

**1. Charities Registration and Regulation Bill 2018 –
Keys’ amendments considered**

HM Attorney General to move:

Motion made –

(a) that the Council –

(i) concur with the Keys in amendments 1, 2, 3 and 4;

(ii) concur with the Keys in respect of amendment 6 to the extent that it inserts a new subsection (2) into clause 46, but disagree with the Keys in respect of that amendment to the extent that it inserts new subsections (3) to (5); and

(b) that amendment 5A be made.

10 **The President:** We turn to our Order Paper. Item 1, Charities Registration and Regulation Bill, to consider the Keys’ amendments.

I call on the mover, Her Majesty’s Attorney General.

The Attorney General: Thank you, Mr President.

15 The Charities Registration and Regulation Bill 2018 has completed its passage through the Keys and appears again on the Order Paper in order for the amendments which were made by the Keys to be considered by Hon. Members.

The Order Paper sets out the resolution that I am moving today, which is that Hon. Members concur with the Keys in amendments 1, 2, 3 and 4, concur in part only in respect of amendment 6 and propose an alternative to amendment 4. Amendments 3 and 5 are tied in with amendment 6, so
20 I will address amendments 1, 2 and 4 before turning to the remainder.

Before I take Hon. Members through the amendments, I would again repeat what I have said on earlier occasions, namely that the Bill was intended to make technical changes to the registration and regulatory processes as regards the existing charity landscape. It was not my brief to make policy changes, in particular as regards the nature and circumstances of registered charities, beyond
25 the widening of the definition of ‘charitable purpose’ to ensure that what is meant by ‘charity’ in the Isle of Man is at least as wide as in England and Wales.

Amendment 1, namely the insertion of paragraph (d) into clause 15(1), was tabled by Mr Harmer on behalf of the Government. The effect of the amendment is to add to the circumstances in which a charity can be removed from the Bill, the fact that it has become exempt from registration. Without
30 this amendment a charity would remain on the register and thus subject to all the requirements that attach to a registered charity, despite having become exempt from registration, meaning that its exemption would be of no practical effect. This is an issue which became apparent only after the Bill’s introduction, otherwise it would have been included in the original draft. For this reason, I would ask Hon. Members to concur with this amendment.

35 The effect of amendment 2, which is to clause 27(10) and which was tabled by Mr Hooper, is to enable the Attorney General to lower as well as raise the threshold amounts of a charity’s income for examination or audit of its annual accounts. Although it is difficult to envisage a situation in which the threshold amount would be lowered, the widening of the Attorney General’s vires in this respect makes no overall difference to the workings of the regulatory regime. For this reason, I
40 would ask Hon. Members to concur with this amendment.

As regards amendment 4, tabled by Mr Harmer, the insertion of the word ‘and’ after ‘registered charities’ in clause 46, in that paragraph, corrects a typographical error which arose in the transcribing of the existing provision during the drafting of the Bill. Its correction provides the necessary clarity as to the requirements which can be imposed by regulations. Accordingly, I would
45 ask Hon. Members to concur with this amendment.

I now turn to amendments 3, 5 and 6. Amendments 3 and 5 are necessary only if any part of amendment 6 is retained.

Amendment 6 was tabled by Mr Hooper and inserts subsections (2),(3), (4) and (5) into clause 46. These four subsections can be broken down into two distinct parts.

50 Subsection (2) is a helpful clarification of the use of the Attorney General's powers provided for by regulations. Had this point been considered prior to the introduction of the Bill, subsection (2) would have been included in the original draft, and for this reason I would ask Hon. Members to concur with amendment 6 to the extent that it amends clause 46 by the insertion of subsection (2).

55 Subsections (3), (4) and (5) must be taken together. Subsection (3) requires the Attorney General to make regulations to exempt charities with a gross income not exceeding £5,000 from the requirement to register, and thus from the requirements to which registered charities are subject. Subsection (4) provides that the Attorney General may by order increase the amount specified in subsection (3). And subsection (5) makes additional provision concerning the meaning of 'gross income'.

60 The insertion of subsections (3), (4) and (5) represents a major change to the charities landscape and gives rise to a number of issues which are quite fundamental in terms of the operation of the provisions of the Bill and, accordingly, to the regulation of Manx charities going forward.

65 Firstly, the provisions of the Bill do not enable an exempt charity to register voluntarily, and indeed a registered charity must be removed from the register if it subsequently becomes exempt. This could result in a charity's status changing from year to year as its income increases or decreases and it requires to be registered, then removed from the register and so on. This also takes no account of the fact that some charities may prefer to be on the register in order to benefit from the reputational benefit that comes from having their accounts and other information available on a public record. If the intention is that small charities should be able to opt in to the regulatory regime,

70 then this will have to be provided through a different mechanism than exemption. Secondly, is it appropriate that the sole criterion for determining whether a charity should be exempt should be the level of its income, irrespective of the amount of funds on deposit in the bank or whether it owns land or other valuable assets? In a period of low interest rates, this would exempt from registration, and therefore visibility to the regulator and to the public, charities with substantial sums of money or valuable assets merely because their income comprised only bank interest rather than public donations. Such a charity could then dissipate its funds and could amount to tens, if not hundreds, of thousands of pounds being without any scrutiny as to how those funds have been applied. A very quick check of the figures held by the Charities Registry shows that of the 700 charities registered there are approximately 300 whose most recent accounts show an income

75 of £5,000 or below. Of these, more than a third have assets valued at £10,000, and this includes 16 charities with assets valued in the £50,000 to £100,000 range, 16 charities with assets valued in the £100,000 to £500,000 range and three charities with assets over £500,000, one of which runs into several million pounds. So this is not a theoretical point. Thirdly, to what extent should the general principles of the Act apply to small charities? Should there be a requirement for a small charity to be notified to the Attorney General, even if just so that there is a record of its name, objects, annual income and contact details? Consideration would also have to be given as to how the requirement for a substantial and genuine connection could be applied by the legislation to a small charity. It would seem inconsistent that application of the test would be determined by a charity's income, particularly in the case of a charity whose income

90 fluctuated around the registration threshold. Although an unregistered charity would not have to file annual accounts, good practice could dictate that it should still have to prepare at the very least a statement showing the charity's income, expenditure and account balances. Also, it would be a rare instance where a charity soliciting funds from the public should not have a written constitution. Should a small charity be able to be included in the register of charity mergers? 95 These issues are all ones which I would suggest need to be explored properly, and that both the charities sector and the general public be given the opportunity to provide input. It is especially important that any potentially negative consequences be identified, both to the charities themselves and to the Island's reputation as a responsible regulator. It is apparent from the email which David Gawne MBE circulated to Hon. Members at the weekend that there is a considerable degree of

100 concern in the charitable sector regarding the effect of the insertion of subsections (3), (4) and (5).
As well as highlighting some of the issues to which I have already referred, Mr Gawne indicated that
not being registered may prove to be disadvantageous to small charities in that it would bar them
from receiving funds from bodies which only support charities which are registered and thus subject
to scrutiny. So, an unintended consequence of the amendment may be that the small charities that
105 were intended to benefit from it instead suffer a detriment.

In view of these issues, I would ask Hon. Members to disagree with the Keys in respect of that
part of amendment 5 which inserts subsections (3), (4) and (5).

As regards amendment 3, this is a necessary change if the insertion of subsection (2) is accepted.
For this reason, if Hon. Members concur with amendment 6 to the extent of the insertion of
110 subsection (2), I would ask that such concurrence extend also to amendment 3.

Concerning amendment 5, this amendment is also consequential on the adoption of
amendment 6, as it is a necessary repositioning of the procedural requirement that Tynwald
approval be sought for regulations made under clause 46. Amendment 5 reflects the fact that
amendment 6 provides for the insertion of subsection (4), which enables the Attorney General to
115 make an order. If Hon. Members disagree with amendment 6 to the extent that it inserts
subsections (3), (4) and (5), but concur with that amendment to the extent that it inserts
subsection (2), then the reference to 'and orders under subsection (4)' will need to be omitted. For
this reason, I propose that Members concur with amendment 5A as an alternative to amendment 5.

Mr President, I beg to move that the motion standing in my name be passed.

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The President: Mr Henderson.

Mr Henderson: Gura mie eu, Eaghtyrane.
I beg to second, sir, and reserve my remarks.

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The President: Miss August-Hanson.

Miss August-Hanson: Can I give way to my colleague on Legislative Council?

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Mrs Lord-Brennan: Thank you, Mr President.

I would like to draw Council Members' thinking back to when the Bill was first put before us. One
of the elements was that what this Bill is doing is establishing processes that are desirable in terms
of good governance and regulatory oversight and transparency by formalising the registration and
administration of charities, and part of this was against the background of Moneyval and the
135 necessity to ensure that charities have a substantial and genuine connection to the Island.

I think the amendment that has come from the other place to do with effectively taking charities
that have an income of £5,000 out of the loop – and that is a step away from what we have now – is
something that should be revisited, because actually it is providing a gap and I think that is
something that needs to be looked at as a policy matter. I do not really think it was the intention to
140 create something that would end up outside the scope of registration and regulation and everything
that was trying to be achieved in the Bill in the first instance. It does concern me, some of the issues
that have been raised to do with the impact it might have on the smaller charities, and really in a
sense might bring into question their legitimacy if they are out there seeking to fundraise and they
cannot say that they are registered. So I think that is something that we should be mindful of.

145 The other point would be the concerns over what the definition of a small charity is, and actually
the ability of a charity to hold various assets that, aside from income, would also fall outside of the
scope of having any oversight over that.

I suppose I would close, really, saying that I am supportive of the approach of the learned
Attorney and I think that as a policy matter it is something that, if it were to be legislated for, should
150 be addressed as a policy matter first.

Thank you.

Miss August-Hanson: Thank you, Mr President.

155 I would agree with all of the amendments that have come through from the Keys. The one slight concern, I suppose, where I need clarification from the learned Attorney General, is just regarding the matter of ecclesiastical charities and other denominations. I know that a decision was made in the Keys and I fully respect that; however, Minister Thomas did make a commitment to look at ecclesiastical charities and other denominations at public consultation on the charitable landscape when that is looked into.

160 I would just like to make a small point regarding the amendment that is suggested by the learned Attorney General regarding small charities and the amendment that was made in another place regarding that. In his speech he said that making this move could result in a charity's status changing from year to year as its income increases and decreases, so it is important that they are registered and then removed from the register and so on. He said that such a charity could dissipate its funds without any scrutiny as to how those funds have been applied if they were exempt, but should there
165 be a requirement for a small charity to be notified to the Attorney General, isn't it important to record the name, objects, annual income and contact details – I would have to agree there – and that there be a substantial and genuine connection that could be applied by the legislation to a small charity; that an unregistered charity would not have to file annual accounts – good practice would dictate that it would still have to prepare at the very least a statement showing the charity's income
170 and expenditure and account balances; that it needs to be explored properly; that it is especially important that any potentially negative consequences can be identified; and that it is disadvantageous to small charities in that it would bar them from receiving funding from bodies that support charities which are registered and therefore subject to scrutiny. So I would just like to have something from the learned Attorney General regarding the comparisons that can perhaps be made
175 between the amendments that look to be put forward and the arguments that have been made relating to ecclesiastical and charities otherwise. Thank you.

The President: Learned Attorney, do you wish to deal with this at this point?

180 **The Attorney General:** Yes, thank you, Mr President, and I thank Miss August-Hanson for her contribution.

On the question of ecclesiastical charities, there were amendments tabled before the Keys to extend the legislation on the basis of including ecclesiastical charities. Those amendments were defeated but I can confirm that Minister Thomas, on behalf of Government, did make a commitment
185 that he would take the issue of let's call it the charitable landscape out to public consultation, so that the public and the ecclesiastical charities in particular can make representations with regard to the future with regard to their regulation. So that is a matter that has been addressed by the Keys and, as I have said, there has been a commitment that that will go out to consultation.

190 Whether or not as a consequence of this debate in relation to the move which Mr Hooper made in his amendments ... will be included in that consultation I cannot say, but as I have said, it does have the unintended consequence which I have outlined with reference to the impact on small charities. That might be something that Mr Thomas might want to consider going forward. I cannot commit him, of course. What I said in my speech was simply to highlight what I will again describe as the unintended consequences of the amendment which the Keys have passed as to the detriment
195 which this could cause the small charities. There will not be the level of scrutiny for an unregistered charity, which the small charities seem to be welcoming of because it helps them in their fundraising efforts to be able to, if I use the expression, 'market themselves' and to have an appeal to other organisations or companies or businesses out there able and willing to give support to registered charities. That is something that they do not want to lose. There would not be the scrutiny, of
200 course, because there would be no registration process which will apply to an exempt charity, so nobody would be able see what their funds are if anybody wanted to look at that information.

So it is really the unintended consequences which will flow from this that cause me concern.

The President: Thank you, Mr Attorney.
Mrs Lord-Brennan.

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Mrs Lord-Brennan: Thank you, Mr President.

Given the unintended consequences, if Council is content to ask Keys to revisit it, I wonder if we might agree that what could be put to the Keys would be just to communicate that the Legislative Council is content, if Keys wish, to refer it for a conference to resolve. I am not sure if that is something that we can consider as an option here.

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The President: Would this be by way of an alternative-worded amendment?

Mrs Lord-Brennan: It would just be to put the approach across that if Keys did want to go into conference over it, then that would be something perhaps that we could consider welcoming from our side. I do not know if it would be possible to seek agreement for that.

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The President: Certainly if Keys do not accept Council's amendment, there is provision for a conference of Members between each Branch and it would be resolved that way. Thank you.
Mr Henderson.

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Mr Henderson: Gura mie eu, Eaghtyrane.

I would just like to reflect on an email that David Gawne MBE sent to us all over the weekend outlining pretty much what Mr Attorney has just described to us, inasmuch that the amendment in question from the House of Keys actually does cause quite a few unintended consequences to small charities and indeed detrimental consequences, as we have heard, with regard to a small charity which would be deregistered and would not then be eligible to apply for certain public funding and other charitable funds because they would be deregistered. Also, it is detrimental from their reputational point of view, as they would not be then classified as a registered charity and possibly there is the potential there of not being seen in the same light then as a registered charity.

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Also, Mr Gawne points out, quite rightly, that for charities in any case under the existing legislation the preparation of financial statements at the end of the year is not as onerous as for some organisations and many of his contacts within the charitable sector are quite happy undertaking the current financial regulations, such as they are. They do not see what they have to do as onerous. And again, any charity, whether registered or not, would have to consider it right and proper to have some sort of financial statement anyway. So, we need to think about that and the oscillating effects then, which is the other unintended consequence of a charity floating above and below the intended £5,000 pound *de minimis* mark whereby, as it currently stands, if the Bill went live, that would force every small charity that the learned Attorney has just pointed out in his large list to register and deregister at any particular point in time, which I think then would cause a really serious detrimental administrative nightmare for those charities and I do not think that is fair.

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I think the amendment in the House of Keys was moved out of genuine interest and concern in trying to assist, but under further examination and scrutiny I think we can all see that there are issues and the best way forward is the compromise situation that Mr Attorney has outlined, that we accept in part a piece of it but in the other parts reject them to get rid of the unintended consequences as have been outlined, and I think that would be a sensible way forward, Eaghtyrane.

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The President: Mrs Poole-Wilson.

Mrs Poole-Wilson: Thank you, Mr President.

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Just a couple of observations. I think it is clear that the amendment moved in another place that we are talking about today was clearly moved with the best of intentions to avoid unnecessary administrative burden on small charities. However, I absolutely hear what the learned Attorney has said about the unintended consequences of the amendment.

255 It also seems to me, if I have it correct, that this would be a change from the existing landscape
that, as things currently stand under the 1989 Act, all charities are required to provide a statement
and the significant difference with this Bill is that it is to be clearer about what information should be
provided on registration. It is now to provide a written governing instrument, more like a clear
260 constitution, and the further requirement will be to provide an annual report along with accounts;
and the accounts element still is a reflection of the current landscape, so it is not a significant change
and the thresholds for auditing have not been changed either.

It is also my understanding that to assist organisations, particularly the smallest organisations,
there will be model documents provided to help them produce a written constitution and there will
be a two-year transitional period also to give small organisations time to generate the appropriate
265 documentation. As far as annual reports are concerned, it is my understanding again that there will
be model documents and the annual report should be commensurate with the size of the
organisation. So, again, the smallest organisations should not be put to undue burden; they should
be able to file something that is appropriate for their size and level of income.

I think the other thing that I would just like to clarify is that ... I hear what the learned Attorney
270 has said about not being able to commit the Minister for Policy and Reform on consulting on this
issue, the wider charities landscape, but he has given a commitment to consult on the position of
ecclesiastical charities; but should the Minister for Policy and Reform take the view that the time is
right to consult more broadly on the charities landscape and to seek the views of the public and
charities on questions of who should be exempt and from what, whether this legislation, because of
275 the power to bring forth regulations, is still fit for purpose to make any future exemptions that may
result out of any future consultation and policy decision to make any future exemptions ... So we are
not losing the ability to make future change. That is within this Bill but it is a policy matter for
consultation as to what should be, if anything, exempted from regulation and registration.

Thank you, Mr President.

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The President: Does any other Member wish to speak before I call on the learned Attorney?
Mrs Maska.

Mrs Maska: Thank you, Mr President.

285 I thank the learned Attorney for his explanation of the implications of the amendment to
section 46 which was made in another place; and, as my colleague Mrs Poole-Wilson has referred to,
I am sure the intention was not to create impediments or make the operation more difficult or
create problems.

I think it is important that in the final operation of this Bill it must be seen to aid all charities in
290 transparency and clear operation, as seen by potential donors. Those who are involved in charitable
fundraising must have confidence that the charity that they have assigned their funding to is well
operated and well regulated. However, we must be careful that we do not put undue impediments
in the way of small charities and I am sure that the intention was to simplify and clarify that
pathway. All I would ask is that we all have in mind that the resultant legislation assists the
295 operation of charities, both large scale and small.

I also thank Mr David Gawne MBE for his submission to us all, which again was very helpful in
consideration of clauses today.

Thank you.

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

Miss August-Hanson: Thank you, Mr President.

I would just like to give my support to what Mrs Lord-Brennan had to say earlier about potentially
going to conference, and should that matter come about it would be very welcome. I believe it was
305 2013 the last time that LegCo was in conference with Keys, and it is a very valuable tool.

Thank you.

The President: Mrs Sharpe.

Mrs Sharpe: Thank you, Mr President.

310 I would just like to ask the learned Attorney: might another unintended consequence of the proposed £5,000 income cut-off point for small charities being registered be that a fraudulent person could set up a number of small charities which could then operate under the radar, perhaps laundering finances?

315 **The President:** I call on the learned Attorney.

The Attorney General: Thank you, Mr President.

320 If I could just start by thanking all Hon. Members for their careful consideration of the motion today and of this matter, and I join with Mrs Maska in thanking Mr Gawne for his email to us all, which was very helpful in explaining what we have described as the unintended consequences of the amendments which the House of Keys made with reference to small charities.

325 If I could deal with Mrs Sharpe's point, clearly that could be an unintended consequence, that a fraudster could put in place a series of small charities to avoid registration – that could happen in any situation – but clearly the fact that a public charity has got to be registered in the context of the existing landscape would be a deterrent. If I take you back to the speech which I made at the First Reading, part of the movement for introducing and tidying up both the registration and regulatory process was to satisfy Moneyval, in their evaluation of the Island, that we had in place a proper control with reference to charities operating out of the Isle of Man. So, clearly it is hoped that this tidying up of the registration process and clarifying matters the way it does will be a deterrent to people wanting to make use of the Isle of Man for illegal purposes.

330 If I could then just turn briefly to what Mrs Poole-Wilson said, clearly the Bill in its current state, absent the amendments from the Keys, does reflect the existing landscape and that was something that, in shaping the Bill and presenting it to both the Keys and to Council, was very much in my mind. It was not part of my remit to consider in any way changing that landscape and we have always had in mind the importance of the small charities sector – and again, as I have said in my previous speeches to you, we do offer, really on a day-to-day basis, support to the small charities. We have model documentation available there and we offer them help, and the Bill provides for this two-year period in which we will help the small charities come on board to follow the new regime which will be hopefully put in place.

340 The points made by Mr Henderson ... I thank him very much for his support and for seconding the motion which I have passed. It is, as he has indicated, the unintended consequences, which we are all well aware of today, which caused me concern and which caused me to bring this motion to you, and I am hoping, from what you have said, that I have your indicative support.

I so move, sir.

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The President: Hon. Members, I move the motion in the name of the learned Attorney in parts.

First of all, that Council concur with the Keys in amendments 1, 2, 3 and 4 on your list of amendments: those in favour, say aye; against, no. The ayes have it. The ayes have it.

350 We deal now with amendment 6. The motion is that Council concur with the Keys in respect of amendment 6 to the extent that it inserts a new subsection (2) into clause 46, but disagree with the Keys in respect of that amendment to the extent that it inserts new subsections (3), (4) and (5). So, the motion is that we agree part (2) of amendment 6 but reject parts (3), (4) and (5). Those in favour, say aye; against, no. The ayes have it.

A division was called for and voting resulted as follows:

FOR

Mr Cretney
Mr Crookall
Mr Henderson
Mrs Lord-Brennan
Mrs Maska
Mrs Poole-Wilson
Mrs Sharpe

AGAINST

Miss August-Hanson

The President: The motion carries, 7 votes to 1.

355 In consequence of that decision, the motion is that amendment 5 is replaced by the amendment shown as 5A. Those in favour, say aye; against, no. The ayes have it. The ayes have it.

I will put the amendments in their totality. Those in favour, say aye; those against, no. The ayes have it. The ayes have it.

Thank you, Hon. Members.