

PROJET DE LOI

ENTITLED

The Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009

THE STATES, in pursuance of their Resolution of the 27th September, 2007^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

Power to enact Ordinances in relation to non profit organisations and non profit organisational activities.

1. The States may by Ordinance make such provision as they think fit in relation to non profit organisations, their activities, and their directors, employees, officers and trustees, and in relation to non profit organisational activities.

Specific matters for which Ordinances may make provision.

2. An Ordinance under section 1 may, without limitation, make provision in relation to the following matters -

- (a) the prohibition, restriction or regulation of matters set out in section 1,
- (b) exceptions, exemptions and derogations from any such prohibition, restriction or regulation including, without

^a Article VIII of Billet d'État No. XX of 2007.

limitation, exceptions, exemptions and derogations -

- (i) in the public interest,
 - (ii) as a matter of public policy, or
 - (iii) on social, community, economic, ethical and other grounds,
- (c) the establishment of an office of Registrar of Non Profit Organisations ("**the Registrar**"), whether as an office of a department of the States or as a separate legal entity, with responsibility for the administration and enforcement of this Law and any Ordinance under it, and with such rights, liabilities, functions and capacity as may be specified by Ordinance,
- (d) the appointment, term of office and termination of office of the Registrar,
- (e) the vesting of any right, liability, power and property in the Registrar,
- (f) the investigation by the Registrar of matters set out in section 1 and the making and publication by him of reports on those matters, whether at the direction of the Policy Council or the States,
- (g) the Registrar's powers of entry, inspection, search and inquiry for the purposes of -

- (i) the administration and enforcement of any Ordinance under this Law,
 - (ii) carrying out investigations and making reports, and
 - (iii) generally for the carrying out of his functions,
- (h) the production, seizure, retention, use and disclosure of documents and information,
 - (i) the obtaining and exchanging of information,
 - (j) the service of documents,
 - (k) the establishment by the Registrar of his office, the appointment of his staff and the delegation of his functions,
 - (l) the issue by the Registrar of codes of practice, guidance and recommendations, and their status in law,
 - (m) the imposition by the Registrar of directions, orders, penalties, fines, interim measures and other sanctions,
 - (n) the appointment by the Registrar of any person or body to advise him in relation to the exercise of his functions,

- (o) the production and publication by the Registrar of reports and accounts and the auditing of accounts,
- (p) the making of grants and loans to the Registrar,
- (q) the establishment by the Registrar of a fund and the status of that fund for income tax purposes,
- (r) the objectives to be promoted and the other matters to be taken into account by the Registrar, the Policy Council and the States in carrying out their respective functions under this Law and any Ordinance under it,
- (s) the giving to the Registrar of directions and recommendations by the Policy Council, the States or any other body,
- (t) co-operation and the provision of mutual assistance by the Registrar, in relation to matters set out in section 1, with or to authorities -
 - (i) carrying out functions corresponding to his own, or
 - (ii) which are of any prescribed class or description,
- (u) privilege and duties of confidentiality and exceptions, exemptions and derogations therefrom,

- (v) the implementation of -
 - (i) any international instrument relating to matters set out in section 1 or any aspect thereof,
 - (ii) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international instrument,subject to such exceptions, adaptations and modifications as may be specified in the Ordinance,
- (w) the administration and enforcement of any Ordinance under this Law including, without limitation, provision as to -
 - (i) appeals in relation to decisions in respect of such administration and enforcement,
 - (ii) modes of civil enforcement (including, without limitation, proceedings for injunctions),
 - (iii) subject to section 3(7), modes of criminal enforcement,
 - (iv) remedies in respect of contraventions of any prohibition, restriction or regulation imposed by an Ordinance under this Law, and

(v) the establishment of a tribunal and a panel of persons from whom the members of the tribunal are to be drawn,

and otherwise as to the administration of justice in relation to matters set out in section 1,

(x) the jurisdiction and powers of the courts, and the constitution and procedure of those courts, in relation to matters set out in section 1,

(y) provision as to evidence including, without limitation, rules as to the admission of evidence and evidential presumptions,

(z) the authorisation of, and conferring of functions on, any person, body or office including, without limitation, the Registrar, the Policy Council and the States (and their respective officers) for the purposes of the administration and enforcement of any Ordinance under this Law,

(aa) the granting (conditionally or otherwise), refusal, variation, revocation and suspension of licences or other descriptions of authorisation or approval for the doing of anything restricted, regulated or controlled by an Ordinance under this Law,

(bb) the making of applications for such licences,

authorisations or approvals,

- (cc) the levying of fees,
- (dd) the recovery of costs associated with the administration and enforcement of any Ordinance under this Law, and
- (ee) the exclusion of liability of any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith.

General provisions as to subordinate legislation.

- 3. (1) Any Ordinance under this Law -
 - (a) may be amended or repealed by a subsequent Ordinance hereunder,
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and
 - (c) may, without limitation, contain provision -
 - (i) subject to subsection (7), as to the creation of new liabilities, obligations, remedies, sanctions and penalties,

- (ii) making consequential amendments to this Law and any other enactment, and
- (iii) authorising the Policy Council, any other department of the States or any other body (including, without limitation, any court) to make or issue regulations, rules, orders, codes or guidance, whether as to any matter in relation to which the Ordinance can make provision or otherwise.

(2) Any power conferred by this Law to make any Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) An Ordinance under this Law may, for the avoidance of doubt-

(a) subject to subsection (7), create offences, and

(b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law.

(4) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law -

(a) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,

(b) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 1, and

(c) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by *Projet de Loi*, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(5) An Ordinance under this Law does not have effect in

Alderney unless approved by the States of Alderney.

(6) For the purposes of subsection (5), an Ordinance shall be deemed to have been approved by the States of Alderney at the expiration of a period of four months immediately following the day of its approval by the States of Deliberation unless, within that period, the States of Alderney resolve to disapprove its application to Alderney.

(7) An Ordinance under this Law may not -

- (a) provide for offences to be triable only on indictment,
- (b) authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or
- (c) authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

Interpretation.

4. (1) In this Law, unless the context otherwise requires -

"charity" means any organisation established for charitable purposes only,

"department of the States" means any department, council or committee (howsoever called or titled) of the States,

"enactment" means any Law, Ordinance or subordinate legislation,

"implementation", in relation to -

- (a) any international instrument, and
- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international instrument,

includes the enforcement or enactment thereof, and the securing of the administration, execution, recognition, exercise or enjoyment thereof, in or under domestic law,

"international instrument" means -

- (a) any convention, treaty, protocol or other international instrument, or any provision thereof, and
- (b) any Community provision within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^b,

whether or not binding on Guernsey,

^b Order in Council No. III of 1994.

"non profit organisation" means any organisation established solely or principally either for the non-financial benefit of its members or for the benefit of society or any class or part of society and, without limitation, includes any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works, and includes a charity,

"non profit organisational activities" means any activities of a non profit organisation whether or not such activities are connected to its objects or purpose,

"organisation" includes a body of persons (corporate or unincorporate), a trust, any other legal entity and any equivalent or similar structure or arrangement,

"Policy Council" means the States Policy Council,

"Registrar" has the meaning assigned by section 2(c),

"States" means the States of Guernsey, and

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) The States may by Ordinance amend subsection (1) so as to amend the meaning of any expression defined therein or to define any other expression.

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Law.

(4) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

5. This Law may be cited as the Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009.

^c Ordres en Conseil Vol. XIII, p. 355.