

**THE CHARITIES ETC. (GUERNSEY AND ALDERNEY) ORDINANCE, 2021
GUIDANCE FOR ALL CHARITIES AND OTHER NPOS (“THE GENERAL GUIDANCE”)**

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Introduction

This guidance is for all charities and other non-profit organisations (“NPOs”) on the requirements of The Charities etc. (Guernsey and Alderney) Ordinance, 2021 and the Charities etc. (Amendments, Exemptions, Governance and Specified Amount) (Guernsey and Alderney) Regulations, 2021, referred to as the “legislation”.

There is additional guidance for charities/NPOs which are internationally active due to the higher risk due to their international profiles.

This guidance is to assist charities/NPOs to understand the requirements that apply to them. It does not replace the legislation and it does not cover all matters addressed in the legislation. It is important that charities/NPOs familiarise themselves with the legislation to ensure that they are fully aware of all their requirements.

The objectives of the Ordinance and Regulations are:

- (1) To promote accountability, integrity and public confidence in the administration and management of the sector.
- (2) To meet international standards aimed at preventing the sector from being abused for criminal purposes (terrorist financing, money laundering, fraud, bribery and corruption).
- (3) To give comfort to donors and others providing funding to an NPO that their donations will be used to achieve the registered purposes.

Due to charities/NPOs reputational benefits from registration the requirements apply to all registered charities/NPOs whether their registration was compulsory or voluntarily. However, the requirements vary depending if the charity/NPO has international activity or is domestically focused and for domestically focused charities/NPOs, depending on the asset value and if they solicit or accept funds from the public. The legislation creates a risk-based sliding scale of requirements applicable to different types of charities/NPOs or activity. Please refer to the checklists.

PART I - OVERVIEW OF LEGISLATION

FAQ 1 – What requirements apply to charities/NPOs under the legislation?

All charities/NPOs that carry out international activities must register. It is also compulsory for charity/NPOs to register if their assets are £100,000 or more or their turnover is £20,000 or more. Charities/NPOs that are not required to register may do so voluntarily.

When an organisation applies for registration, it must provide details about its activities and the individuals who control it. Once registered, a charity/NPO must update the Registrar within 21 days about any changes to their registration details including details about any criminal offences committed by its officers. Only charities/NPOs that work with children or vulnerable adults, need to carry out a Disclosure and Barring Service check on its officers.

All registered charities/NPOs are required to submit an annual validation at the beginning of each calendar year and no later than 28 February.

Registered charities/NPOs are subject to governance measures:

Basic governance measures set out the minimum standards expected of all charities/NPOs on the register in line with current best practice.

Financial crime risk mitigate measures are risk-based and contain additional requirements for charities/NPOs that carry out international activity in line with current best practice.

All charities/NPOs are required to report, to the Registrar, payments made outside the Bailiwick of **£100,000** or more. Excluding:

- Donation of physical items e.g., clothing or equipment.
- Payments that are incidental to the purposes of the charity/NPO to support a person from the Bailiwick who is residing elsewhere for reasons connected to the payment (i.e., medical treatment)
- Payments to an affiliated organisation in the UK, Jersey or the Isle of Man.

This reporting requirement **applies to all registered charities/NPOs** but in practice effects charities/NPOs that are internationally active.

Basic governance measures are:

- Constitution or/and other governing documents that cover minimum legislation requirements and provide a copy to the Registrar,
- Maintain financial records demonstrating that charity/NPO's assets are being applied in line with its objectives
- Annual financial statements (and in some cases file them with the Registrar)
- Make and keep records of meetings, decisions, contractual documents etc
- Standard measures to ensure financial probity and transparency (e.g., as far as possible passing funds through their bank accounts).

Risk mitigation measures, again in broad terms, are requirements to:

- Put in place controls to ensure that it and its activities cannot be used for the purposes of money laundering, fraud, bribery and corruption.
- Identify donors and beneficiaries in certain situations.
- Periodically review compliance with the legislation and take steps to address any issues of non-compliance.

There are exemptions from some requirements for certain types of registered charity/NPO. For example:

Registered charities/NPOs that have a British parent organisation (i.e. one that is registered in the UK, Jersey or Isle of Man) only require governing documents to cover matters not already dealt with in the constitution of the British parent organisation (and may be modified or disapplied by the Registrar if they think it appropriate).

The requirement to file annual financial statements with the Registrar does not apply to charities/NPOs that register voluntarily.

In addition, the risk-based approach means that requirements do not apply when an event is unlikely. For example, a charity/NPO with a purely domestic focus is unlikely to receive payments from outside the Bailiwick so will not be required to carry out identification measures on donors.

Charities/NPOs that are not required to register and do not register voluntarily are not subject to any requirements under the legislation.

PART II - REGISTRATION

FAQ 2 - What is a charity under the legislation?

An organisation is a charity if all of its purposes are charitable (or are ancillary or incidental to its charitable purposes), **and** it provides benefit for the public or a section of the public by carrying out its purposes.

FAQ 3 - What are charitable purposes?

The “charitable purposes” are set out in Schedule 4 of the Ordinance, as follows:

- (a) the prevention or relief of poverty,
- (b) the advancement of education,
- (c) the advancement of religion,
- (d) the advancement of health,
- (e) the saving of lives,
- (f) the advancement of citizenship or community development,
- (g) the advancement of the arts, heritage, culture or science,
- (h) the advancement of public participation in sport,

- (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended,
- (j) the advancement of human rights, conflict resolution or reconciliation,
- (k) the promotion of religious or racial harmony.
- (l) the promotion of equality and diversity,
- (m) the advancement of environmental protection or improvement,
- (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,
- (o) the advancement of animal welfare, and
- (p) any other purpose that may reasonably be regarded as analogous to any of the purposes listed in subparagraphs (a) to (o)

FAQ 4 - What constitutes an NPO under the legislation?

An organisation is an NPO if it does not fit the criteria to be a charity but is established solely or principally for the non-financial benefit of its members or for the benefit of the public. An example of an NPO would include a private members club.

FAQ 5 - Which charities/NPOs must registered?

Charities/NPOs must be registered if they are based in Guernsey or Alderney, and they fall into one or both of the following categories -

Category 1 - charities/NPOs that have gross assets and funds of £100,000 or more, or a gross annual income of over £20,000 ("the financial threshold"). Except for charities/NPOs that meet the financial threshold but do not solicit or accept donations, funds or contributions from the public (see FAQ 6).

Category 2 - charities/NPOs that engage in international activities, in other words those that raise or distribute assets abroad (See FAQ 7). Charities/NPOs in this category must be registered, regardless of whether they meet the financial threshold or solicit or accept donations etc. from the public.

The Registrar has the power to refuse to register an organisation in certain situations. This includes cases where the Registrar:

- Is not satisfied that the NPO is within the definition of charity/NPO.
- Has concerns about the running of the organisation, or the individuals running it.
- It would not be in the public interest to do so (for example where an organisation adversely affects the human rights of individuals, promotes discrimination against sections of the community, or encourages hate crimes).

FAQ 6 – What counts as soliciting or accepting donations etc. from the public?

A charity/NPO solicits or accepts donations etc. from the public if, in the normal course of its activities, it applies for or accepts sponsorship, grants or donations from the public, expects to do this or holds itself out as doing this. This applies to any type of donation, whether in the form of cash or physical items.

Holding itself out as soliciting or accepting donations from the public includes having donation information/ability on a website or publicising the receipt of sponsorships or grants.

The following are **NOT soliciting or accepting donations**:

- Accepting a bequest unless the charity/NPO invites legacies from the public.
- Fundraising (events or sales) that involves providing something (specific benefit or item) in exchange for a payment unless it is incidental to a donation (e.g. free tickets to sponsors or flag day sticker). Such fundraising is commercial and not fully dependent on public goodwill.
- Private charitable trusts or a purpose foundation set up as a restructuring vehicle.
- Club or groups funded exclusively by membership i.e. subscriptions. Public does not include the members of a charity/NPO itself (i.e. those with voting rights) or their family or close associates*.
- Funded exclusively by individuals who are closely linked to the charity/NPO, and their family or close associates*. (i.e. employees or volunteers)
- Religious charities/NPOs funded exclusively by event/service attendees.
- Sporting or cultural events (e.g. a choir or a badminton club) funded exclusively by participants fees (other than the audience)

*A close associate is somebody with a close business relationship including fellow charity/NPO partner or board member but would not normally apply to external third parties (e.g. an accountant or lawyer providing services).

However, in all these examples the organisation will still be required to register if it engages in international activity (see FAQ 7).

FAQ 7 – What counts as international activity?

A charity/NPO engages in international activity if, in the routine course of its activities, the charity/NPO receives (or expects to receive) assets from parties outside the Bailiwick or provides (or expects to provide) assets to parties outside the Bailiwick.

This will apply to local charities/NPOs that are branches or affiliate members of an organisation based elsewhere, if they receive funding from or raise funds for that organisation. It will also apply to charities/NPOs that are established for the specific purpose of providing assistance to other parts of the world.

The following distributing of assets outside the Bailiwick are **NOT international activity**:

- (1) Incidental expenditure, e.g. purchase of equipment from a foreign supplier, or coach hire to transport sports teams whilst abroad, or payments to an affiliated organisation outside the Bailiwick purely for administrative purpose such as a registration fee.
- (2) Charities/NPOs with domestically focused purpose but occasionally distribute physical items such as clothing or equipment overseas for the support of purposes in another country that are linked to its purposes in the Bailiwick (e.g. a local sports club that at the end of the season sends its used kit to a team in a developing country, or a PTA that sends textbooks to a school in a deprived area.) This exemption is on the basis that although such physical items potentially have a high value in certain parts of the world, the volume is likely to be low in contrast to charities/NPOs specifically set up for this purpose and which are required to register.
- (3) Charities/NPOs whose purpose is to fund persons from the Bailiwick receiving services from a provider outside the Bailiwick. This could be payments related to a person's medical treatment or schooling in the UK, or payments to cover the expenses of a friend or family member who is providing support to the person when he or she is outside the Bailiwick.
- (4) Where the payment is in line with the purposes of the charity/NPO but is *de minimis*, or in other words is of a very low amount. An example would be where a charity/NPO exists to provide support for young musicians, if one of its officers is on tour abroad with the members of an orchestra and he or she gives them money to purchase refreshments. As this would technically be in line with the purposes of the charity/NPO it would not be an incidental expense, but the low sums involved mean that it would be considered *de minimis*.

Therefore, charities/NPOs whose only international activity comes within one or other of these four categories do not need to register, unless they both meet the financial threshold and solicit or accept donations from the public (see FAQs 5 and 6).

FAQ 8 – Can a charity/NPO that is not obliged to be registered register voluntarily?

A charity or NPO based in in Guernsey or Alderney that is not required to be registered may apply for voluntary registration. Voluntary registration brings with it most of the same governance requirements as compulsory registration. This is to protect the public in view of the credibility conferred by registration. See FAQ 5 re Registrar's power to refuse to registration.

FAQ 9 – Can a charity/NPO that chooses not to register voluntarily still claim exemptions under income tax legislation?

Income tax legislation exemptions only apply to registered charities/NPOs and are not available to charities/NPOs that choose not to register. Therefore, this is an advantage of voluntary registration.

PART III – BASIC GOVERNANCE REQUIREMENTS

FAQ 10 - Must registered charities/NPOs have a constitution?

Yes, and they must be filed with the Guernsey Registry.

Registered charities/NPOs (including those that are voluntarily registered) must have constitutional documentations that, as a minimum, contain the information set out in the Schedule to the Regulations ("Schedule"). They set out the charity/NPO purposes, its membership, the number of board members (or other managing officers such as trustees), the appointment, removal and replacement of managing officers, how meetings are conducted, voting rights, and provisions for the administration of assets.

There are two exceptions:

- (1) Branches: registered charities/NPOs that are branches of a British parent organisation (i.e. one registered with the Charity Commission for England and Wales, the Scottish Charity Regulator or the corresponding bodies in Jersey or the Isle of Man) and whose only activity within the Bailiwick is to raise funds etc. for the British parent organisation. Branches can rely on the constitutional documents of their British parent organisation instead of having their own. Provided that where the constitutional documents of the British parent do not cover all of the matters within the Schedule, the local charity/NPO must have its own constitutional documentation to address the matters that are missing.
- (2) Charities/NPOs in existence when the Regulations came into force (29/04/2022) that are governed by legislation or an instrument (e.g. a trust deed) that is incompatible with matters in the Schedule and the charity/NPO has no power to change this, it may apply to the Registrar for a direction that the requirements in question do not apply to it.

Proportionate:

The Schedule is not prescriptive about the way in which the constitutional documentation deals with each matter. This flexibility allows constitutional documentation to be proportionate to the circumstances of the charity/NPO. For example, the provisions governing the administration of assets might need to be detailed for a charity/NPO with a significant investment portfolio but those with low value assets would probably need no more than a requirement to have a bank account with specified signatories.

Filing:

Copies of constitutional documentation must be provided to the Registrar when applying for registration and within 21 days of any changes or additions.

More than one document:

It is recommended that this documentation takes the form of a constitution, but it need not, and it may comprise more than one document. It is key that all the required information is covered in official, agreed and recorded documents.

The way this is achieved may vary depending on the type of organisation involved. For example, a company (LBG) will include these matters in its memorandum and articles of association, and a trust will have a trust deed. Charities/NPOs can either amend those documents as necessary or append a further document that contains the missing information.

Review:

All registered charities/NPOs must review their constitutional documentation periodically and update it as necessary. If any changes are made to the documentation, updated copies must be filed with the Registrar within 21 days.

FAQ 11 - How many managing officers must a registered charity/NPO have?

A minimum of 3.

Charities/NPOs (including those that are voluntarily registered) must have a minimum of 3 managing officers, 2 of whom who are unconnected, i.e. not related to each other. One of the unconnected officers should occupy the role of Treasurer (or equivalent). The specific roles filled by managing officers will depend on the nature of the charity/NPO but would generally be the directors in the case of a company (LBG), the trustees in the case of a trust, or the committee members in the case of an unincorporated association other than a trust (e.g. a PTA).

Exemptions:

Charities/NPOs administered, directed or controlled by a corporate services provider (i.e. that is licensed to offer trust and/or corporate services by the Guernsey Financial Services Commission ("GFSC")). The corporate services provider will cover the functions that are otherwise carried out by a board, and the necessary degree of impartial oversight charity/NPO's activities.

Voluntary registered charities/NPOs may have only 2 managing officers. One person may act as Chair and Secretary, but the Treasurer must be a separated role and unconnected.

Recommendations:

Charities/NPOs operating outside the Bailiwick are recommended to have a minimum of 4 unconnected managing officers due to the greater risks involved and the need to widen the pool of people with a proper understanding of the activities of the charity/NPO.

Local branches who operate under their UK parent's constitution are recommended to have a minimum of 2 unconnected managing officers, for good governance and to comply with the requirement for 2 people to be involved in the release of funds.

FAQ 12 – What records must registered charities/NPOs keep?

Registered charities/NPOs (including those that are voluntarily registered) must make, keep and retain records of all financial transactions so that they can evidence the use of their funds.

They must also keep records of the following:

- Names and addresses of managing officers.
- Minutes of meetings of the managing officers and any other meetings of the members of the charity/NPO.
- Records relating to international activity, if relevant.
- If the charity/NPO is affiliated to another organisation, details of its relationship with the affiliate organisation and of the affiliate itself, including where it is registered.
- Details of any contracts the charity/NPO has entered into for goods or services with a value of £5,000 or more.

The records must be kept for a minimum of 6 years in a form that will enable them to be accessed easily.

FAQ 13 – What requirements are there about accounts or financial statements?

Financial Statements

All registered charities/NPOs, including those that are voluntarily registered, must prepare annual financial statements. This should include a breakdown of income and expenditure that is detailed enough to show and explain the financial position of the charity/NPO.

Local branches of a UK-registered parent organisation, the financial statement breakdown of income and expenditure may be the funds or other assets raised or received on behalf of the UK parent organisation, and the funds or other assets remitted to the UK parent organisation.

Charities/NPOs that are required to register, the annual financial statement must contain a balance sheet which is optional for voluntarily registered charities/NPOs.

Filing

Charities/NPOs that are required to be registered must file their annual financial statements with the Registrar within 12 months of the end of their financial year end. Voluntarily registered charities/NPOs are **not** required to file their annual financial statements.

Publicly available

Registered charities/NPOs that solicit or accept donations from the public, including those that are voluntarily registered, must make their most recent annual financial statements publicly available and may keep donor or beneficiary details confidential, at the discretion of the board.

This requirement applies to annual financial statements ending on or after 31 March 2023. However, there is nothing to stop those charities/NPOs that currently make their financial statements publicly available from continuing to do so.

The charities/NPOs may decide their manner of publication. They may choose to respond to specific requests on a case-by-case basis, or by making them generally available via the charity/NPO's website or on a public membership website.

Making financial statements public increases potential donors, and other interested parties, confidence in the charity/NPO and so all charities/NPOs are encouraged to do so irrespective of the legislation.

Template

Template financial statements will be available at www.guernseyregistry.com/charities.

FAQ 14 – What financial controls must registered charities/NPOs have?

All registered charities/NPOs (including those that are voluntarily registered) must apply any financial controls set out in their constitutional (governing) documentation and have measures to promote probity and transparency which must include the following four principles:

1. Funds must pass through a bank account

Charities/NPOs are required to use a bank account as far as is reasonably possible and when this is not possible a log of cash transactions and the reasons for them must be maintained. For example:

- Low-value payments traditionally made in cash (e.g. to a shop, café, plant sale or fete, or in a collecting tin on a flag day) are allowable but post-event cash takings must be paid into the charity/NPO's bank account.
- Charities/NPOs international activities in countries where the use of cash is the norm and it is not possible to use a cheque or bank transfer.
- There is an exemption for payments of up to £1,000 in any twelve-month period that are made within the Bailiwick and are incidental to the purposes of the charity/NPO. This is to cover payments that would ordinarily be made by cheque or bank transfer but where this is not feasible for some reason, (e.g. where a charity/NPO is in the middle of hosting an event and additional supplies need to be purchased urgently).

2. Minimum of two unconnected people are involved in the release of funds

This could be achieved in a number of ways: dual signing authority on the bank accounts mandate, or internal authorisation by two people before any transfer of funds, or by the division of functions to ensure that one person has to approve the release of funds before another actually releases them. Please note:

- It is not compulsory to have two signatories on a bank account as in some situations (primarily where bank transfers are made online rather than by cheque) it is not possible because dual release is not available, is overly burdensome, generates additional costs or training needs.
- The general expectation is that the two people would be managing officers of the charity/NPO, when possible.

The Regulations permit charities/NPOs to set a *de minimis* threshold below which dual agreement is not necessary, provided that:

1. The amount set must take into account, and be proportionate to, the financial risks of the charity/NPO; and
2. The charity/NPO must notify the Registrar of the amount, and the Registrar does not have any objection to it on proportionality grounds.

3. Keep assets of a registered charity/NPO separate from those of any third party

It is generally expected that a registered charity/NPO will have its own bank account and that payments to or from the charity/NPO will be made via that account rather than via the account of a third party. However:

1. If due to circumstances, it is not possible or practicable to do so (e.g. where a charity/NPO has only just been set up and does not yet have its own bank account), clear and detailed records should be made of any payments made to or by a third party on behalf of the charity/NPO.
2. If a managing officer or other member makes a loan to the charity/NPO (for example to get it off the ground when it is first established), this must be clearly recorded, along with details of any repayment by the charity/NPO.
3. If it is in the financial interests of the charity/NPO for payments to be made into the account of a third party (e.g. if this will lead to reduced bank charges), this is permitted by Regulations for payments up to £1,000 provided that:
 - the third party's bank account is in the Bailiwick;
 - an unconnected managing officer has given consent; and
 - the transaction and consent is recorded in the charity/NPO's records.

Third parties in this context include the managing officers or members of the charity/NPO itself.

4. Policies and procedures that follow accepted accounting principles and controls

This does not apply to charities/NPOs that have registered voluntarily.

These policies and procedures must include making financial information available to the board (managing officers).

Policies and procedures will vary depending on the nature of the charity/NPO but in general terms, the lower the value of a charity/NPO's assets, the more simple their policies and procedures can be.

Work is currently underway to prepare more detailed guidance on accounting etc. policies which is expected to be issued later in 2022.

PART IV – RISK MITIGATION MEASURES

FAQ 15 – What are the risks that mitigating measures should address?

Mitigating measures should address the risk of a registered charity/NPO being used for criminal purposes. This means money laundering, fraud, bribery and corruption. For charities/NPOs that carry out international activity (other than remitting funds to a UK -registered charity/NPO), this also means terrorist financing. This is in recognition of the higher risk profile arising from international activity and is the subject of separate guidance.

FAQ 16 – What mitigating measures should be put in place?

There is a general requirement to put in place controls to ensure that funds and assets are fully accounted for, are used in accordance with the aims etc. of the charity/NPO, and the charity/NPO complies with all of its legal and constitutional requirements. See FAQ 17.

There is a specific requirement to identify donors and beneficiaries and carry out compliance reviews. See FAQ 18.

There are specific requirements for Internationally active charities/NPOs about anti-financial crime policies and dealing with international partners, which are looked at in separate guidance relating to international activity.

FAQ 17 – What general controls should be put in place?

Registered charities/NPOs should already have sufficient controls to address financial crimes such as fraud or bribery and corruption. However, terrorist financing is looked at in separate guidance for internationally active charities/NPOs.

For domestically focussed charities/NPOs, the basic governance measures summarised in FAQ 1 and outlined in PART III, may be sufficient to mitigate the risk of being abused for criminal purposes.

Additional controls will be required if there is something about the charity/NPO's profile or activities that makes it particularly vulnerable to abuse (e.g. activity that is known to be targeted by criminals, or high value assets and its managing officials have little financial experience).

All charities/NPOs that carry out international activity (other than remitting funds to a UK-registered organisation) will usually be expected to have additional controls in place, in order to address the greater risks of being abused for criminal purposes as they have less control over the use of their assets.

Controls may include all or some of the following, depending on the circumstances of the charity/NPO;

- Segregation of duties where possible
- Regular bank reconciliation checks
- Multiple signatories for all bank account activity
- Having professionally audited accounts
- Restricting full access to all areas of the accounting system
- Regular review of and spot checks on payroll records to ensure consistency with staff movements
- Reconciliation of supplier statements, invoices and creditor balances
- Documented authority thresholds for the approval of and payments to suppliers
- Random checks to ensure expenditure below key thresholds is legitimate
- Procedures to address any employee/trustee connections with suppliers.

FAQ 18 – When should identification measures be carried out?

A registered charity/NPO must identify donors and beneficiaries:

1. If it receives a donation from outside the Bailiwick or provides assets etc. to a beneficiary outside the Bailiwick of **£15,000** or more, in any one year (whether in the form of a single payment or a series of payments), it must identify the donor or beneficiary.

This does NOT apply to:

- Distributions outside the Bailiwick that do not comprise international activity under the Ordinance (see FAQ 7).
- Donations or distributions of physical items (rather than a monetary transaction) unless the item has a market value which is readily apparent (i.e. on the basis of easily

ascertainable information such as from an internet search) to be **£15,000** or more (or would do if counted together with other items donated in the same year). The vast majority of donations and distributions take the form of money, however, charities/NPOs may receive a valuable item such as a painting or a vintage car that could easily be sold. This would not include perishable items such as foodstuffs unless they are provided in such form and quantity that they would ordinarily be expected to be sold on.

2. If it receives an **unusual** donation or beneficiary request, it must identify the donor or beneficiary. For example where the charity/NPO is requested to use cash in circumstances where it would expect to use a bank account, or if a payment is made or received via a third party for no obvious reason.

Identification measures should be carried out before the registered charity/NPO receives or makes the donation or distribution in question, or as soon as possible afterwards. If for example unexpected funds are received directly into the charity/NPO's bank account, it is accepted that the charity/NPO cannot reasonably carry out identification measures on the donor beforehand but should do so as soon as possible.

The impact on domestically focused charities/NPOs is likely to be very limited.

There is no requirement to carry out identification measures at all in relation to the governments of the Bailiwick or persons linked with them, and charities/NPOs registered with the Charity Commission for England and Wales, the Scottish Charity Regulator or the corresponding bodies in Jersey or the Isle of Man. In these circumstances the charity/NPO must independently check the donor/beneficiary's registration status.

FAQ 19– What are the identification measures that should be carried out for donors?

For donors to which the identification measures apply (see FAQ 18) charities/NPOs are required to take reasonable measures to establish and document their identity. Please note:

- What is reasonable will depend on the circumstances, and this may mean that in some cases only very limited steps can be taken.
- Charities/NPOs are not required to have measures that are equivalent to customer due diligence of the kind carried out by a financial services business. Essentially, a charity/NPO must do its best to check the identity of its donors based on information that is readily available to it (for example because it already holds information on the donor or knows the donor well from previous dealings, or there is information about the donor online).
- Charities/NPOs are not expected to devote significant costs or efforts trying to obtain additional information that is not readily available.

The measures taken will vary depending on the whether the donor is an individual, an entity with a local connection or not:

Individuals: establishing identity will usually be straightforward and require nothing more than recording the person's name and address.

Entities with local connection: for Guernsey legal persons and Alderney companies that are regulated by the GFSC or administered by a corporate services provider, the name and address

of the entity should be recorded and it is not necessary to identify the individuals who own or control the entity.

Foreign entities: for foreign entities that are not administered by a corporate services provider, the requirement to carry out reasonable measures will generally be met by making an enquiry of the entity about its owners/controllers, i.e. board members and any other person exercising control in the background, and cross-checking this against other information held by the charity/NPO or information in the public domain (for example the website of the entity, or a public register such as the register at Companies House in the UK).

FAQ 20 – What are the identification measures that should be carried out for beneficiaries?

For beneficiaries to which the identification measures apply (see FAQ 18) charities/NPOs are required to take reasonable measures to establish and document their identity, and their credentials, *bona fides* and good standing. Please note:

- What is reasonable will depend on the circumstances, and this may mean that in some cases that only very limited steps can be taken.
- Charities/NPOs are not required to have measures that are equivalent to customer due diligence of the kind carried out by a financial services business. Essentially, a charity/NPO must do its best to check the identity of its beneficiaries based on information that is readily available to it (for example because it already holds information on the beneficiaries or knows the beneficiaries well from previous dealings, or there is information about the beneficiary online).
- Charities/NPOs are not expected to devote significant costs or efforts trying to obtain additional information that is not readily available.

Identification of beneficiaries is a two-stage process:

Stage one: identify - identify the parties to whom the funds or other assets or forms of assistance will be provided (both direct and indirect recipients) and record their name, address and reason for entitlement to the benefit.

Direct recipient is the person to whom the distribution is made, even if it does not give them any personal advantage, and this includes persons who act as conduits or intermediaries.

Indirect recipient is someone who will ultimately benefit from a distribution. For example, if a distribution is made to the spouse of a sick person to enable the spouse to buy that person a wheelchair, the spouse is a direct recipient, and the sick person is the indirect recipient.

Different considerations apply depending on the ultimate beneficiary:

For a group of individuals, it will only be reasonable to apply identification measures to the members of the group, if its individual members can be easily identified (e.g. where a distribution is for the benefit of a small and limited group, such as the members of a nuclear family).

For the benefit of a potentially large or unlimited group (e.g. the pupils of a school or the patients in a hospital). In that situation, the members of that group cannot be easily identified so the identification duties do not apply, but will apply to the recipient (e.g. the principal of a school or the administrator of a hospital).

For distribution to an entity, the identification measures apply to the individuals who own or control that entity, subject to the exemptions for local entities or foreign entities that are locally administered entities as outlined under FAQ 19.

Stage two: credentials- confirm the credentials etc. of the identified beneficiaries to determine, as far as is reasonably possible, whether there is reason to believe that the benefits will be used for criminal activity. Whether deliberate on the part of the beneficiary, or if that individual or entity is likely to advertently or inadvertently cause or facilitate criminal activity (e.g. where the potential recipient is dominated by a third party who is suspected of being involved in crime, or where the intended recipient is an entity that is known to have very weak financial controls and is highly vulnerable to fraud or corruption).

In this context the meaning of 'credentials' includes suitability, circumstances, achievements, qualities or aspects of a persons background that can be used to indicate their entitlement to receive benefits.

The measures will vary depending on the circumstances:

Longstanding relationship: For distributions that are made to a beneficiary with whom a charity/NPO has a longstanding relationship, the charity/NPO would not normally be expected to do more than check whether it has any knowledge or information from its previous dealings with the beneficiary which might give cause for concern. If it does, it would probably be necessary to make enquires of the beneficiary or third parties known to the charity/NPO that may have relevant information, and perhaps check for any other relevant information in the public domain by an internet search. These measures should usually be followed when a charity/NPO is helping a beneficiary for the first time, unless the beneficiary is well known to it for other reasons.

Foreign entity: If the beneficiary is a foreign entity (that is not administered etc. by a corporate services provider) these measures should be applied to its board members and any underlying controllers that have been identified.

If the potential recipients are in a part of world with limited infrastructure (and the charity/NPO not directly involved in making distributions within the relevant country so is not in a position to make enquiries about potential recipients), it may rely on an affiliated organisation or other international partners as sources of information. This is likely to be the case for many charities/NPOs that carry out international activities and these measures are included in separate guidance relating to international activity.

Entities with local connection: Where the potential beneficiary is a local company etc. or a foreign entity administered etc. by a corporate services provider, the only requirement is to take reasonable measures to confirm the credentials etc. of the entity itself by recording information that is readily available to it. Where the entity is administered etc. by a corporate services provider, the charity/NPO can rely on the verification etc. requirements that the corporate services provider is subject to under the legal framework for anti – money laundering and countering the financing of terrorism (AML/CFT framework) and will not, generally, need to do more than confirm the involvement of the corporate services provider. However, if the charity/NPO has reason to be concerned about the entity (or any person connected with it) further steps would usually be necessary, but a charity/NPO would not generally be expected to go beyond looking at information in the public domain.

FAQ 21– What must charities/NPOs do after taking identification measures?

Donation register

Charities/NPOs must record the names of the donors and the amount of the donation in a register. If a donor wishes their identity or the amount of their donation(s) to be treated as confidential the charity/NPO may agree to record the details in such a way that protects confidentiality (e.g. by maintaining a confidential section of the register that is available to managing officers but not to the wider membership).

Beneficiary register

The names of beneficiaries, the value of distributions made to them, and their credentials must be recorded in a register. This should be done in a way that respects confidentiality, particularly where sensitive information is involved (e.g. a person's financial or medical details).

IMPORTANT: If a charity/NPO cannot carry out the required identification measures for any reason or has concerns that accepting a donation or making a distribution to a beneficiary may expose it to the risk of being abused for criminal purposes, it should put in place mitigating measures. This might be making further enquiries, applying conditions or extra controls to the donation or distribution, or in some cases deciding to decline the donation or not to make the distribution. Where a donation or a distribution proceeds but is made subject to mitigating measures, a summary of those measures should be recorded in the register.

FAQ 22 – Should a charity/NPO tell the authorities if it suspects a person is involved in criminality?

This legislation does not require charities/NPOs to report suspicion. However, they may choose to do so voluntarily by providing information to the police on a confidential basis in the same way as any concerned citizen.

Under the AML/CFT framework suspicion of money laundering or terrorist financing must be reported without “tipping off” the donor or beneficiary. These requirements apply to any suspicion acquired in the course of business, including trade, professional or economic activity. The requirement would therefore apply to any suspicion acquired by a person employed by a charity/NPO in the course of that employment, any suspicion acquired by a corporate services provider in the course of administering etc. a charity/NPO, or any suspicion acquired by a volunteer in the course of economic activity for the charity/NPO such as raising or distributing funds.

There are also requirements to report possible breaches of international sanctions under the Bailiwick's sanctions legislation. These requirements primarily apply to financial services businesses but there are some sanctions regimes where the reporting requirements apply more widely. These wider requirements are not directed at charities/NPOs specifically, but they could be relevant to the activities of a charity/NPO that is involved in international activity. This is looked at in the separate guidance relating to international activity, and internationally active charities/NPOs should also look at information about specific sanctions regimes on the States of Guernsey website to familiarise themselves with any sanctions regimes that might be relevant to them. There is also information about sanctions on the websites of the Registry, and the GFSC.

FAQ 23 – What reviews should charities/NPOs undertake?

Compliance with legislation review

Registered charities/NPOs should review their compliance with the legislation (and their anti-financial crime policies if they carry out international activity) annually. If they detect any failures of compliance they should put in place mitigating measures.

Review of constitutional documents

Registered charities/NPOs should also review their constitutional documentation periodically and update it as necessary. This will apply to all registered charities/NPOs except those that are local branches of British parent charities/NPOs to the extent that they are covered by the constitutional documentation of the UK parent organisation. A review every 5 years would generally be considered sufficient unless there is a change in circumstances or to applicable requirements that need to be addressed more urgently.

Review of anti-financial crime policies

Internationally active charities/NPOs should also review their anti-financial crime policies. However, this will generally need to be done more frequently than the reviews of constitutional documentation because of the rapid way in which financial crime can evolve, particularly when it relates to terrorism. As a general rule, policies relating to terrorist financing should be reviewed annually and those relating to other forms of financial crime should be reviewed every two years.

Important: These reviews are important to ensure that registered charities/NPOs are aware of their risks and take account of any changes to their circumstances. The scale of the reviews will depend on the complexity of the activities of the charity/NPO, but in general this is expected to be a fairly high-level exercise rather than a detailed investigation.

Recorded: The charity/NPO must record the review findings and details of any remedial action.

PART V – COMMONLY USED TERMS

FAQ 24 – What is affiliation?

Affiliation does not mean simply supporting another organisation, for example by donating funds to it. Instead, it means having an agreement with a parent organisation that governs the way in which the charity/NPO conducts itself. The level of detail in the agreement will vary, but at a minimum will usually include permission for the name and branding of the parent organisation to be used by the charity/NPO and a requirement that the charity/NPO acts in accordance with the aims and purposes of the parent organisation.

FAQ 25 – What is money laundering?

Money laundering is an offence that may arise after the commission of an offence that generates proceeds, such as fraud or corruption. It is the process of disguising those proceeds to make them appear to have come from a legitimate source. Money laundering may be carried out by the perpetrator of the crime or by a third party to assist the perpetrator and may take different forms.

At its simplest this may involve no more than passing payments through the bank account of a third party and then back to the perpetrator of the crime. The bank account could be in the name of a friend or family member of the perpetrator but could also be an account set up for these purposes, for example in the name of a sham organisation.

Money laundering may also involve moving money between different bank accounts to try to create a false trail as to the origin of the money. In more complex schemes, perpetrators of crimes will try to put more distance between themselves and the proceeds of their crimes, usually through the use of intervening structures such as companies or trusts. For the most sophisticated money laundering schemes, it is also common for different jurisdictions to be involved, for example where there is a bank account in one jurisdiction that is in the name of a company incorporated in a second jurisdiction, and the shares of the company are the property of a trust created in a third jurisdiction.

FAQ 26 – What is terrorist financing?

Terrorist financing means raising or providing funds or other assets for purposes related to terrorism. Generally speaking, terrorism means carrying out an act in support of a particular cause that is intended to intimidate the public or influence government behaviour. The act in question may involve violence against people or property (e.g. by the use of explosives or weapons), creating serious health and safety risks (e.g. by use of chemical weapons) or undermining computer systems. Terrorism also includes certain other activities such as threatening to use nuclear materials or kidnapping internationally protected persons such as diplomats.

However, terrorist financing does not only mean financing these specific activities but also extends to financing terrorist training or activity intended to promote terrorist ideology. In addition, it includes raising or providing funds for the benefit of terrorist charities/NPOs or individual terrorists for legitimate purposes (e.g. the payment of rent). This is because discharging

the financial requirements of such persons may free up their assets for use in terrorism-related activity.

Terrorist financing often involves the same patterns of activity as those involved in money laundering outlined above. However, a key difference from money laundering is that the source of the funds involved in terrorist financing is irrelevant. While the funds may have been generated by criminality, they may also come from a legitimate source.