

STATES OF JERSEY



DRAFT NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200- (P.63/2008): SECOND AMENDMENTS

**Lodged au Greffe on 20th May 2008
by Deputy R.G. Le Hérisier of St. Saviour**

STATES GREFFE

1 PAGE 16, ARTICLE 2 –

In paragraph (1), for the amount “£1000” substitute the amount “£5000”

2 PAGE 16, ARTICLE 3 –

In paragraph (1), in sub-paragraph (a) of the definition “financial statement” –

- (a) delete the word “detailed”
- (b) for the words “with any necessary explanations” substitute the words “with such explanation as may be reasonably necessary”

3 PAGE 19, ARTICLE 8 –

For paragraphs (3) and (4) substitute the following paragraphs –

- “(3) The notice must –
 - (a) give the reason for the refusal; and
 - (b) set out the applicant’s rights under paragraphs (4) and (6).
- (4) The applicant may, within 28 days of receiving the notice, request, in writing, that the Commission reconsider its refusal of the application.
- (5) The Commission shall, within the period of 56 days following receipt of a request under paragraph (4), reconsider its decision and shall either–
 - (a) confirm the refusal, and send notice of the confirmation to the applicant, giving the reasons for the confirmation of the original decision; or
 - (b) register the applicant.
- (6) A person aggrieved by the Commission’s refusal of an application may, whether or not the person has requested the Commission to reconsider the refusal, appeal to the Royal Court.”

4 PAGE 19, ARTICLE 8 –

After paragraph (6) (unrenumbered) insert the following paragraph –

- “(*) On the appeal, the Court may further order that all or any of the costs of the appeal shall be paid out of public funds.”

5 PAGE 23, ARTICLE 17 –

In paragraph (2) –

- (a) at the end of sub-paragraph (a), add the word “and”
- (b) at the end of sub-paragraph (b), delete the word “and”
- (c) delete sub-paragraph (c)

6 PAGE 24, ARTICLE 18 –

For paragraph (5) substitute the following paragraph –

“(5) The Commission may refuse to provide a copy only if it has reason to suspect or believe that the copy is required for a purpose that is unlawful.”

7 PAGE 24, ARTICLE 19 –

In paragraph (3), for the words “The Commission may, in particular do so, if it is satisfied that the information is required” substitute the words “However, the Commission must not supply information unless it is satisfied that the information is required”

8 PAGE 30, ARTICLE 40 –

In the substituted paragraph (5) for the words beginning “to provide information” to the end of the paragraph substitute the words “to provide such information to the Commission in respect of those regulated NPOs as may be necessary to enable the Commission to discharge its functions under the Non-Profit Organizations (Jersey) Law 200-”

9 PAGE 33, SCHEDULE –

In Part 2 of the form of application, opposite questions 7 and 8 –

- (a) for the amounts “£0 – 1000” substitute the amounts “£0 – £5000”;
- (b) for the amounts “£1001 – £19,999” substitute the amounts “£5001 to £19,999”

And renumber the provisions of the Law accordingly.

DEPUTY R.G. LE HÉRISSIER OF ST. SAVIOUR

REPORT

The Draft Non-Profit Organisations (Jersey) Law 200- has been introduced to meet the perceived requirements of the FATF to ensure such bodies “are not abused by those seeking to fund terrorism “.

Unfortunately, it has not been preceded by the establishment of a Charities Commission or suchlike, with the result that the proposed Law strives to set up a system which embraces the work of a Charities Commission type body and that of a body tasked with monitoring possible abuses.

The result is an unsatisfactory hybrid where the JFSC assumes, rather bizarrely, the part-role of a Charities Commission.

Serious concerns were expressed by NPOs in Jersey that the Law was very heavy-handed, it did not properly build in risk assessment, and it could easily have “criminalised” NPO office-holders for minor administrative lapses.

Negotiations commenced with a representative group of NPOs and the Chief Minister and his staff. There has been a mitigation of some of the more onerous requirements, particularly around “criminalising” volunteer officials for administrative lapses but some concerns still remain.

Furthermore, the overall view remains that the establishment of a Charities Commission or suchlike is vital. Judging from English experience, such a body has adopted a more risk-based approach and, this in concert with existing anti-terrorism and money laundering legislation, has obviated the need for the somewhat heavy-handed approach reflected in this Draft.

The Group has kept amendments to a minimum and has reluctantly, and on the promise of a speedy response to the States decision to set up a Feasibility Study re a Charities Commission, accepted that the broad intent of legislation is necessary. However, it is another instance of the Executive seeking to rush through legislation at the behest of an international body and without sufficient sensitivity in regard to local conditions.

The rationale for each of the amendments is as follows –

Amendment 1 – Article 2(1)

Apparently, the drafters of the legislation have assumed that £1,000 is acceptable because it is the *de minimus* applied by the English Charities Commission who have been deemed “largely compliant”.

The view of the Focus Group of local NPOs was that this is too low a sum in current circumstances, and while precise information does not exist about turnover in local NPOs, anecdotal evidence suggests that £5,000 is a more realistic figure.

By using £1,000 the net is cast very wide. In any event, there are other mechanisms should the authorities have question marks over the operation of an NPO.

It is sometimes argued, for example, that the London bombings cost relatively little to mount. However, the issue is not the cost *per se*; it is whether an overall risk assessment leads to the conclusion that an NPO poses a risk.

Amendment 2 – Article 3(1)(a)

The amended wording places the emphasis upon the reasonableness of the explanations as opposed to simply seeking detailed information which may or may not prove relevant.

Amendment 3 – Articles 8(3) and (4)

Appealing directly to the Royal Court is onerous for voluntary bodies, hence the intervening step.

Amendment 4 – Article 8(6)

Again, there must be a provision should NPOs be brought before the court and found not to be culpable. Hence the ability to pay appeal costs out of public funds.

Article 13

Because of States procedures it is not possible for me to propose an amendment to delete an entire Article – I must therefore simply invite members to reject this Article by voting against it during the debate. This whole Article should be removed as it has no relevance to the prime purpose of the draft, which is to identify NPOs likely to be involved in terrorism. The Charity Commission (once established, as I hope will be the case) will deal with these issues, to ensure confidence and accountability generally.

Amendment 5 – Article 17

This power is far too wide and must be dropped.

Amendment 6 – Article 18

This amendment is intended to achieve clarity on the basis for which this information may be provided.

Amendment 7 – Article 19(3)

Again, the power of the Commission is circumscribed.

Amendment 8 – Article 40

Once more, it must be made clear that the Commission's powers can only be exercised to a clear and specific end. Charities Law.

Amendment 9 – Schedule

This amendment is consequential to the proposed increase in the *de minimus* limit.

Note:

For the convenience of members, I attach as Appendices the Isle of Man Consultation Paper on this issue and the Isle of Man Charities Registration Act 1989, which may be a useful model for Jersey to follow.

Financial and manpower implications

There are no financial or manpower implications for the States as a result of these amendments.



Charities and other Non-Profit Organisations

Invitation to comment on options for the
registration, regulation and monitoring of such
bodies to prevent their possible use in the
financing of terrorism

Chief Secretary's Office
April 2008

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Non-Profit Organisations and Terrorist Financing

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Foreword by the Chief Minister

The Isle of Man is well known for its contribution to voluntary work and to charitable projects and the Island's people have always shown considerable generosity in donating their time and resources to good causes.

However, to maintain a successful economy for the benefit of its people, it is important that the Isle of Man meets international standards in safeguarding all sectors of our community, including the voluntary sector, against potential abuse for such purposes as money laundering and the financing of terrorism.

A key test of the Island's compliance with these standards will be the forthcoming assessment by the International Monetary Fund (IMF). One of the IMF's current concerns is the potential use of charities and other non-profit organisations (NPOs) around the world to facilitate the financing of terrorism.

There is no suggestion that NPOs in the Isle of Man are being used for such purposes, and the Government fully recognises the good work that is done by the Island's voluntary and charitable sector.

However, it is prudent and timely to review the regulation of this type of organisation to ensure that the Island's system is not vulnerable to abuse in future by international elements.

Hon J A Brown MHK
Chief Minister

Non-Profit Organisations and Terrorist Financing

1. Introduction

- 1.1 A team from the International Monetary Fund (IMF) will be visiting the Isle of Man in September 2008 to assess the Island's measures in respect of anti-money laundering and combating terrorist financing (AML/CFT).
- 1.2 The previous IMF assessment of the Island published in 2003 was generally positive, but it is extremely important for the Island's international reputation, and for its continued economic prosperity, that the IMF's forthcoming report does not judge the Island to have fallen behind in its compliance with evolving international standards.
- 1.3 A major area of interest for the IMF at present is the use of non-profit organisations (NPOs) to facilitate the financing of terrorism. Although charities are perhaps the most obvious type of NPO the FATF's definition is much broader, including any body that raises and distributes funds for charitable, religious, cultural, educational, social or fraternal purposes or for carrying out other types of "good works".
- 1.4 Certain types of NPO, for example a body that distributes funding outside of the jurisdiction in which it is based, are viewed by the IMF and FATF as being generally higher risk.
- 1.5 Whilst the Isle of Man Government is not aware of any charities or other non-profit organisations in the Island being used for such activities, it cannot afford to be complacent. However, without appropriate measures in place to reduce the risk to a minimum the Island will be judged by the IMF as failing to meet international standards.
- 1.6 This consultation paper has been issued as part of the process of reviewing the adequacy of the Isle of Man's current legislation and practice in relation to preventing charities and other non-profit organisations being used to assist the financing of terrorism.
- 1.7 The paper gives the background to the FATF Special Recommendation that concerns NPOs; the present situation in the Island is described, as is that in neighbouring jurisdictions; and comments are invited on possible options for the future.
- 1.8 The Isle of Man Government would wish to comply with international best practice in this area but although it considers some changes may be required it has no wish to damage the voluntary/charitable sector in the Island.
- 1.9 This paper only deals with the specific issue of the possible use/abuse of NPOs for AML/CFT purposes. It does not deal with any broader issues of the Island's law in relation to charities/NPOs. A Charities Bill is included in the Government's legislative programme and full consultation on the issues that may be included in that Bill will be carried out separately in due course.

2. The Financial Action Task Force and International Monetary Fund

- 2.1 The Financial Action Task Force (FATF) is an inter-governmental body set up in 1989 for the development and promotion of national and international policies to combat money laundering and terrorist financing¹.
- 2.2 The FATF has issued 40 Recommendations on money laundering and 9 Special Recommendations on Terrorist Financing, which were last updated in October 2004. These Recommendations and Special Recommendations are now accepted as setting the international standards in relation to anti-money laundering and countering terrorist financing (AML/CFT) measures.
- 2.3 In September 2008 a team from the International Monetary Fund (IMF)² will visit the Island as part of its rolling programme of assessing international finance centres against current international standards in the areas of AML/CFT and the regulation of financial services. The IMF will then carry out similar assessments of Jersey and Guernsey in October and December respectively before the reports on all three Crown Dependencies are published at the same time in the first quarter of 2009.
- 2.4 The IMF last visited the Isle of Man in 2002 and its report published in 2003 was generally very positive. However, since that time some of the international standards have been updated or strengthened and it is also understood that the IMF's assessment methodology is now much more comprehensive. For instance, in the area of AML/CFT there is now a greater emphasis on compliance with the revised FATF 40 AML/CFT Recommendations and 9 Special Recommendations on Terrorist Financing.
- 2.5 A positive outcome from the IMF's assessment is extremely important for the Island's international reputation, and for its continued economic prosperity. This is particularly true at a time when international finance centres are, rightly or wrongly, subject to increased scrutiny by the media, international bodies and governments.
- 2.6 A high level working group, chaired by the Chief Secretary and consisting of senior officers of the Isle of Man Government, was therefore established to coordinate the Government's preparations for the IMF assessment.
- 2.7 A major current area of interest for the IMF that came to the attention of the Government's working group is the use, or abuse, of non-profit organisations (NPOs) in the financing of terrorism. NPOs which raise a large amount of funds, those that have complex financial structures and/or distribute funding outside of the jurisdiction in which they are based are viewed as being of particularly high risk.

¹ Further information about the FATF can be found on its website at: <http://www.fatf-gafi.org>

² Further information about the IMF can be found on its website at: <http://www.imf.org>

3. FATF Special Recommendation VIII

3.1 FATF Special Recommendation VIII (SR VIII) on Non-Profit Organisations (NPOs) states:

"Countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Non-profit organisations are particularly vulnerable, and countries should ensure that they cannot be misused:

- (i) by terrorist organisations posing as legitimate entities;*
- (ii) to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset freezing measures; and*
- (iii) to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations."*

3.2 The term *Non-Profit Organisation* is defined in the FATF's Interpretative Note³ to SR VIII as meaning:

"a legal entity or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works".

3.3 The FATF recognises the great value of NPOs and the Interpretative Note to SR VIII states that they:

"... play a vital role in the world economy and in many national economies and social systems. Their efforts complement the activity of the governmental and business sectors in providing essential services, comfort and hope to those in need around the world."

3.4 However, the Interpretative Note continues:

"The ongoing international campaign against terrorist financing has unfortunately demonstrated however that terrorists and terrorist organisations exploit the NPO sector to raise and move funds, provide logistical support, encourage terrorist recruitment or otherwise support terrorist organisations and operations. This misuse ... also undermines donor confidence and jeopardises the very integrity of NPOs ...

NPOs may be vulnerable to abuse by terrorists for a variety of reasons. NPOs enjoy the public trust, have access to considerable sources of funds, and are often cash-intensive. Furthermore, some NPOs have a global presence that provides a framework for national and international operations and financial transactions ... NPOs may often be subject to little or no governmental oversight (for example, registration, record keeping, reporting and monitoring), or few formalities may be required for their creation (for example, there may be no skills or starting capital required, no background checks necessary for employees)."

³ See <http://www.fatf-gafi.org/dataoecd/43/5/38816530.pdf>

3.5 The FATF's paper setting out International Best Practices⁴ for SR VIII recognises a risk based approach to the issue of NPOs and terrorist financing, stating:

"Government oversight should be flexible, effective, and proportional to the risk of abuse. Mechanisms that reduce the compliance burden without creating loopholes for terrorist financiers should be given due consideration. Small organisations that do not raise significant amounts of money from public sources, and locally based associations or organisations whose primary function is to redistribute resources among members may not necessarily require enhanced government oversight."

3.6 Nevertheless, the FATF Methodology⁵ for assessing compliance with SR VIII includes the following as "Essential Criteria":

- Countries should: (i) review the adequacy of domestic laws and regulations that relate to non-profit organisations; (ii) use all available sources of information to undertake domestic reviews of or have the capacity to obtain timely information on the activities, size and other relevant features of their non-profit sectors for the purpose of identifying the features and types of non-profit organisations (NPOs) that are at risk of being misused for terrorist financing by virtue of their activities or characteristics; and (iii) conduct periodic reassessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities.
- Countries should undertake outreach to the NPO sector with a view to protecting the sector from terrorist financing abuse. This outreach should include (i) raising awareness in the NPO sector about the risks of terrorist abuse and the available measures to protect against such abuse; and (ii) promoting transparency, accountability, integrity, and public confidence in the administration and management of all NPOs.
- Countries should be able to demonstrate that the following steps have been taken to promote effective supervision or monitoring of those NPOs which account for: (i) a significant portion of the financial resources under control of the sector; and (ii) a substantial share of the sector's international activities.
- NPOs should maintain information on: (1) the purpose and objectives of their stated activities; and (2) the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information should be publicly available either directly from the NPO or through appropriate authorities.
- Countries should be able to demonstrate that there are appropriate measures in place to sanction violations of oversight measures or rules by NPOs or persons acting on behalf of NPOs. The application of such sanctions should not preclude parallel civil, administrative, or criminal proceedings with respect to NPOs or persons acting on their behalf where appropriate.
- NPOs should be licensed or registered. This information should be available to competent authorities.

⁴ See <http://www.fatf-gafi.org/dataoecd/39/19/34033761.pdf>

⁵ See <http://www.fatf-gafi.org/dataoecd/16/54/40339628.pdf>

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- NPOs should maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.
 - Countries should implement measures to ensure that they can effectively investigate and gather information on NPOs.
 - Countries should identify appropriate points of contact and procedures to respond to international requests for information regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support.

4. Terrorist Financing and NPOs in the Isle of Man

A. Terrorist Financing Legislation

- 4.1 The Island's law against terrorist financing, money laundering for terrorist purposes and connected offences is presently contained in an Act of Tynwald – the Anti-Terrorism and Crime Act 2003⁶ – and two Orders in Council – the Terrorism (United Nations Measures) (Isle of Man) Order 2001⁷ and the Al-Qa'ida and Taliban (United Nations Measures) (Isle of Man) Order 2002⁸.
- 4.2 This terrorist financing legislation is generally in line with international standards, and it is not considered that this aspect of the Island's law requires particular amendment at this time. However, the Department of Home Affairs has a new Terrorism Bill in its legislative programme and it will be giving further consideration to this area in due course.

B. NPOs and Charities

- 4.3 There is no evidence that any NPOs based in the Island are being used to facilitate the financing of terrorism, or that they have ever been used for such a purpose. Indeed, it may be thought that the risk in relation to Isle of Man charities and other NPOs is so slight as to require no further action. However, in the modern global financial system as the perhaps more obvious avenues in larger jurisdictions are closed off terrorist financiers will inevitably seek weak points in the regulatory regimes of other countries so that they can continue their activities.
- 4.4 Whilst the risk of an Island NPO being used for terrorist financing may be small, it could be highly damaging to the Island's reputation if the IMF reported the Island to be failing take appropriate measures to meet international standards in this area. The Isle of Man Government therefore considers that a proactive approach to this matter is now required.
- 4.5 The Isle of Man Government recognises the important, indeed invaluable, social and economic role of many NPOs and it would not wish to discourage participation in the charitable sector, but it would be remiss not to consider whether the Island's legislation and practice in this area needs to be updated and strengthened.
- 4.6 The Isle of Man Government would support the view that action to prevent NPOs being used to finance terrorism should be proportionate and risk based but at the same time being effective and in compliance with international standards and best practice.
- 4.7 Whilst all persons and bodies in the Isle of Man, including NPOs, are subject to the Island's anti-terrorist financing legislation described above, there is concern that the Island may not fully meet the FATF's essential criteria for compliance with SR VIII.

⁶ 2003 c.6 – <http://www.gov.im/lib/docs/infocentre/acts/atca2003.pdf>

⁷ SI 2001/3364 – <http://www.opsi.gov.uk/si/si2001/20013364.htm>

⁸ SI 2002/259 – <http://www.opsi.gov.uk/si/si2002/20020259.htm>

4.8 Isle of Man NPOs include:

- Registered charities, including charitable companies and trusts;
- Religious organisations, such as churches.
- Cultural organisations, such as the Manx Gaelic bodies.
- Social bodies, such as sports clubs and youth clubs.
- Fraternal organisations, such as the Freemasons and the Soroptimists
- Others bodies carrying out other types of "good works".

4.9 With the obvious exception of registered charities, NPOs in the Island are not required to be licensed or registered.

4.10 For a body to be registered as a charity with the General Registry in the Isle of Man, under the Charities Registration Act 1989⁹ the Chief Registrar must be satisfied that the institution is established for charitable purposes and that it has a substantial and genuine connection with the Island. Any institution in the Island that takes or uses any name, style, title or description implying or otherwise pretending that it is a charity or holds itself out as a charity is guilty of an offence unless it is registered or exempt from registration¹⁰.

4.11 In the United Kingdom NPOs other than charities do not have to be registered. Jersey and Guernsey are progressing legislation which will see all NPOs being required to register; in Jersey this registration will be with the Jersey Financial Services Commission and in Guernsey with the Administrator of Income Tax. Unlike the Isle of Man, now neither Jersey or Guernsey have required any charities to be registered.

4.12 Under the current system in the Isle of Man charities are not charged a fee to register and it is not envisaged that any change will be made to this arrangement. Nor is it envisaged that a fee would be charged if the registration requirement were to be extended to other NPOs.

Question 1

Do you think the present registration requirements for charities under the Charities Registration Act 1989 are sufficient to meet international standards aimed at preventing NPOs being used for terrorist financing?

Question 2

Should all NPOs be subject to some form of basic registration procedure in the same way as charities? If so, should NPOs be treated in the same way as charities or should different requirements apply to different types of body?

⁹ A copy of this Act can be found at:

<http://www.gov.im/lib/docs/regisries/courts/charitiesregistrationact1989.pdf>

¹⁰ Section 2(3) of the Charities Registration Act 1989 provides that bodies may be exempted from the registration requirement by regulations made by the Deemsters which require Tynwald approval. The Religious Charities Regulations 1999 [SD 392/99] exempt a number of religious charitable bodies from the need to register under the 1989 Act.

4.13 In terms of which charities/NPOs may be at a higher risk of being used or abused to facilitate terrorist financing, a UK Home Office consultation document in 2007¹¹ stated that the experience of law enforcement and intelligence agencies in the United Kingdom indicated that NPOs with certain characteristics are more vulnerable than others. In particular, the risk of abuse was found to be greater for bodies which:

- are closely aligned to particular religious or cultural movements;
- frequently move funds or other resources to areas of conflict or unrest around the world;
- pass funds to other organisations based overseas rather than deliver services directly;
- deal exclusively in cash or alternative remittance systems where no formal banking infrastructure exists; or
- have extremely complicated financial records in which suspicious transactions are less easy to identify.

Question 3

What factors should the Isle of Man Government take into account in developing a risk based approach to dealing with NPOs/charities?

4.14 Any institution that is a registered charity must have filed documents with the General Registry setting out the purposes of the charity. A registered charity must also file annual accounts with the General Registry, and the level of independent audit to which those accounts must be subjected depends upon the income of the charity. However, there is at present no requirement for charities to retain their financial records for a minimum of five years as recommended by the FATF.

4.15 It is proposed that a requirement for all registered charities to retain their financial records for a minimum period of five years should be introduced.

Question 4

Do you think a requirement for all registered charities to retain their financial records for a minimum of five years will cause any difficulties for the charitable sector?

4.16 Although charities must register with it, the General Registry has no statutory requirement to monitor or supervise charities and it has no power to carry out an investigation of charities where they are suspected of being involved with criminal activity.

4.17 Under the Charities Registration Act 1989 the power to require information from a charity, to investigate a charity, or to act for the protection of a charity rests with the Attorney General. However, these powers have in the past only been

¹¹ "Review of safeguards to protect the charitable sector from terrorist abuse - a consultation document", UK Home Office, May 2007.

used reactively, i.e. where it has been alleged that there is a problem with a particular charity. There has been no proactive monitoring or supervision of charities, or the provision of information to charities on best practices and how to minimise the risk of their use for terrorist financing ("outreach" as the FATF describes it).

- 4.18 It is proposed that the Isle of Man Government should engage in greater outreach to the charitable sector and, using a risk based approach, there should be improved monitoring and supervision of charities.
- 4.19 If the Isle of Man Government is to be more proactive in this area, consideration must be given to how this may be best achieved.
- 4.20 At present the powers in relation to charities under the Charities Registration Act 1989 are split between the General Registry (registration) and the Attorney General's Chambers (investigation, legal action).
- 4.21 In England and Wales there is an independent body, the Charity Commission, which fulfils registration, outreach, monitoring and enforcement functions, and in Scotland there is the Office of the Scottish Charity Regulator.
- 4.22 However, mindful of the personnel and resource implications of a new independent body, in Jersey the government intends that the Jersey Financial Services Commission (JFSC) will act as the regulator of NPOs – but only for the purpose of preventing their abuse by terrorist financiers. The logic of the Jersey proposal was that the JFSC is very experienced in the area of anti-money laundering/countering terrorist financing, it has a track record of outreach to private sector bodies, and it has adequate resources to be able to carry out the role effectively.
- 4.23 If there is to be increased outreach to charities, possible options may therefore include:
- a) the General Registry or/and the Attorney General's Chambers take on the role of proactive supervisor for charities;
 - b) the Financial Supervision Commission assume the role of registrar and supervisor of charities in respect of their financial propriety;
 - c) another existing Government Department/Board/Office assumes the role of registrar and supervisor of charities in respect of their financial propriety;
 - d) establishment of a new body with specific responsibility for charities, either within the Government structure or as an independent body (a "Charity Commission").

Question 5

If there is to be greater outreach to NPOs/charities and also greater monitoring and supervision of those bodies who should carry out this role?

5. Consultation Process

- 5.1 Responses to the questions posed in this paper, or any other comments on the registration, regulation and monitoring of charities in relation to their possible use for terrorist financing, should be addressed to:

Ms Anne Shimmin
Secretary to IMF Working Group
Chief Secretary's Office
Government Office
Bucks Road
Douglas
Isle of Man
IM1 3PN

Responses may also be sent by email to: anne.shimmin@cs0.gov.im

- 5.2 The closing date for responses is **Friday 20th June 2008**.
- 5.3 **Unless specifically requested otherwise, any responses received may be published either in part or in their entirety.**

Summary of Questions

Question 1

Do you think the present registration requirements for charities under the Charities Registration Act 1989 are sufficient to meet international standards aimed at preventing NPOs being used for terrorist financing?

Question 2

Should all NPOs be subject to some form of basic registration procedure in the same way as charities? If so, should NPOs be treated in the same way as charities or should different requirements apply to different types of body?

Question 3

What factors should the Isle of Man Government take into account in developing a risk based approach to dealing with NPOs/charities?

Question 4

Do you think a requirement for all registered charities to retain their financial records for a minimum of five years will cause any difficulties for the charitable sector?

Question 5

If there is to be greater outreach to NPOs/charities and also greater monitoring and supervision of those bodies who should carry out this role?

The information in this booklet can be provided in large print or
audio tape on request

Chief Secretary's Office
Government Office
Douglas
Isle of Man

www.gov.im/cso

CHARITIES REGISTRATION ACT 1989

(Chapter 11)

Arrangement of Sections

1. Restrictions on use of word 'charity' etc.
2. Charitable institutions to file statements.
3. Refusal of statements.
4. Declarations as to status of registered charities.
5. Accounts of registered charities.
6. Auditors: supplementary provisions.
7. Power to require registered charity to abandon misleading name.
8. Particulars, etc. to be furnished to the Attorney General.
9. General power to institute inquiries.
10. Power to act for protection of charities.
11. Public documents.
12. False and misleading statements.
13. Review by, and reference to a Deemster.
14. Offences: supplementary provisions.
15. Interpretation.
16. Winding up of charitable companies.
- 16A. Charitable companies: alteration of objects clause.
- 16B. Charitable companies: invalidity of certain transactions.
- 16C. Charitable companies: status to appear on correspondence, etc.
17. Amendment.
18. Saving and transitional provisions.
19. Short title and commencement.

Schedule

Received Royal Assent: 17 October 1989

Passed: 18 October 1989

GENERAL NOTE: The maximum fines in this Act are as increased by the Criminal Justice (Penalties, Etc.) Act 1993 s 1.

AN ACT

to repeal and replace the Public Charities Act 1922; to make further provision for the regulation of charities; to confer new powers for the investigation of the affairs of charities; and for connected purposes.

*Restrictions on use of word 'charity'***1 Restrictions on use of word 'charity' etc**

- (1) Subject to subsection (3), any institution which in the Island-
- (a) takes or uses any name, style, title or description implying or otherwise pretends, that it is a charity; or
 - (b) holds itself out as a charity,
- shall be guilty of an offence.
- (2) In the case of a Manx institution subsection (1) shall have effect as if the words 'or elsewhere' appeared after the words 'in the Island'.
- (3) An institution shall not be guilty of an offence under subsection (1)-
- (a) if it is a registered charity; or
 - (b) if it is exempted from section 2 by regulations under section 2(3); or
 - (c) in the case of an institution constituted under the law of the Island, during the 56 days immediately following the date on which it is constituted if it complies with section 2(1) within 28 days of that date.
- (4) Any person who is a trustee, director, manager or other similar officer of an institution, or who is the agent of an institution, at the time of a contravention of

subsection (1) shall be guilty of an offence.

(5) Where the affairs of an institution are managed by the members, subsection (4) shall apply in relation to a member in connection with his functions of management as if he were an officer of the institution.

Registration of charitable institutions

2 Charitable institutions to file statements

(1) Every institution which is established for charitable purposes shall file in the General Registry-

(a) a statement in such form as may be prescribed; and

(b) such documents as may be prescribed.

(2) Where there is any change in any of the particulars in such statement or documents, the institution shall, within one month after such change, file in the General Registry-

(a) a statement of change in such form as may be prescribed; and

(b) such documents as may be prescribed.

(3) This section shall not apply to such institutions as may be prescribed.

(4) If a statement or document is not filed in accordance with subsection (1) or (2), the agent, and every trustee, director, manager or other similar officer of the institution shall be guilty of an offence.

3 Refusal of statements

(1) The Chief Registrar may refuse to accept any statement for filing under section 2(1) if he is satisfied that-

(a) the institution is not established for charitable purposes; or

(b) the institution does not have a substantial and genuine connection with the Island; or

(c) the name of the institution is undesirable or misleading.

(2) The power of the Chief Registrar to refuse to accept a statement under subsection (1) shall be exercised by notice in writing served by post within 28 days of receipt of the statement.

(3) For the purposes of subsection (1)(b), and section 4(1)(b) an institution shall not be treated as having a substantial and genuine connection with the Island by reason only of the fact that the institution is a Manx institution.

4 Declarations as to status of registered charities

(1) The High Court may, on the application of the Attorney General, by order declare that a registered charity-

(a) is not an institution established for charitable purposes; or

(b) does not have a substantial and genuine connection with the Island.

(2) Where an order is made under subsection (1), the institution shall cease to be a registered charity from the date of the order.

(3) Where an order is made under subsection (1), the Attorney General shall cause a copy of the order to be filed in the General Registry with the statement filed under section 2(1).

(4) Rules of court may be made to govern the practice and procedure of the High Court in relation to applications under subsection (1).

Accounts and auditors

5 Accounts of registered charities

(1) Every registered charity shall cause its accounts to be made up at least once in each calendar year.

(2) A registered charity to which this subsection applies shall cause the accounts to be audited by an accountant or an approved person.

- (3) Subsection (2) applies to a charity whose gross income in the accounting year in question exceeds £100,000.
- (4) A registered charity to which this subsection applies shall cause the accounts, at its option, to be either —
- (a) audited by an accountant or an approved person, or
 - (b) examined by an independent person (an "examiner") who —
 - (i) is an accountant or an approved person, or
 - (ii) holds a qualification prescribed by regulations under section 11(1)(c).
- (5) Subsection (4) applies to a charity whose gross income in the accounting year in question exceeds £5,000 but does not exceed £100,000.
- (6) Every registered charity shall, within 6 months of the end of each accounting year, file the accounts for that year in the General Registry, together (in the case of a charity to which subsection (2) or (4) applies) with the report of the auditor or examiner on them.
- (7) If the provisions of this section are not complied with, the agent, and every trustee, director, manager or other similar officer, of the charity shall be guilty of an offence.
- (8) References in this section to the accounts of a registered charity and the report of the auditor or examiner are to accounts and reports which comply with regulations under section 11(1)(b).
- (9) In this section "approved", in relation to any person, means approved by the First Deemster for the purpose of auditing or examining (as the case may be) the accounts of the charity in question; and an approval under this subsection may be revoked at any time.
- (10) The Treasury may by order amend subsection (3) or (5) by substituting different amounts for the amounts specified therein (or the amounts for the time being substituted for them by a previous order under this subsection).
- (11) No order under this subsection shall come into operation unless it is approved by Tynwald.

[S 5 amended by Audit Act 2006 S 17 (1).]

6 Auditors: supplementary provisions

- (1) The auditor of the accounts of a registered charity shall—
- (a) have a right of access to all books, accounts and documents relating to the charity;
 - (b) be entitled to require from any charity trustee, director, manager or other similar officer, past or present, and from any past or present agent, officer or servant of the charity such information and explanation as he thinks necessary for the performance of his duties.
- (2) Where the auditor of a registered charity—
- (a) is removed, resigns or is not reappointed and there are any circumstances connected with his ceasing to hold office which he considers should be brought to the Attorney General's attention; or
 - (b) has any information or has formed an opinion on a matter of which he has become aware in his capacity as auditor and which is relevant to any functions of the Attorney General under this Act,
- the auditor shall notify the Attorney General of such circumstances, information or opinion, as the case may be.
- (3) No duty to which an auditor may be subject shall be regarded as contravened by reason of his notifying the Attorney General of any matter under this Act.

Regulation and inspection

7 Power to require registered charity to abandon misleading name

- (1) If, in the opinion of the Attorney General, the name of a registered charity—

(a) gives a misleading indication as to the nature of its activities; or
(b) is undesirable,

the Attorney General may, if he is satisfied that it is in the public interest, direct the registered charity to change its name.

(2) A copy of a direction made under subsection (1) shall be served by post on the registered charity concerned.

(3) If the direction is not complied with within a period of 6 weeks or such longer period as may be specified in the direction, the registered charity, its agent and every trustee, director, manager or similar officer of the charity shall be guilty of an offence.

8 Particulars, etc to be furnished to the Attorney General

(1) The Attorney General may require-

(a) a registered charity to furnish him with particulars as to the investment of any moneys belonging to it;

(b) a registered charity to have such investment valued by a valuer to be approved by him;

(c) a registered charity to furnish him with a report by a person to be approved by him, as to the state of repair and condition of any land or buildings belonging to it;

(d) any person having in his possession or control any document relating to a registered charity, without charge-

(i) to furnish him with copies or extracts from any of those documents; or

(ii) to transmit the document itself to him for inspection.

(2) Where a building belongs to a registered charity, the Attorney General may require the registered charity to transmit to him the policy of insurance of that building and the receipts for the current year's premium in respect of it.

(3) Any registered charity or person who fails to comply with a requirement under this section shall be guilty of an offence.

9 General power to institute inquiries

(1) The Attorney General may from time to time institute inquiries with regard to any institution which is, or which purports to be, established for charitable purposes or class of such institutions either generally or for particular purposes.

(2) The Attorney General may either conduct such an inquiry himself or appoint a person to conduct it and make a report to him.

(3) For the purposes of any such inquiry the Attorney General, and a person appointed by him to conduct the inquiry, may require any person (subject to the provisions of this section)-

(a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which he has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to him on any such matter, and to verify any such accounts, statements or answers by statutory declaration;

(b) to attend at a specified time and place and give evidence or produce documents in his custody or control which relate to any matter in question at the inquiry.

(4) For the purposes of any such inquiry evidence may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths, or may instead of administering an oath require the person examined to make and subscribe a declaration of the truth of the matters about which he is examined.

(5) No person claiming to hold any property adversely to an institution which is the subject of an inquiry or freed or discharged from any charitable trust or charge, shall be required under this section to furnish any information or produce any document relating

to that property or any trust or charge alleged to affect it.

(6) Where the Attorney General proposes to take any action in consequence of an inquiry under this section, he may publish the report of the person conducting the inquiry, or such other statement of the results of the inquiry as he thinks fit, in any manner calculated in his opinion to bring it to the attention of persons who may wish to make representations to him about the action to be taken.

(7) If any person fails to comply with a requirement under subsection (3), he shall be guilty of an offence.

(8) If any person wilfully alters, suppresses, conceals or destroys any document which he may be required to produce under this section, he shall be guilty of an offence.

10 Power to act for protection of charities

(1) The High Court may, on the application of the Attorney General, make an order under this section if it is satisfied that-

(a) there has been in the administration of an institution which is, or which purports to be, established for charitable purposes any misconduct or mismanagement;

(b) it is necessary or desirable to act for the purpose of protecting the property of the institution or securing a proper application for the purposes of the institution of that property or of property coming to the institution; or

(c) it is in the public interest.

(2) An order under this section may-

(a) remove or suspend any trustee, director, officer, agent or servant of the institution;

(b) appoint a new trustee or director in lieu of any trustee or director removed under paragraph (a);

(c) require any bank or other person who holds money or securities on behalf of the institution or of any trustee or agent for it not to part with the money or securities without the consent of the Attorney General;

(d) notwithstanding anything in the trusts or constitution of the institution, restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the institution without the approval of the Attorney General.

(3) The references in subsection (1) to misconduct or mismanagement shall (notwithstanding anything in the trusts or constitution of the institution) extend to the expenditure of sums-

(a) for the remuneration, reimbursement or reward of persons-

(i) raising funds for the institution; or

(ii) acting in the affairs of the institution; or

(b) for other promotional or administrative purposes,

where such sums are excessive in relation to the property which is or is likely to be applied or applicable for charitable purposes.

(4) In any proceedings under this section, the report of an inquiry under section 9 shall be admissible as evidence of the documents and facts stated therein.

Miscellaneous matters

11 Public documents

(1) The Deemsters may make such regulations as they consider are necessary or desirable to carry the provisions of this Act into effect and, without prejudice to the generality of that power, may make provision-

(a) requiring the keeping of records with respect to the transactions and financial position of registered charities and for the keeping of records on the Island;

(b) as to the form and content of the annual accounts of registered charities and of the report of the auditor or examiner on them;

(c) prescribing the qualifications of examiners of such accounts;

(d) defining the expressions "accounting year" and "gross income" for any purposes of this Act or any other enactment relating to charities.

(2) Regulations made under this Act shall not come into operation until they are approved by Tynwald.

[S 11 (1)(b) amended by Audit Act 2006 S 17 (2).]

12 False and misleading statements

A person commits an offence if-

(a) for the purposes of or in connection with any statement or other document filed or to be filed in the General Registry under this Act; or

(b) in purported compliance with any requirement imposed on him by or under this Act; or

(c) in any statement or other document filed in the General Registry under this Act,

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

13 Review by, and reference to a Deemster

(1) Any person aggrieved by-

(a) a decision of the Chief Registrar under section 3; or

(b) a direction of the Attorney General under section 7,

may, within 21 days of the decision or direction, apply to a Deemster for a review of the decision or direction.

(2) A Deemster may annul or confirm, with or without modifications, the decision or direction subject to review.

(3) A review under this section shall be informal and a Deemster may adopt any procedure which he may consider to be convenient and to afford a fair and equal opportunity to the parties involved.

(4) Where a decision under section 3 is subject to review, section 1(3)(c) shall have effect as if the reference in that section to 56 days were construed as a reference to a period ending on the date on which the Deemster annuls or confirms that decision.

(5) Where a direction under section 7 is subject to review, subsection (3) of that section shall have effect as if the reference in that subsection to the period of 6 weeks were construed as a reference to a period of 6 weeks calculated from the date on which the Deemster annuls or confirms that direction.

(6) Without prejudice to subsections (1) to (4), whenever the Chief Registrar entertains a doubt as to any question of law or fact arising from his functions under this Act, he may refer the matter to a Deemster for guidance.

14 Offences: supplementary provisions

(1) Any person who commits an offence under section 1, 8, 9 or 12 shall be liable-

(a) on summary conviction to a fine not exceeding £5,000 or to a term of imprisonment not exceeding 6 months, or to both;

(b) on conviction on indictment to a fine or to a term of imprisonment not exceeding 2 years, or to both.

(2) Any person who commits an offence under section 2, 5 or 7 shall be liable on summary conviction to a fine not exceeding £5,000.

(3) No person shall be prosecuted for an offence under this Act without the consent of the Attorney General.

(4) In any proceedings for an offence under this Act it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

15 Interpretation

(1) In this Act-

'agent' means a person who, in the Island, undertakes any of the following activities on behalf of an institution-

- (a) acting as the principal or only representative of an institution;
 - (b) acting as the principal or only organiser of the affairs of an institution;
 - (c) accepting documents on behalf of an institution;
 - (d) providing post forwarding services for an institution;
 - (e) as an occupier of premises, providing registered office or accommodation address facilities for an institution;
 - (f) providing an institution with corporate, secretarial or accounting services;
- 'charitable purposes' and 'charity' have the meaning given by section 14 of the Charities Act 1962;

'company' means a company formed and registered under the Companies Acts 1931 to 1992, or to which the provisions of those Acts apply as they apply to such a company;

[Definition of 'company' inserted by Companies Act 1992 Sch 5.]

'institution' means any institution, (wherever established) whether corporate or not, and includes any trust or undertaking;

'Manx institution' means an institution which is-

- (a) constituted under the law of the Island;
- (b) resident in the Island;
- (c) administered in the Island;
- (d) registered under Part XI of the Companies Act 1931;

'registered charity' means-

- (a) a charity in respect of which a statement has been filed under section 2(1) and has not been refused under section 3; or
- (b) a charity which, by virtue of section 18(2), fails to be treated as a registered charity,

but excludes any institution in respect of which an order under section 4 has effect.

(2) The Deemsters may, by regulations, extend or restrict the definitions of 'agent' and 'Manx institution' contained in subsection (1).

16 Winding up of charitable companies

Where an institution established for charitable purposes may be wound up by the High Court under the Companies Acts 1931 to 1986, a petition for it to be wound up under those Acts may be presented by the Attorney General as well as by any other person authorised by that Act.

16A Charitable companies: alteration of objects clause

(1) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of-

- (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,
- (b) any property representing income which has accrued before the alteration is made, or
- (c) the income from any such property as aforesaid.

(2) Where a charity is a company, any alteration by it of the objects clause in its memorandum of association is ineffective without the prior written consent of the Attorney General; and it shall deliver a copy of that consent to the registrar of companies under section 5(10)(a) or (b) of the Companies Act 1931 along with the printed copy of the memorandum as altered.

(3) Section 5(12) of that Act (offences) applies in relation to a default in complying with subsection (2) as regards the delivery of a copy of the Attorney General's consent.

[S 16A inserted by Companies Act 1992 Sch 5.]

16B Charitable companies: invalidity of certain transactions

(1) Section 4 of the Companies Act 1986 (validity of acts of company) does not apply to the acts of a company which is a charity except in favour of a person who-

(a) gives full consideration in money or money's worth in relation to the act in question, and

(b) does not know that the act is not permitted by the company's memorandum or section 5(7) of that Act,

or who does not know at the time the act is done that the company is a charity.

(2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or section 5(7) of that Act, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.

(3) In any proceedings arising out of subsection (1) the burden of proving-

(a) that a person knew that an act was not permitted by the company's memorandum or section 5(7) of that Act, or

(b) that a person knew that the company was a charity,

lies on the person making that allegation.

[S 16B inserted by Companies Act 1992 Sch 5.]

16C Charitable companies: status to appear on correspondence, etc

(1) Where a company is a charity and its name does not include the word 'charity' or the word 'charitable', the fact that the company is a charity shall be stated in English in legible characters-

(a) in all business letters of the company,

(b) in all its notices and other official publications,

(c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company,

(d) in all conveyances purporting to be executed by the company, and

(e) in all its bills of parcels, invoices, receipts and letters of credit.

(2) In subsection (1)(d) 'conveyance' means any instrument creating, transferring, varying or extinguishing an interest in land.

(3) Section 94(3) and (4) of the Companies Act 1931 (offences in connection with failure to include required particulars in business letters, etc.) apply in relation to a contravention of subsection (1) of this section.

[S 16C inserted by Companies Act 1992 Sch 5.]

17 [Amends section 3 of the Charities Act 1986]

18 Saving and transitional provisions

(1)

[Subs (1) repealed by Statute Law Revision Act 1992 Sch 2.]

(2) All statements, returns and annual accounts filed in the General Registry under any provision of the Public Charities Act 1922 shall be treated as if they were filed under the corresponding provision of this Act.

(3) Any reference to any provision of the Public Charities Act 1922 in any

document relating to a charity established before the commencement of this Act shall be treated as a reference to the corresponding provision of this Act.

(4) Without prejudice to the operation of section 16 of the Interpretation Act 1976 apart from this subsection, any approval under section 4(3)(b) of the Public Charities Act 1922 which is extant immediately before the commencement of this Act shall cease to have effect upon such commencement.

19 Short title and commencement

(1) This Act may be cited as the Charities Registration Act 1989.

(2) This Act shall come into operation on such day as may be appointed by order of the Governor in Council.

[ADO (whole Act) 1/4/1990 (GC85/90).]

Schedule

[Sch repealed by Statute Law Revision Act 1992 Sch 2.]