

**2. Charities Registration and Regulation Bill 2018 –  
First Reading approved**

HM Attorney General to move:

*That the Charities Registration and Regulation Bill 2018 be read a first time.*

**The President:** We turn now to Item 2: Charities Registration and Regulation Bill 2018 for First Reading. I call on the learned Attorney General.

**The Attorney General:** Thank you, Mr President.

As Attorney General, I have certain statutory functions in relation to the regulation of charities on the Island, and as a consequence my Chambers have been best placed to consider the current statutory framework.

The registration and regulation of charities is currently provided for by the Charities Registration Act 1989. Over time, the provisions of that Act have become outdated and additional requirements are necessary so that there is a modern system in place which will enable the public to retain confidence in the Manx charitable sector.

It is also necessary to take account of recent changes to the meaning of ‘charity’ in England and Wales so that *bona fide* charities which are established in that jurisdiction are not prevented from carrying on activities here.

Accordingly, having brought recommended and necessary changes to the attention of the Council of Ministers, I am asked by them to introduce the Charities Registration and Regulations Bill 2018 today and in doing so I will briefly explain the purpose and scope of the Bill.

The Bill has six main purposes: firstly, to update the meaning of ‘charity’.

The definition of ‘charity’ is currently set out in section 14 of the Charities Act 1962 namely:

an institution, corporate or not, which is established for charitable purposes, and is subject to the control of the Court in the exercise of the Court’s jurisdiction with respect to charities ...

The 1962 Act provides that ‘charitable purposes’ means:

purposes which are exclusively charitable according to the laws of the Isle of Man.

The meaning of ‘charitable’ in the Island has primarily been developed by the courts, which have generally adopted the traditional four ‘heads’ of charity which had been derived in England and Wales from the Preamble to the Statute of Charitable Uses 1601, namely: firstly, the relief of poverty; secondly, the advancement of education; thirdly, the advancement of religion; and finally, other purposes beneficial to the community not falling under any of the preceding heads.

These purposes were widened by provisions in the Recreational Charities (Isle of Man) Act 1960 and the Charities Act 1962, reflecting legislative change in England and Wales.

The definition of ‘charity’ was expanded in England and Wales by the Charities Act 2006 by the adoption of 13 purposes or heads of charity, which extended the definition beyond that which applies in Manx law. The effect of this is that a *bona fide* charity established in England and Wales may not be able to carry on activities in the Island. The Bill now extends the definition of ‘charity’ so that it includes the English 13 heads of charity.

The second purpose is to provide for a modern register of charities.

The present legislation providing for the registration and regulation of charities is the Charities Registration Act 1989, which replaced the Public Charities Act 1922. This Bill will repeal the 1989 Act, albeit re-enacting certain of its provisions ... Sorry, this Bill will repeal certain provisions of the 1989 Act, and in particular those which provide the Attorney General’s regulatory functions.

Although the 1989 Act does provide a requirement for a charity in the Island to register by filing a 'statement', it does not provide the clear *vires* for the establishment and operation of a registry which are necessary in a modern world. Accordingly, the Bill makes provision for matters such as the information to be contained in the register, the notification of any changes to that information, the circumstances in which an institution should be removed from the register and the making available to the public of information contained in the register. To reflect the importance now placed on the privacy of an individual, the Bill provides for the making of Regulations to provide restrictions on the publication of information which is held on the register.

The Bill also sets out the criteria for determination of an application to register a charity, which include matters such whether the institution is a charity under Manx law, the nature of its connection with the Island, whether its name can be considered to be undesirable or misleading and whether the governing instrument is fit for purpose – that is, it sets out the necessary powers and management/administrative procedures to enable it to function effectively – as well as whether there is reason to be concerned about the suitability of the persons appointed as its trustees – that is, the persons who have general control and management of its administration, whether described, for example, as directors, trustees or committee members – to undertake such role, and the risk of the charity being used for money-laundering activities or of its property being used to finance terrorism.

The reason why these matters are being considered in detail at the time of registration is to ensure that a charity coming onto the register is not only suitable for registration but, with the principle in mind that 'prevention is better than cure', that it, and its trustees, have the necessary powers and understanding of how they should be used so that the charity can operate successfully both in regard to the achievement of its charitable purposes and the meeting of the necessary regulatory requirements.

The Bill also preserves the requirement, first introduced in the Charities Registration Act 1989, that a charity wishing to register as a Manx charity must have a substantial and genuine connection with the Island. Such a requirement is important to prevent the Island being used, by example, by entities which have no intention to carry on charitable activities here and no presence here other than an accommodation address. Failure to register is an offence.

Also included in the Bill are provisions concerning the keeping of a register of mergers. The purpose of this is to provide a record of mergers of registered charities so that charities which would otherwise cease to exist as a consequence of the merger do not have to remain in existence, and on the register, merely to receive future bequests or gifts. Instead, the gift will be treated as a gift to the successor charity. This will be to the benefit of the relevant charities and also the registrar.

The third purpose is to assist charity trustees in the proper delivery of their charity's objectives.

A basic principle regarding the smooth running of an operation is that those charged with its management should have a clear set of rules to work to. This is even more important in the case of a charity where the trustees are required to use the charity's property for purposes which are subject to control by law as well as by the charity's constitution.

There is presently no requirement that a registered charity have a written constitution. Even where existing charities do have a written constitution, problems frequently arise due to their inadequacy and/or lack of clarity as regards the powers of the trustees and, in many cases, the lack of a mechanism to make changes. In the absence of such a mechanism, or to enable a charity to adopt a written constitution, an application has to be made to the court for approval of a scheme. To address these issues, which will assist the charities as well as the registrar/regulator, the Bill provides for adequacy of the constitution to be a condition of registration, a requirement for all charities, including those already on the register, to have a written constitution, with at least two years being allowed for compliance by existing charities, and for the Attorney General to be able to approve the adoption of a written constitution, and

for its amendment where it does not provide the necessary mechanism. As is the case presently, model constitutional documents will be available for charities to adopt should they so wish.

As the trustees of a charity – whether described in the constitution as trustees, directors, committee members, council members, or whatever – are acting under a duty to discharge the charitable trusts on which the charity's property is held, the Bill provides that the restriction on the delegation of the functions by the trustees of a charitable trust, which are set out in the Trustee Act 2001, apply to all charities, irrespective of whether they are constituted as a company, a foundation, an unincorporated association or as a trust.

The fourth purpose is to ensure more effective regulation of charities.

The Charities Registration Act 1989 provides for annual accounts of charities to be filed, which are subject to examination or audit if the income is above certain thresholds. Annual accounts provide only limited information as regards the activities of a charity and, to improve the ability of the regulator to identify potential problems as regards the running of a charity, for example, the misapplication of funds, the Bill makes provision for a report on the activities of the charity to be filed at the same time as filing the annual accounts. The information to be contained in the report will be prescribed, meaning that reporting requirements can be tailored to reflect the size of the charity. It is not anticipated that the reporting requirement will place any significant burden on trustees as, in most cases, they are already required to report on the previous year's activities at their charity's AGM.

In the case of foreign charities – that is, those established under the laws of another jurisdiction – the Bill will clarify that the accounts and reports to be filed are in respect of their activities in, or in connection with, the Island as the regulator clearly has no interest in their operations elsewhere. Further, to ensure accountability within the Island, unless at least one of the trustees is ordinarily resident in the Island, a foreign charity will be required to appoint a 'responsible person' in the Island who will be responsible for the charity's compliance with all the legislative requirements.

The Bill makes provision for the automatic disqualification of individuals from acting as trustees of charities, for example, if convicted of dishonesty offences, disqualified as a company director or placed on the sex offenders' register. The effect of this will be to prevent unsuitable individuals from undertaking such a role. As part of the process of approving an application for registration, the Attorney General will be able to consider whether the trustees of a charity have the appropriate expertise and experience to ensure the successful delivery of that charity's objectives and also whether there is a substantial risk of the charity being used for money-laundering activities or being involved in the financing of terrorism. These provisions should reduce the potential risks both to the charities themselves and to the Island's reputation.

The Bill re-enacts the Attorney General's existing regulatory powers, which include powers to require specified information to be provided to the Attorney General, to institute inquiries and to make application to the court to remove or suspend a trustee from office. These powers will be augmented under the Bill by the power to obtain a search warrant from a justice of the peace.

Further, the Bill enables the Attorney General to make regulations prescribing information with which the Attorney General may require to be provided. This will enable, for example, charities to be required to provide information concerning the adoption of, and compliance with, safeguarding policies. The Bill also provides for the disclosure of information between the Attorney General and public authorities for the purpose of enabling them to discharge their respective functions.

The fifth purpose is to improve public service and administrative efficiency.

The Bill provides for the functions of registrar to be conferred on the Attorney General, in addition to his existing functions as regulator. This will address the uncertainties which have long existed as to where the boundaries lie between the functions of the registrar and those of the regulator. As the registrar presently routinely seeks advice from the Attorney General's Chambers as to the exercise of his functions under the 1989 Act, it will streamline the

administrative process, as well as assisting trustees and members of the public by providing a 'one-stop shop' for all matters concerning charities.

A further advantage is that it will address the incorrect perception that, by not having a 'Charity Commission', the Island's regulation of charities is somewhat inadequate.

The sixth purpose is to provide a simplified mechanism for appealing decisions of the registrar/regulator by establishing a Charities Tribunal.

The Bill increases the number of decisions which the Attorney General can make in relation to charities, including those which are related to the function of registrar. It also provides for the Attorney General to be able to exercise certain functions which currently fall within the jurisdiction of the High Court, such as the approval of the adoption, or amendment of, constitutional documents. As a public authority, decisions of the Attorney General are subject to judicial review by the High Court by way of a doleance claim. In order to provide a more straightforward and cost-effective mechanism for challenge, however, the Bill provides for the creation of a Charities Tribunal to hear appeals in respect of decisions taken by the Attorney General, with the exception of decisions concerning the exercise of his powers to inquire into the activities of charities, to make applications to court for the protection of charities and to consent to a prosecution for non-compliance with certain requirements under the Bill.

There are then in the Bill certain miscellaneous provisions.

The Bill makes a number of other provisions, including enabling the Attorney General to appoint a person employed in the Attorney General's Chambers to perform certain specified functions which the Attorney General would otherwise have to undertake personally, and for the Attorney General to enter into arrangements with the Registrar General for the provision of services in connection with the delivery of the Attorney General's functions under the Bill, which will enable the register to be hosted within the Central Registry, thus taking advantage of existing IT provision.

Mr President, I beg to move that the Charities Registration and Regulation Bill be read for a first time.

**The President:** Mrs Lord-Brennan.

**Mrs Lord-Brennan:** Mr President, thank you.

I am happy to second and I do welcome the move by the Attorney General to update legislation in respect of charities constituted on or only operating within the Isle of Man.

Upon review, the key points that stand out to me are that it firstly remedies a defect in the current legislative provision in respect of the list or description of charitable purposes and the consequential legitimacy on Island of charities that are lawful in England and Wales operating here.

Secondly, the Bill establishes processes that are desirable in terms of good governance, regulatory oversight and transparency by formalising the registration and administration of charities. Part of this is requiring charities to have a written constitution that is a governing document – for example, a trust deed or memorandum and articles of association – which is a cornerstone of governance and an important point of reference for the charity's administration and the key people involved.

That said, having looked at the Bill line by line there is sensible proportionality kept, so that the provisions should not be too onerous for the smaller or new charity – for example, in Part 6, charity accounts and annual reports. I am conscious of this, as it should not be the case that it is too administratively burdensome to operate a charity.

Third, the specification or requirements for a responsible person for foreign charities fills a gap and enhances regulatory compliance, whilst the establishment of the Charities Tribunal and the appeal process provides an important point of recourse.

Overall, this approach is much more aligned to the good governance, responsibility and sound regulatory environment we have come to expect from various organisations and sectors of Island life, as a responsible jurisdiction.

Thank you, Mr President. I beg to second.

**The President:** Hon. Member, Mr Henderson.

**Mr Henderson:** Gura mie eu, Eaghtyrane.

I would just like to echo the Hon. Member, Mrs Lord-Brennan's commentary with regard to the introduction of the Charities Registration and Regulation Bill. I am pleased that it addresses deficiencies within existing legislation. I am pleased that it recognises, or will do, UK charities and for operational purposes here. I am pleased, again, that it is looking at the good governance and governance systems with regard to local charities. All excellent and much required.

Queries with regard to that, though, and Mrs Lord-Brennan touched on that but I will just highlight it further, inasmuch: have we gone too far – and I will be purposely provocative with that comment – with our administrative burden on charities? As the learned Attorney General pointed out, Eaghtyrane, with the inception of a small new charity, will this be almost too onerous for them?

I say that, and I am sure everyone else here has experience with being on the board of a local charity, but from my own experiences, the current levels of paperwork and with one particular charity in mind, it was quite onerous. So I am just wondering what flexibility or assistance is open to a charity if they are finding the bureaucracy a bit ... or they are sinking under it, let's put it that way.

How does this measure up to GDPR data protection? – another question. The learned Attorney touched on privacy details and I am just wondering if he can confirm that privacy can be respected, even though with some of the information being requested here.

And finally, Eaghtyrane, in respect of consultation in the build-up to this legislation, if the learned Attorney could give us some insight as to the consultation period, any commentaries made. What have our local charities said with regard to this legislation? That would be really good to have on record.

Gura mie eu.

**The President:** Hon. Member, Mr Cretney.

**Mr Cretney:** Yes, thank you.

Can I start, Mr President, by declaring an interest as a trustee and chairman of a long-established Isle of Man charity.

I just want to say that I warmly welcome the proposed legislation before Hon. Members. I think for quite some time it has been apparent that it did need updating and modernising, and the governance structure needed to be better put in place than perhaps it has been historically. So I warmly welcome the proposed legislation.

We do have a written constitution, and I think that that is something which all charities should have, as a matter of course. I do not believe that that should be a burdensome responsibility. In fact you can get standard ones which you can adapt to your own particular circumstances, I think the Attorney General referred to that in his remarks.

I warmly welcome this. I do not think there is much more I can add to that which has been said by others already, but it certainly has my strong support.

**The President:** Hon. Member, Mrs Poole-Wilson.

**Mrs Poole-Wilson:** Thank you, Mr President.

Like others who have spoken, I should ... Well, first, I should declare an interest that I too am a trustee of an Isle of Man charity. But I welcome modernisation and creating a more robust framework for regulation of charities.

I just had one question which I do not know whether the learned Attorney will be able to answer today or perhaps may bring back to us, as the Bill makes its progression through its stages, and that is that certainly my experience of becoming a trustee is that it can be a complex landscape, in that as the learned Attorney pointed out, you have to be clear on the rules that you are working to and they are not only enshrined in the law, including in due course this Bill, but also any constitution or memorandum and articles that apply to your trustee. Very often we want people to act as trustees of charities, but they may not necessarily all come with perhaps the experience of navigating regulation, legislation and so on.

As I look at the Charity Commission for England and Wales they have a huge amount of helpful guidance for charities and trustees. I am conscious that we probably do not need to replicate on that scale, but I wondered whether the learned Attorney might be able to advise whether, following on from this reform, there will be any scope for his Chambers, the regulator, to provide some Isle of Man tailored guidance. I think very much of what is on the Charity Commission's website is applicable but where we deviate in our background laws – and he referenced the Trustee Act, for example – so where we deviate in the Isle of Man, I wonder whether there will be any scope to offer some accessible guidance to those who step forward to become trustees of charities.

Thank you, Mr President.

**The President:** Miss August-Hanson.

**Miss August-Hanson:** Thank you, Mr President.

I will be quite brief. I wondered if the learned Attorney General would provide a little detail about what ways the Bill has been updated or made to suit the Isle of Man that deviate away from the Act in England and Wales.

It seems to have been based on the 2006 provision, and since that Act was promulgated I notice that in Part 2, section 4(2)(a) and (b), we have that the:

“charity” does not include —

(a) an ecclesiastical charity; or

(b) a trust of property falling within paragraph 1(2) of Schedule 3 to 31 the Church Act 1992.

And that in the consultation document the first point was that the advancement of religion should no longer be a charitable purpose, which had five responses more than any other – noting obviously that the consultation only attracted 20. I wondered if perhaps you might be able to just give us a little bit more detail on that, and also any other ways that it may have been updated or changed from the 2006 provision in the UK, in England and Wales.

Although I do appreciate the need to update the legislation that sits around charities and registration, to actually move into the 21st century here – I do understand that and do warmly welcome it. It does seem to provide a decent level of good governance.

I would also like to just agree with my colleague on Legislative Council, Mr Henderson, just in the need perhaps to understand a little bit more regarding GDPR and data protection. I know that Mrs Lord-Brennan said that there would not be any level of unnecessary, administratively burdensome paperwork for small charities, but just a little more on that would be very helpful.

Thank you.

**The President:** Mrs Lord-Brennan? (**Mrs Lord-Brennan:** No.) No.  
Mover to reply – learned Attorney.

**The Attorney General:** Thank you, Mr President.

If I could start by thanking those Members of Council who have spoken in support, for their support to the purpose of this Bill.

I will take this opportunity to answer as best I can the queries which have been raised.

Turning then firstly to Mr Henderson and his concerns. Firstly with regard to the smaller charities, these are certainly the charities very much in our minds when we were looking at drafting the provisions of the Bill, because I would say to Hon. Members that they constitute the majority of the work which we do in Chambers, which is actually by way of guidance to these charities, with reference to many queries they have, with reference to their powers, functions, their duties under existing legislation. You may have noticed in the Bill that the intention is that, if passed, guidance will be issued and that guidance will certainly address charities of any shape or form or size. Certainly, that is very much something that we want to help people with.

It is quite often with reference to these long-established small charities where we will have difficulties with the absence of constitutional documents and again, with that in mind, we provided in the Bill for a two-year period in which we can help them tidy up their requirements in that respect.

As I mentioned in my opening statement, we do make available to all charities a standard model of constitution which they can work to. Again, I can speak from our experience in Chambers, we are on a frequent basis dealing with these small charities to help them in that regard.

Privacy/GDPR has been a major concern. Again, what I can point Hon. Members to: the provision of the Bill is that guidance will be issued there as to what will be required for the purpose of registration, and what personal details may have to be provided, but more importantly what will then be available to the public to see. It will not be everything, so we will very much have in mind GDPR and privacy issues in that regard.

Consultation did run its course in the normal fashion. It was active: although there were only – I think mention has been made – 20 responses, I can tell you that there was active consultation, where those people who have particular interests in charities, and I will not name names, certainly spent a lot of time dealing with officers in Chambers, but generally giving their support to the targets, aims and purpose of the Bill which I have mentioned. So I am quite content and I can say to Hon. Members that there has been full consultation, and that those charities and those persons who are interested in charitable purposes on the Island have engaged in it actively. I know that we have altered the Bill in many regards as a result of that consultation to meet their needs and requirements.

So I hope that might help Mr Henderson with regard to the points he has raised.

With regard to Mrs Poole Wilson, I entirely agree that the charitable provisions, the legislation and especially the changes we are making do create what can be perceived as a complicated landscape. The Bill itself does anticipate, as I have mentioned, the issue of guidance itself with regard to many of its provisions, but I can say that there is an intention to issue tailored guidance for Isle of Man charities. That will follow the Bill and that is certainly something that we have very much in mind.

To Miss August-Hanson, this Bill is not based on the UK 2006 Act. It simply lifts from that Act the definition of 'charities', and that has been key from our point of view to ensure that we are on a level playing field with the UK so there is no difficulty in charities established appropriately in the UK for charitable purposes being able to operate here. As I have said and perhaps I did not make it clear, this is building on our existing Isle of Man legislation, which is somewhat different from the UK's, and we have under this Bill the provision for the 1989 Act to be repealed and many provisions of that Act with reference to the Attorney's own functions at the present time are now carried forward into this new Bill and enhanced. I hope that assists.

I thank Mr Cretney for his support, and to Members generally.

Thank you.

**The President:** Hon. Members, I put the question that the Charities Registration and Regulation Bill 2018 be read for the first time. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members. We have completed the Order Paper – an Order Paper in which we have passed historic and important legislation. You may well think it was the duty of Legislative Council, this Branch, to consider such legislation expeditiously, with impartiality and thoroughly, and without undue pressure (**Mr Cretney and Miss August-Hanson:** Hear, hear.) or influence from outside the Council. Equally, I am satisfied – and I am sure you are satisfied – that Council has indeed done its duty in this regard.

**Several Members:** Indeed. Hear, hear.

**The President:** Hon. Members, the Council will now adjourn until the next sitting, which will take place on Tuesday, 11th December at 10.30 a.m. in Tynwald Court.

*The Council adjourned at 3.07 p.m.*