022

In April 2022, new charities legislation in Guernsey came into force, replacing the Charities and Non Profit Organisations (Registration) (Guernsey) Law 2008 which previously regulated charities and non-profit organisations (**NPOs**).

For those involved in Guernsey charities, there is a very short deadline of 31 July 2022 to comply with the new regime.

For the last two months, Angela Calnan and the private client team in our Guernsey office have been working hard to advise charities as to their obligation to register, assisting with that process and refreshing the constitutional documents of numerous charities to bring them into line with the new regime.

So, what is the new regime, who is caught by it and what action needs to be taken now by whom and when?

The new legislation is contained in:

- The Charities etc. (Guernsey and Alderney) Ordinance 2021 (**Ordinance**); and
- The Charities etc. (Amendments, Exemptions, Governance and Specified Amount) Regulations, 2022 (**Regulations**).

What is the purpose of the new legislation?

- To clarify the distinction between a charity and an NPO by introducing a charitable purposes test;
- To define "charitable purposes" and bring much needed clarity to Guernsey's law in this area;
- To ensure that charities and NPOs comply with international standards against money laundering and terrorist financing; and
- To increase the financial probity and transparency of charities and NPOs.

What is the difference between a charity and an NPO?

A charity is defined as an organisation that has only 'charitable purposes' which provide, or intend to provide, benefit to the public or a section of the public. The list of 'charitable purposes' are broad and can be found at Schedule 4 of the Ordinance.

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NPOs are organisations which cannot be defined as a charity but provide non-financial benefit to their members or the public.

Which organisations need to register under the Ordinance?

The Ordinance introduces a single register for both charities and NPOs. Organisations that are already registered under the old legislation will automatically be entered into this new register.

Charities and NPOs will be required to register if:

- they have a gross annual income over £20,000; or
- gross assets and funds worth more than £100,000.

Charities or NPOs that conduct 'international activity' will need to register, irrespective of the financial threshold. Broadly, 'international activity' is raising or distributing assets outside the Bailiwick, subject to limited exceptions. This article does not focus on organisations that conduct international activity, but such organisations should note that they are subject to more stringent regulation and earlier deadlines in respect of some requirements. This provision will often bite where Guernsey organisations make payments to the United Kingdom or further afield recipients.

Charities and NPOs that meet the financial threshold but do not accept donations from the public **and** do not carry out international activity do not need to be registered. Membership fees do not constitute donations.

All unregistered organisations will need to review their position in line with the Ordinance and if required, have submitted their application to register by **31 July 2022**.

Ongoing requirements

Registered organisations will be required to have basic governance measures in place. They involve:

- Having constitutional documents that meet the minimum standards (set out in the schedule to the Regulations) – these do not have to be in place until **30 June 2023**, or **31 December 2022** for organisations that carry out international activity;
- Keeping financial records that demonstrate how funds, assets and income are used from **1 August 2022**;
- Producing annual financial statements – the first of which is due within one year of the first financial year end on or after **29 April 2022** (i.e. **29 April 2023** at the earliest);
- Having at least three managing officers, at least two of whom (including the treasurer) are unconnected to one another;
- Increased compliance measures surrounding risk assessment and policies, record-keeping, donations and international activity;
- Notifying the Guernsey Registry of any changes to the information supplied in their application to register.

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Higher risk payments

From **1 August 2022**, all registered charities and NPOs will be expected to identify and verify their donors where the donation falls into any one of these categories:

- The donation has come from outside of the Bailiwick;
- The donation exceeds £15,000 in any given year; or
- The donation is considered to be 'unusual' in nature.

Any international payments of £100,000 or more will need to be reported to the Guernsey Registry.

Financial probity and transparency

From **1 August 2022**, all registered charities and NPOs need to have certain financial probity and transparency measures in place.

Funds will have to be kept separate from those of any third party (including the organisation's members).

All funds are required to pass through a bank account, other than:

- petty cash payments that do not exceed £1,000 in any 12-month period; or
- payments made or received wholly within the Bailiwick that are ancillary or incidental to the purpose of the organisation.

At least two unconnected individuals need to be involved in releasing funds, unless the amount falls below a *de minimus* threshold set by the organisation and communicated to the Guernsey Registry.

More generally, the organisation will have to adopt policies and procedures which follow accepted principles of accounting and control.

Next steps

Applicable organisations must ensure that they meet the most pressing deadlines **highlighted above in bold**.

To ensure that any future key deadlines are not missed, consult the Guernsey Registry's summary timeline of key dates. The Registry has also produced guidance for charities and NPOs.

It should be noted that organisations conducting international activity are subject to additional compliance requirements that must be met by **30 November 2022**.

Recent work highlights

Collas Crill is heavily involved in the charities space, both domestically and internationally. Some of our recent local projects include advising:

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- Smile for Georgie Foundation
- Priaulx Premature Baby Foundation
- HFL Charitable Foundation (website link not yet available).

Please do not hesitate to get in touch if you need assistance with reviewing your current position in relation to the Ordinance or if you need assistance in putting in place internal policies and procedures for complying with the new obligations.

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