



ST. HELENA

(Chapter No. not allocated yet)

CHARITIES ORDINANCE

Non-authoritative Consolidated Text

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Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown

[Telephone (+290) 2270; Fax (+290) 2454; email pa.lawofficers@legalandlands.gov.sh]¹

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¹These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

CHARITIES ORDINANCE

(Ordinance 8 of 2005)

TO MAKE PROVISION FOR THE REGISTRATION OF CHARITIES IN ST. HELENA
AND TO PROVIDE FOR RELATED MATTERS.

Commencement

[17 October 2005]

**PART I
PRELIMINARY****Short title and commencement**

1. This Ordinance may be cited as the Charities Ordinance 2005 and shall come into force on such day as the Governor may appoint by notice in the *Gazette*.

Interpretation

2. In this Ordinance, unless the context otherwise requires—

- “**charitable organisation**” means any organisation established for charitable purposes only; “**charitable purposes**” means those purposes specified in section 3;
- “**the Commission**” means the Charity Commission for St. Helena appointed under section 5;
- “**management committee**” includes any committee, council, board or other body which is responsible, according to the constitution of a charitable organisation, for the management of the affairs of that organisation;
- “**organisation**” means any person or body of persons (whether incorporated or not) and includes a part of a larger organisation if the management and operation of that part can be distinguished from the management and operation of other parts;
- “**prescribed**” means prescribed by regulations made under section 13;
- “**the register**” means the register of charitable organisations maintained by the Registrar in accordance with section 7;
- “**registered**” means registered in the register;
- “**the Registrar**” means the Registrar of Charities provided for in section 4.

Meaning of “charitable purposes”

3. (1) A purpose is a charitable purpose if, but only if, it—
- (a) falls within subsection (2); and
 - (b) is for the public benefit.
- (2) A purpose falls within this subsection if it falls within any of the following descriptions or purposes—
- (a) the prevention or relief of poverty;
 - (b) the advancement of education;
 - (c) the advancement of religion;
 - (d) the advancement of health;
 - (e) the advancement of citizenship or community development;
 - (f) the advancement of the arts, heritage or science;
 - (g) the advancement of amateur sport;

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- (h) the advancement of human rights, conflict resolution or reconciliation;
- (i) the advancement of environmental protection or improvement;
- (j) the relief of those in need, by reason of youth, age, ill-health, disability, financial hardship or other disadvantage;
- (k) the advancement of animal welfare;
- (l) any other purpose that may reasonably be regarded as analogous to any purposes falling within paragraphs (a) to (k).

PART II

THE REGISTRAR OF CHARITIES AND THE CHARITY COMMISSION

Registrar of Charities

4. (1) The Governor may appoint a public officer to be the Registrar of Charities.
- (2) Whenever the office of Registrar is vacant, the Registrar of the Supreme Court shall be the Registrar.

Charity Commission

5. (1) There shall be a body corporate known as „The Charity Commission for St. Helena“, which shall have the powers and duties conferred upon it by or under this Ordinance or under any other law.

(2) The Commission may have and use a seal of a design approved by the Governor. Whether or not it has a seal, any document under the hand of the Registrar or of the Chairman of the Commission shall be sufficient evidence of any act or proceedings of the Commission; and a document purporting to be signed by the Registrar or by the Chairman shall be presumed to be so signed unless the contrary is proved.

(3) The Commission shall comprise not less than three nor more than five Commissioners, appointed by the Governor, one of whom shall be so appointed as the Chairman of the Commission.

(4) The Chairman shall preside at every meeting of the Commission at which he is present but, in his absence, the Commissioners present may elect one of their number to preside. The Chairman or other Commissioner presiding shall have a casting vote (as well as a deliberative vote) in the event of an equality of votes upon any question before a meeting.

(5) The Commission shall not conduct any business unless at least two commissioners are:

- (a) present in person at the same place and time; or
- (b) otherwise able to discuss the matters for decision, and vote thereon, in such manner as may be prescribed.

(6) Each Commissioner shall hold office during the pleasure of the Governor for a term of three years; and shall be eligible for re-appointment from time to time.

(7) Subject to this section, the Commission may regulate its own proceedings.

(8) A commissioner may resign his office upon giving written notice to the Governor. The Governor may revoke the appointment of any commissioner upon giving written notice to that commissioner.

(9) Any commissioner who has a personal interest in any matter which comes before the Commission for discussion at any meeting of the Commission during any times when he is present at that meeting, shall forthwith declare that interest and shall withdraw from the meeting and remain absent whilst that matter is under discussion

(10) The Governor in Council may give general directions of a policy nature to the Commission, relating to the exercise of its functions under this Ordinance, and the Commission shall give effect to any such directions.

Functions and powers of the Commission

6. (1) The functions of the Commission are—
- (a) to determine whether organisations are or are not charitable organisations;
 - (b) to encourage and facilitate the better management of charitable organisations;
 - (c) to ensure that persons involved in the management or administration of registered organisations comply with their legal obligations in exercising their functions;
 - (d) to identify and investigate any apparent misconduct or mismanagement in the administration of charitable organisations, and take remedial or protective action in connection with such misconduct or mismanagement; and
 - (e) to perform the specific functions which are conferred upon it by or under this Ordinance.

(2) The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions.

PART III REGISTRATION

Registration of charitable organisations

7. (1) The Registrar shall maintain a register in which shall be entered the prescribed particulars of every charitable organisation approved by the Commission.

(2) Any organisation in St. Helena, wishing to obtain the benefits of this Ordinance, may apply to the Registrar to be registered as a charitable organisation and the Registrar shall cause every such application to be placed before the Commission.

(3) Subject to subsection (4) the Commission shall, if satisfied that any applicant for registration is a charitable organisation, direct the Registrar to enter in the register the prescribed particulars thereof; and, in any other case, shall refuse registration.

(4) The Commission may refuse to direct that a charitable organisation be entered in the register if a person specified in section 10(4) is a member of the management committee of the organisation.

(5) The register (including the entries cancelled when organisations are removed from the register) shall be open to public inspection at such times as may be prescribed and upon payment of the prescribed fee.

(6) The Registrar shall charge such fee for registration as may from time to time be prescribed.

Cancellation of registration

8. (1) Subject to the following provisions of this section, the Registrar—
- (a) shall remove from the register—
 - (i) any registered organisation which he considers to be no longer a charitable organisation; or
 - (ii) any charitable organisation which has ceased to exist or does not operate.
 - (b) may remove from the register—

- (i) any registered organisation which has failed to comply with the requirements of this Ordinance or of the constitution or other governing document of the organisation; or
- (ii) any registered organisation having a managing committee of which a person specified in section 10 (4) is a member.

(2) If the Registrar intends to remove a registered organisation from the register in terms of subsection (1), he shall give written notice to the organisation of that intention and the reason therefore, and that its registration will be cancelled 15 days (or such longer period as he may specify in the notice) after the date of the notice unless the organisation shows cause to the satisfaction of the Commission why its registration should not be cancelled.

(3) In determining the question raised by any notice given under subsection (2), the Commission shall take into consideration any written representation made by or on behalf of the registered organisation and received by the Registrar within the period specified in the notice or such further period as the Commission may allow, and may make such other enquiries and receive such evidence as to the Commission appears necessary for the proper determination of the question.

(4) If the registered organisation fails to show cause to the Commission why its registration should not be cancelled, the Commission shall direct the Registrar to cancel the registration and the same shall be cancelled.

Appeals

9. (1) Where the Commission have refused to register an organisation under section 7, or have directed the cancellation of its registration under section 8, the organisation concerned may appeal to the Supreme Court and the Court may make such order in the matter as appears to the Court to be just.

(2) The Chief Justice may, by Rules of Court, prescribe the procedure to be adopted in relation to an appeal under subsection (1).

PART IV ADMINISTRATION OF CHARITIES

Administrative requirements

10. (1) Subject to subsection (5), an organisation shall not be registered as a charitable organisation unless it has a governing document which—

- (a) sets out the name and the purposes of the organisation and such other matters as may be prescribed; and
- (b) provides for the appointment of a management committee in terms consistent with subsection (2).

(2) The management committee of a charitable organisation shall comprise a chairperson, a secretary, a treasurer and such other officers or members as are specified in the governing document.

(3) The functions and duties of the chairperson, secretary and treasurer shall be as prescribed; but the governing document of the organisation may specify powers and duties additional to (but not inconsistent with) those prescribed.

(4) A person may not be a member of the management committee of a charitable organisation if he—

- (a) has been convicted of an offence involving dishonesty or deception, unless the conviction is spent under any law in force in St. Helena relating to rehabilitation of offenders;
- (b) is an undischarged bankrupt;
- (c) has been previously removed from the management committee of a charitable organisation by the Commission;
- (d) is disqualified from acting as a company director.

(5) The Commission may from time to time, by notice published in the Gazette, declare that organisations of a type specified in the notice shall be exempt from all or part of the provisions of this section.

Keeping of accounts

11. (1) Subject to subsection (3), every registered organisation shall—

- (a) maintain accounts recording all moneys received and the expenditure thereof and containing such other information as the Commission may from time to time require;
- (b) prepare an annual Financial Statement in such form as may from time to time be approved by the Commission.

(2) The chairperson of every registered organisation shall, within six months of the end of each financial year, submit the Financial Statement prepared in relation to that year in accordance with subsection (1) (b) to the Registrar.

(3) The Commission may from time to time, by notice published in the Gazette, declare that organisations of a type specified in the notice shall be exempt from all or part of the provisions of subsections (1) and (2).

(4) The Commission may, where it considers it desirable to do so, require that the accounts of any registered organisation for the preceding financial year shall be audited by a person approved by the Commission; and the treasurer or other person having the supervision of the accounts of that organisation shall comply with any such requirement and deliver a copy of the auditor's report to the Commission.

PART V SUPPLEMENTARY

Offences

12. (1) Any person or body of persons which hold itself out as being registered under this Ordinance when he or it is not so registered shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding £1000 or to both such fine and imprisonment.

(2) Where any offence under this section is committed by a body corporate, and it is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other person concerned in the management of the body corporate, he (as well as the body corporate) is guilty of that offence and liable to be proceeded against accordingly.

(3) Where, if it were a body corporate, an unincorporated body of persons would be guilty of any offence under this section, and it is proved that the relevant unlawful act or omission was committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other person

concerned in the management of that body, he is guilty of that offence and liable to be proceeded against accordingly.

Governor in Council may make regulations

13. (1) The Governor in Council may make regulations for carrying into effect the provisions of this Ordinance and, without prejudice to the generality of the foregoing, such Regulations may provide—

- (a) for anything which under this Ordinance is to be, or may be, prescribed;
- (b) for the notification to the Registrar of any change in any of the registered particulars of a registered organisation;
- (c) for the specification of charitable organisations to be exempted from all or part of the provisions of this Ordinance and the conditions (if any) applicable to any such exemption.

(2) Regulations made under this section may provide that a person who contravenes the regulations shall be guilty of an offence and for a penalty not exceeding a fine of £500; subsections (2) and (3) of section 12 shall apply to any such offence as they apply to an offence under subsection (1) of that section.

Application of property cy-pres

14. (1) The Supreme Court shall have in relation to St. Helena all the jurisdiction exercisable by Her Majesty's High Court of Justice in England in relation to cy-pres schemes.

(2) Regulations made under section 13 may provide for the Commissioners to have jurisdiction concurrently with the Supreme Court in relation to cy-pres schemes, either generally or in such circumstances as may be prescribed.

Incidents of Registration

15. (1) Every registered organisation shall be known by the name under which it is registered and may (in that name):

- (a) enter into contracts;
- (b) institute and defend civil proceedings;
- (c) own property, including land or any interest in land;
- (d) be prosecuted for an offence under this Ordinance;

Provided that no proceedings shall be commenced under paragraph (d) except by or with the consent of the Attorney General.

(2) Every document (including a deed and any instrument required for the purposes of the Registered Land Ordinance) requiring to be executed on behalf of a registered organisation shall be sufficiently executed if it is signed on behalf of the organisation by any two of the officers specified in section 10(2);

Provided that nothing in this subsection shall affect any rule of law which requires that a signature on a document must be witnessed or otherwise verified.

(3) No deed or other document executed in the name and on behalf of a registered organisation shall be charged or chargeable with any stamp duty, nor shall any fee be charged under the Registered Land Ordinance for the registration of any instrument made in favour of a registered organisation.

(4) A fundraising activity which is conducted on behalf of a registered organisation, and with the explicit approval of the management committee thereof, shall be deemed, for the

purposes of paragraph (o) in section 4 of the Summary Offences Ordinance, to have been authorised by a permit issued by the Chief of Police² in accordance with that paragraph.

(5) Schedule III of the Income Tax Ordinance is amended by deleting paragraph (c) and substituting therefore:

“(c) the income of any charitable organisation registered under section 7 of the Charities Ordinance, 2005.”.

² *Gazette Notice No. 63 of 1 July 2011: Title changed to Director of Police*

CHARITIES REGULATIONS

(Legal Notice 15 of 2005 and 18 of 2007)

Short title and commencement

1. These regulations may be cited as the Charities Regulations 2005 and shall come into force on the 17th day of October 2005.

Conduct of business of Commission

2. For the purposes of section 5(5)(b) of Charities Ordinance 2005 („the Ordinance“), the Charity Commission („the Commission“) shall be deemed to be able to properly conduct business and discuss matters for decision if at least two commissioners are able to conduct such business by the use of telephone, teleconference or video conference facilities.

Register of charities

3.³ (1) For the purposes of section 7(1) of the Ordinance, the following particulars, of every charitable organisation approved by the Commission, shall be entered in the register of charities („the register“)—

- (a) Name of charity;
- (b) Registration number of charity;
- (c) Date of registration of charity;
- (d) Name and contact details of the correspondent for the charity; and
- (e) Purpose of charity
- (f) Names of all officers of the management committee of the charity.

(2) The register shall be open to public inspection at the Legal, Lands and Planning Department between the hours of 9am and 3.30pm on any working day.

Contents of governing document

4. For the purposes of section 10(1)(a) of the Ordinance, the following matters shall be included in a governing document—

- (a) Name of charity;
- (b) Objects of the charity;
- (c) Statement on the application of income and property to the charitable purposes;
- (d) What happens in the event of dissolution of the charity;
- (e) Membership and termination of membership;
- (f) Calling and running of meetings;
- (g) How the charity will be administered;
- (h) The keeping of minutes of meetings; and
- (i) Accounting and reporting procedures.

Notification of change in registered particulars

5. Any change in the registered particulars of a charity shall be notified in writing to the Registrar within ten working days of when such change occurred.

³ Regulation 3 amended by Legal Notice 18 of 2007

Contravention of regulations

6. Any person who wilfully contravenes any of the provisions of these regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding £500.

Fees

7. The fees set out in the Schedule hereto shall be paid in respect of the several matters set out therein.

SCHEDULE

Fees

- | | | |
|----|-------------------------------------|-------|
| 1. | Inspection of Register of Charities | £0.50 |
| 2. | Registration of charity | £1.00 |
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CHARITIES (EXEMPT BODIES) REGULATIONS

(Legal Notice 5 of 2006)

Commencement

[1 August 2006]

Citation and commencement

1. These Regulations may be cited as the Charities (Exempt Bodies) Regulations 2006 and shall come into force on the 1st day of August 2006.

Exemptions for statutory corporations

2. A corporation established by an Ordinance and which satisfies the definition of “charitable organisation” is exempt from the provisions of section 10 of the Charities Ordinance 2005 and from regulation 4 of the Charities Regulations 2005.

CHARITIES (EXEMPT BODIES) REGULATIONS

(Legal Notice 17 of 2007)

Commencement

[1 August 2007]

Citation and commencement

1. These Regulations may be cited as the Charities (Exempt Bodies) Regulations, 2007, and shall come into force on the 1st day of August 2007.

Exemption for churches

2. A church or group of churches shall be exempt from the requirements of section 10 of the Charities Ordinance, 2005, if, in the opinion of the Charities Commission, that church or group of churches is appropriately regulated by the rules of the religious body of which it forms part.