



## ST HELENA

### A BILL

### FOR

### AN ORDINANCE

**to amend the Charities Ordinance, 2005, to further regulate charitable organisations working with vulnerable beneficiaries; to make provision for financial penalties for certain offences; and for connected and incidental purposes.**

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Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

#### **Short title and commencement**

1. This Ordinance may be cited as the Charities (Amendment) Ordinance, 2018, and comes into force on the date of publication.

#### **Interpretation**

2. Section 2 of the Charities Ordinance, 2005, is amended by adding the following definition:

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

#### **Cancellation of registration**

3. Section 8(1)(b) of the Charities Ordinance, 2005, is amended—

- (a) by deleting the word “and” at the end of subparagraph (i) and adding the word “and” at the end of subparagraph (ii);
- (b) by adding the following subparagraph:
  - “(iii) any registered organisation referred to in section 10(1)(b) which has failed to comply with its safeguarding policy.”

#### **Administrative requirements**

4. Section 10 of the Charities Ordinance, 2005, is amended—

- (a) by repealing subsection (1) and substituting the following:
  - “(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
- (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.”;
- (b) by inserting the following subsection after subsection (1):
  - “(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.”;
- (c) by inserting the following subsection after subsection (3):
  - “(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.”.

## **Offences and failure to comply**

- 5. Section 12 of the Charities Ordinance, 2005, is amended—
  - (a) by deleting the heading and substituting the following:
    - “**Offences and other failure to comply**”;
  - (b) by adding the following subsections:
    - “(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
      - (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.”.

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**EXPLANATORY NOTE**

*(This note is not part of the Ordinance)*

This Ordinance amends the Charities Ordinance, 2005, to require charitable organisations that deal primarily with vulnerable adults to develop and maintain a safeguarding policy with respect to these beneficiaries. Failure to comply with the safeguarding policy may result in the organisation being removed from the register. The Ordinance also makes provision for payment of a civil penalty to the Commission in the event of failure by an organisation to submit an updated annual report with respect to the implementation of its safeguarding policy. The penalty also applies for failure by charitable organisations to submit annual financial statements and accounts.