

## OPEN AGENDA PUBLIC DOCUMENT

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### Memorandum for Executive Council

SUBJECT

*Charities (Amendment) Bill, 2018 and Charities (Amendment) Regulations, 2018*

Memorandum by the Chairman of the Social and Community Development Committee

ADVICE SOUGHT

1. Council is asked to advise:
  - (a) whether the attached Charities (Amendment) Bill, 2018, should be printed and published and tabled as Government Business at the next formal meeting of the Legislative Council; and
  - (b) whether the Charities (Amendment) Regulations, 2018 should be enacted.

BACKGROUND & CONSIDERATIONS

2. The Charity Commission for St Helena (“The Commission”) is a body corporate established under S5 of the Charities Ordinance 2005. The Commission is the regulating body for all local charities, and is responsible for facilitating and ensuring the good governance of these organisations.
3. Following a review, the Commission found that a number of organisations were not complying with their reporting obligations under the Ordinance. This presented difficulties in assessing their true financial state and whether or not they were still operating as a charity.
4. Trustees of a charity owe a fiduciary duty to the beneficiaries, and should ensure the good governance of the organisation by accounting for its finances and complying with all applicable laws. Over the past year there has been considerable growth in the number of applications for charitable status, and an increase in the number of registered charities. Therefore it is imperative that reporting requirements are adhered to.
5. Section 8 of the Ordinance gives the Commission the power to revoke the status of any charitable organisation that does not comply with its reporting obligations. However the Commission recognises the important role of charities in St Helena, and will only seek to use this power as a last resort.
6. To encourage compliance without evoking its powers under S8,

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the Commission proposes a financial penalty for charities which fail to report their accounts. The penalty is civil in nature and of a modest sum, which is considered proportionate to the average income of local charities.

7. In addition to this, the Commission also seeks to implement a legal framework for charitable organisations that work with vulnerable beneficiaries. This proposed amendment follows the findings of the Wass report, where it was identified that that civil society organisations that worked with vulnerable persons were largely unregulated.
8. The proposed amendment requires all charities that work with vulnerable people to have in place adequate safeguarding policies, and to report annually on its implementation. A civil penalty is proposed for organisations that fail to file annual reports, and in more serious cases where the Commission may find that an organisation did not follow its safeguarding policy, the organisation may be removed from the Charities Register.
9. The proposed safeguarding amendment is intended to give oversight of Charitable Organisations by ensuring that adequate and effective measures are in place to protect vulnerable beneficiaries.
10. It is also proposed to amend the Charities Regulations, 2005. The proposed Regulations seek to amend the provision regarding the register, and to increase the fees for application and inspection.
11. The Commission considers the increase proportionate to the current economic climate, and is of the view that they are unlikely to deter organisations from applying for charitable status.

### FINANCIAL IMPLICATIONS

12. There are no financial implications.

### ECONOMIC IMPLICATIONS

13. The increase in fees for Application and Inspection of the Register are reasonable in terms of the economic environment, and are unlikely to affect the number of applications for charitable status.

### CONSISTENCY WITH INVESTMENT POLICY PRINCIPLES

14. N/A

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### PUBLIC / SOCIAL IMPACT

15. The Bill furthers good governance principles by requiring charitable organisations to be financially accountable and to adopt safe practices to protect vulnerable beneficiaries, which is likely to have a positive social/public impact. No significant social or public impact is expected from the introduction of increased fees for applications or inspection of the Register

### ENVIRONMENTAL IMPACT

16. None

### PREVIOUS CONSULTATION / COMMITTEE INPUT

17. The Commission attended a meet and greet hosted by the Community Development Organisation at Jamestown Community Centre on 30.05.2017, to discuss the proposed reporting requirements. Representatives from the various charities were in attendance, and the proposed legislative amendments were discussed. Those in attendance understood and agreed with the proposal.

18. On 17.01.2018 a Consultation event was held at the Jamestown Community Centre, approximately 20 charitable organisations were represented. The proposal was discussed and in fact the majority of organisations that were represented confirmed they were already working to a safeguarding policy. Generally those in attendance agreed with the proposal, but added that they would not like the legislation to deter people from volunteering.

### PUBLIC REACTION

19. The public is likely to be in favour of the proposed amendments.

### PUBLICITY

20. The proposed amendment was discussed with representatives from local charities at a meet and greet held at the Jamestown Community Centre on 30.05.2017 and a Consultation event on 17.01.2018.

21. The Bill and draft Regulations were also put on the open agenda for consideration by the Social and Community Development Committee on 08.08.2018.

22. Council's decision should be mention in the ExCo Report and associated broadcast.

### SUPPORT TO STRATEGIC OBJECTIVES

N/A

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**LINK TO  
SUSTAINABLE  
ECONOMIC  
DEVELOPMENT  
PLAN GOALS**

N/A

**OPEN /CLOSED  
AGENDA ITEM  
Corporate Support  
Corporate Services  
DATE OF MEMO**

This paper is recommended for discussion in open session

**AAG**

22.08.2018

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