



ST HELENA

REVISED EDITION OF THE LAWS, 2017

CORPORATE BODIES

CHARITIES ORDINANCE, 2005¹

Ordinance 8 of 2005

In force 17 October 2005

Amended by Ordinance 8 of 2018

Subsidiary legislation:

CHARITIES REGULATIONS, 2005

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Legal Notice 15 of 2005

In force 17 October 2005

Amended by L.N.18 /2007, L.N. 18/2018, L.N. 11/2019

CHARITIES (EXEMPT BODIES) REGULATIONS, 2006

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CHARITIES ORDINANCE, 2005

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¹ Under section 10 of the Revised Edition of the Laws Ordinance, 1999 this text is authoritative and is the sole authentic edition in respect of the law contained in it as at 1 April 2019.

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AN ORDINANCE to make provision for the registration of charities in St Helena and to provide for related matters.

PART I
PRELIMINARY

Short title and commencement

1. This Ordinance may be cited as the Charities Ordinance, 2005 and comes into force on a day the Governor appoints 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 the 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;

“vulnerable beneficiaries”² means persons under the age of 18 or persons in need of assistance by reason of old age, ill-health or disability.

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;
- (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 is to be the Registrar.

Charity Commission

² Definition of “vulnerable beneficiaries” inserted by Ord. 8 of 2018

5. (1) There is to be a body corporate known as “The Charity Commission for St Helena”, which is to 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.

(2A) Whether or not it has a seal, any document under the hand of the Registrar or of the Chair of the Commission is sufficient evidence of any act or proceedings of the Commission; and a document purporting to be signed by the Registrar or by the Chair is presumed to be so signed unless the contrary is proved.

(3) The Commission must comprise not less than 3 nor more than 5 Commissioners, appointed by the Governor, one of whom must be so appointed as the Chair of the Commission.

(4) The Chair presides at every meeting of the Commission at which he or she is present but, in the absence of the Chair, the Commissioners present may elect one of their number to preside.

(4A) The Chair or other Commissioner presiding has 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 must not conduct any business unless at least 2 of them are—

(a) present in person at the same place and time; or

(b) otherwise able to discuss the matters for decision, and vote on them in the prescribed manner.

(6) Each Commissioner holds office for a term of 3 years; and is 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 office upon giving written notice to the Governor.

(8A) 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 or she is present at that meeting, must immediately declare that interest and must 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 must 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 must maintain a register and enter in it 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 must cause every such application to be placed before the Commission.

(3) Subject to subsection (4) the Commission must, if satisfied that any applicant for registration is a charitable organisation, direct the Registrar to enter in the register the prescribed particulars of the organisation; and, in any other case, must 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) must be open to public inspection at prescribed times on payment of the prescribed fee.

(6) The Registrar must charge for registration any fee that is prescribed.

Cancellation of registration

8.³ (1) Subject to subsections (2) to (4), the Registrar—

(a) must remove from the register—

- (i) any registered organisation which the Registrar considers to be no longer a charitable organisation; and
- (ii) any charitable organisation which has ceased to exist or does not operate;

(b) may remove from the register—

³ Section 8 amended by Ord. 8 of 2018

- (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;
- (ii) any registered organisation that has a managing committee of which a person specified in section 10(4) is a member; and
- (iii) any registered organisation referred to in section 10(1)(b) which has failed to comply with its safeguarding policy.

(2) If the Registrar intends to remove a registered organisation from the register pursuant to subsection (1), the Registrar must give written notice to the organisation of that intention and the reason for it, and that its registration will be cancelled 15 days (or any longer period the Registrar specifies 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 deciding the question raised by any notice given under subsection (2), the Commission—

- (a) must 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
- (b) may make such other enquiries and receive such evidence as the Commission considers 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 must direct the Registrar to cancel the registration and the registration must be cancelled.

Appeals

9. (1) If the Commission has refused to register an organisation under section 7, or has 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

10.⁴ (1) Subject to subsection (5), an organisation must not be registered as a charitable organisation unless it has submitted to the Registrar—

- (a) its governing document which—
 - (i) sets out the name and the purposes of the organisation and any other matters that are prescribed; and
 - (ii) provides for the appointment of a management committee in terms consistent with subsection (2); and

⁴ Section 10 amended by Ord. 8 of 2018

- (b) in the case of an organisation which has as its primary purpose the advancement, relief or assistance of vulnerable beneficiaries, a copy of its safeguarding policy with respect to its beneficiaries.

(1A) The safeguarding policy referred to in subsection (1)(b) must include, but not be limited to—

- (a) provision for making the necessary enquiries into the background of individuals engaged (whether as employee, volunteer or otherwise) to work with vulnerable beneficiaries;
- (b) provision for mitigating identified risks to safeguard the beneficiaries of the organisation;
- (c) reporting and investigating procedures.

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

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

(3A) The Chair of a registered organisation referred to in subsection (1)(b) must, within 6 months after the end of each financial year, submit to the Commission an annual updated report by its management committee with respect to the implementation during that year of its safeguarding policy.

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

- (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 are exempt from all or some of the provisions of this section.

Keeping of accounts

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

- (a) maintain accounts recording all moneys received and the expenditure of them and containing any other information the Commission from time to time requires;
- (b) prepare an annual Financial Statement in a form approved by the Commission.

(2) The Chair of every registered organisation must, within 6 months of the end of each financial year, submit to the Registrar the Financial Statement prepared in relation to that year in accordance with subsection (1)(b).

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

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

PART V SUPPLEMENTARY

Offences and other failure to comply

12.⁵ (1) Any person or body of persons which hold itself out as being registered under this Ordinance when not so registered commits an offence.

Penalty: A fine of £1,000 or imprisonment for 12 months, or both.

(2) If an offence under this section is committed by a corporate body, 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 corporate body, that person (as well as the corporate body) commits that offence and liable to be proceeded against accordingly.

(3) If—

(a) an unincorporated body of persons does anything which, if it were a corporate body, would be an offence under this section; and

(b) it is proved that the relevant unlawful act was committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other person concerned in the management of that body,

that person is guilty of that offence and liable to be proceeded against accordingly.

(4) Without affecting the power of the Registrar under section 8, an organisation that fails to comply with a requirement under section 10(3A) or section 11(2) or (4) is liable to pay a financial penalty of £20.00.

(5) A financial penalty imposed under subsection (4) must be paid to the Commission within 30 days from the date on which it is imposed.

(6) If a financial penalty is not paid within the period as required in subsection (5), the Commission may recover that financial penalty and the reasonable expenses incurred in recovering that penalty as a civil debt.

(7) Subsection (4) does not apply where, in the case of a failure to comply with—

(a) section 10(3A), the Chair can show that to the best of his or her knowledge the annual updated report was submitted under that section within the required timeframe; or

⁵ Section 12 amended by Ord. 8 of 2018

- (b) section 11(2) or (4), the Chair, treasurer or other person having supervision of the accounts of the organisation can show that to the best of his or her knowledge the accounts were submitted and audited under that section within the required timeframe.

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 limiting that power, such regulations may provide—

- (a) for the fees payable for registration and other matters;
- (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; and
- (d) generally, for anything which under this Ordinance is to be, or may be, prescribed.

(2) Regulations made under this section may provide that a person who contravenes the regulations commits an offence and for a penalty not exceeding a fine of £500.

(3) Subsections (2) and (3) of section 12 apply to an offence under the regulations made under this section as they apply to an offence under section 12(1).

Application of property cy-pres

14. (1) The Supreme Court has 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 is to 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.

(1A) No proceedings may be commenced under subsection (1)(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, 1980) requiring to be executed on behalf of a registered organisation is sufficiently executed if it is signed on behalf of the organisation by any 2 of the officers specified in section 10(2).

(2A) Subsection (2) does not affect any rule of law which requires that a signature on a document must be witnessed or otherwise verified.

(3) A deed or other document executed in the name and on behalf of a registered organisation is not chargeable with stamp duty, nor is any fee to be charged under the Registered Land Ordinance, 1980 for the registration of any instrument made in favour of a registered organisation.

(4) A fundraising activity conducted on behalf of a registered organisation with the explicit approval of the management committee of that organisation, is, for the purposes of section 4(o) of the Summary Offences Ordinance, 1975, deemed to have been authorised by a permit issued by the Director of Police in accordance with that paragraph.

(5) *Omitted*

CHARITIES ORDINANCE, 2005

CHARITIES REGULATIONS, 2005

(Section 13)

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Citation and commencement

1. These Regulations may be cited as the Charities Regulations, 2005 and come into force on 17th October 2005.

Conduct of business of Commission

2. For the purposes of section 5(5)(b) of the Ordinance, the Commission is deemed to be able to properly conduct business and discuss matters for decision if at least 2 Commissioners are able to conduct such business by the use of telephone, teleconference or video conference facilities.

Register of charitable organisations

3.⁶ (1) For the purposes of section 7(1) of the Ordinance, the following particulars of every charitable organisation approved by the Commission must be entered in the register—

- (a) name of the charity;
- (b) registration number of the charity;
- (c) date of registration of the charity;
- (d) name and contact details of the correspondent for the charity;
- (e) purpose of the charity; and
- (f) names of all officers of the management committee of the charity.

(2) The register is to be open to public inspection at the office of the Registrar between the hours of 9.00 a.m. and 3.30 p.m. on any working day.

Contents of governing document

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

- (a) name of the 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 must be notified in writing to the Registrar within 10 working days of when the change occurred.

Contravention of regulations

6. A person who wilfully contravenes any of the provisions of these Regulations commits an offence.

Penalty: A fine of £500.

Fees

7. The fees set out in the Schedule are payable in respect of the matters set out in it.

SCHEDULE⁷ (Regulation 7)

⁶ Regulation 3 amended by L.N. 18 of 2018

⁷ Schedule 3 substituted by L.N. 18 of 2018 and L.N. 11 of 2019

	<i>Fees</i>
1. Inspection of Register of Charities	£1.05
2. Registration of a charity	£10.45

CHARITIES ORDINANCE, 2005

CHARITIES (EXEMPT BODIES) REGULATIONS, 2006

(Section 13)

Citation and commencement

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

Exemptions for statutory corporations

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

CHARITIES ORDINANCE, 2005

CHARITIES (EXEMPT BODIES) REGULATIONS, 2007

(Section 13)

Citation and commencement

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

Exemption for churches

2. A church or group of churches is 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.

CHARITIES ORDINANCE, 2005

COURTS (CHARITIES) RULES, 2015

(Section 9(2), and section 8 of the Courts (Appeals and Rules) Ordinance, 2017)⁸

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Citation

1. These Rules may be cited as the Courts (Charities) Rules, 2015.

Time for noting appeal

2. A person or organisation aggrieved by a decision of the Charity Commission of St Helena either refusing to register an organisation under section 7 of the Charities Ordinance, 2005, or cancelling the registration of an organisation under section 8 of that Ordinance, may appeal to the Supreme Court within 28 days of the date when the Commission made the decision.

Form of notice of appeal

3. (1) An appeal against any decision of the Commission must be made on notice in the form prescribed in Form A in the Schedule to these Rules.

(2) The notice must be supported by affidavit setting out the grounds for the appeal and all facts and matters relied upon in support of it.

Lodging and service of notice

4. The notice and affidavit in support must be filed with the Registrar of the Supreme Court and be served upon the Chair of the Commission and all other parties or organisations interested in the appeal.

Response to affidavit

5. Any affidavit in response to the Appellant's affidavit must be filed with the Registrar of the Supreme Court and served upon the Appellant and all other parties or organisations within 28 days thereafter.

⁸ Previously section 2 of the Courts (Rules) Ordinance, 1968

Determination of appeal

6. For the purposes of determining an appeal the Supreme Court may do so upon a consideration of such affidavits as have been served alone or in the Court's discretion after a hearing.

Leave to appeal out of time

7. (1) If a person or organisation aggrieved by a decision fails to file and to serve a notice of appeal within the 28 days stipulated for such service, the person or organisation may nevertheless apply to the Supreme Court for leave to appeal out of time.

(2) Any application for leave to appeal out of time must be made on notice and must be supported by an affidavit setting out the reasons for the failure to file and to serve the notice of appeal within the 28 days stipulated and the grounds of appeal and all facts and matters relied upon in support of the application.

(3) An application for leave to appeal must be filed with the Court and must be served upon the Chair of the Commission and any other person or organisation interested in the appeal.

(4) Any affidavit in response to the application for leave to appeal out of time must be served within 14 days of the date of service of the application.

(5) When determining an application for leave to appeal out of time, the Court may only consider the affidavits served with the application, or, in the Court's discretion, served after a hearing.

SCHEDULE
(Rule 3)

COURTS (CHARITIES) RULES, 2015

FORM A

NOTICE OF APPEAL
(Rule 3)

To

TAKE NOTICE that (Name)
of (Address).....
appeals against the decision of the Charities Commission dated the day of
20... and that the grounds of the appeal are set out in the affidavit sworn by
..... and annexed hereto.

Signed

Dated: _____