

# PROJET DE LOI

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## **The Charities and Non Profit Organisations (Registration) (Sark) Law, 2010**

**THE CHIEF PLEAS OF SARK**, in pursuance of their Resolution of the 20<sup>th</sup> January, 2010, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Sark.

### **Register of Non Profit Organisations.**

1. (1) The Registrar of Non Profit Organisations, the office of whom is established by section 2, shall establish and maintain a register of non profit organisations to be called the Register of Non Profit Organisations ("**the Register**") in accordance with the Schedule.

(2) A non profit organisation which is not a charity will be a Sark Registered Non Profit Organisation whilst it is on the Register.

(3) A non profit organisation which is a charity will be a Sark Registered Charity whilst it is on the Register.

(4) A non profit organisation based in the Island of Sark which without reasonable excuse is not registered on the Register in accordance with paragraph 2(1) of the Schedule is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

**Office of Registrar of Non Profit Organisations.**

2. (1) The Chief Pleas of Sark shall establish an office to be called the Office of the Registrar of Non Profit Organisations ("**the Office of the Registrar**").

(2) The holder of that office shall be called the Registrar of Non Profit Organisations ("**the Registrar**").

(3) The Registrar shall be appointed by Resolution of Chief Pleas.

(4) An appointment of the Registrar under this section -

(a) may be periodic or for a fixed term,

(b) is subject to such terms and conditions as Chief Pleas may from time to time think fit, and

(c) may be varied or terminated at any time by Chief Pleas, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.

(5) The Registrar shall, subject to the terms and conditions of his appointment, exercise the functions assigned or transferred to him by or under this Law and any other enactment.

(6) For the purposes of the Public Functions (Transfer and

Performance) (Bailiwick of Guernsey) Law, 1991<sup>a</sup> -

- (a) the Office of the Registrar is a public office, and
- (b) the Registrar is an office holder.

**Functions of Registrar.**

3. The functions of the Registrar are -

- (a) to maintain the Register in accordance with the Schedule,
- (b) to administer the Office of the Registrar,
- (c) to determine -
  - (i) the fees payable (whether generally or in any particular case) under paragraphs 1 and 12 of the Schedule,
  - (ii) the interest payable in the event of default in the due payment of fees, and
  - (iii) the classes or descriptions of person by whom such fees and interest are to be payable, and
- (d) to exercise, subject to the terms and conditions of his appointment, such other functions as may be assigned

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<sup>a</sup> Order in Council No. XXI of 1991.

or transferred to him -

- (i) by or under this Law and any other enactment,  
or
- (ii) by Resolution of Chief Pleas.

**Delegation of functions.**

4. (1) The Registrar may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions to be exercised in his name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement made under this section is for all purposes exercised by the Registrar; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Registrar.

(3) An arrangement made under this section for the exercise of a function by a delegate -

- (a) may be varied or terminated at any time by the Registrar, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the exercise of the function by the Registrar while the arrangement subsists.

(4) The provisions of this section are without prejudice to the

provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>b</sup>.

**Proof of documents.**

5. (1) In any legal proceedings the provisions of subsection (2) apply in relation to any document purporting to be -

- (a) issued by or on behalf of the Registrar, or
- (b) signed by the Registrar, by any of his officers or employees or by any person to whom, pursuant to section 4, he has delegated authority to sign documents of that description.

(2) The document -

- (a) may be received in evidence,
- (b) unless the contrary is proved, is deemed -
  - (i) to be the document which it purports to be, and
  - (ii) to have been issued by or on behalf of the Registrar or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and

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<sup>b</sup> Order in Council No. XXI of 1991.

- (c) is evidence of the matters stated therein.

**Offences as to false or misleading information, etc.**

6. If a person -

- (a) in connection with an application for registration or renewal of registration under this Law,
- (b) in purported compliance with a requirement imposed by or under, or otherwise for the purposes of, any provision of this Law or of any Ordinance or regulation made under it, or
- (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the Registrar for the purpose of exercising his functions conferred by or under this Law,

does any of the following -

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

- (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

**Penalties.**

- 7. A person guilty of an offence under section 6 is liable -
  - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both,
  - (b) on summary conviction, to imprisonment for a term not exceeding one month or to a fine not exceeding level 4 on the uniform scale or to both.

**Regulations as to the keeping of records, etc.**

8. The Committee may by regulation make such provision as it thinks fit in relation to -

- (a) the making, maintenance, keeping and retention of any records and any other documents by any registered organisation, and
- (b) the disclosure and publication of any such record or document, whether by the Registrar or by any other person in possession thereof.

**Offences by bodies corporate, etc.**

9. (1) Where an offence under this Law is committed by a body corporate and 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 similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Where an offence under this Law is alleged to have been committed by an unincorporated body or trust, proceedings for the offence shall be brought in the name of the body or (as the case may be) the trust, and not in the name of any member, trustee, beneficiary or settlor.

(4) A fine imposed on an unincorporated body or trust on its conviction of an offence under this Law shall be paid from the funds of the body or



(as the case may be) the trust.

(5) Where an offence under this Law is committed by an unincorporated body or trust and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of the body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body,
- (c) in the case of a trust, any trustee, or
- (d) any person purporting to act in any capacity described in paragraph (a), (b) or (c),

he as well as the unincorporated body or trust is guilty of the offence and may be proceeded against and punished accordingly.

**General provisions as to subordinate legislation.**

**10.** (1) Chief Pleas may by Ordinance -

- (a) amend section 11 or the Schedule where it appears to Chief Pleas to be necessary or expedient to do so for the purpose of -
  - (i) enabling the person charged with the keeping

of the Register more effectively to carry out any of his functions under this Law,

- (ii) enhancing or protecting the reputation or economic interests of the Bailiwick or any part thereof,
  - (iii) improving or enhancing the investigation, prevention or detection of crime,
  - (iv) facilitating the instigation of, or otherwise for the purposes of, any criminal proceedings,
  - (v) facilitating the detection, seizure and forfeiture of the proceeds of crime or assets intended for use in crime,
  - (vi) discharging any international obligation to which the Bailiwick is subject, or
  - (vii) assisting, in the interests of the public or otherwise, any authority which appears to Chief Pleas to exercise in a place outside the Bailiwick functions corresponding to any of the functions under this Law of the person charged with the keeping of the Register, and
- (b) make such other provision as they think fit for the purposes of carrying this Law into effect.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances or regulations (and vice versa).

(3) Any Ordinance or regulation under this Law -

(a) may be amended or repealed by a subsequent Ordinance or regulation, as the case may be, hereunder,

(b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and

(c) may, in the case of an Ordinance, and without limitation, contain provision -

(i) as to the creation of new liabilities, obligations, penalties and offences up to the limit of the jurisdiction of the Court of the Seneschal,

(ii) making consequential amendments to this Law and any other enactment,

(iii) repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law, and

- (iv) authorising the Committee to make regulations in relation to any matter in relation to which the Ordinance can make provision.

(4) Any power conferred by this Law to make any Ordinance or regulation 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.

(5) Any regulations under this Law must be laid before a meeting of Chief Pleas as soon as possible after being made; and if, at that or their next meeting, Chief Pleas resolve to annul the regulations, they shall cease to have

effect, but without prejudice to anything done under them or to the making of new regulations.

**Interpretation.**

**11.** (1) In this Law, unless the context otherwise requires –

"**based in**" a place means established, administered or controlled in, or operating from or from within, that place,

"**charity**" -

(a) means any organisation established for charitable purposes only, and

(b) where any property or fund the income whereof is applicable to charitable purposes only is entrusted to any person, means, in relation to that property or fund and the income thereof, that person,

"**Chief Pleas**" means the Chief Pleas of Sark,

"**the Committee**" means the General Purpose and Advisory Committee of the Chief Pleas,

"**employee**" includes a person employed under a contract of service or apprenticeship (whether written or oral, express or implied) and a person engaged under a contract for services or on a consultancy or secondment basis,

**"international organisation"** has the meaning given in paragraph 2(5) of the Schedule,

**"large organisation"** has the meaning given in paragraph 2(4) of the Schedule,

**"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,

**"Office of the Registrar"** has the meaning assigned to it in section 2,

**"organisation"** includes a body of persons (corporate or unincorporate), a trust, any other legal entity, any equivalent or similar structure or arrangement and, where paragraph (b) of the definition of "charity" applies, any such person as is referred to in that paragraph,

**"Register"** has the meaning assigned to it in section 1(1),

**"registered organisation"** means any organisation on the Register,

**"Registrar"** has the meaning assigned to it in section 2(2), and

**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Sark) Law, 1989<sup>c</sup>, as amended.

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<sup>c</sup> Ordres en Conseil Vol. XXXI, p. 320.

(2) 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.**

12. This Law may be cited as the Charities and Non Profit Organisations (Registration) (Sark) Law, 2010.

**Commencement.**

13. This Law shall come into force on the date of its registration on the records of the Island of Sark.

## SCHEDULE

Section 1

### REGISTER OF NON PROFIT ORGANISATIONS

#### Register of Non Profit Organisations.

1. (1) The Register shall be kept in such form as the Registrar thinks fit and may, without limitation, be kept in electronic form.

(2) The Registrar shall make arrangements for -

(a) public inspection of that part of the Register on which details of registered organisations -

(i) which solicit or accept donations, funds and contributions from the public, or

(ii) which elect to be inscribed there,

are inscribed, and

(b) subject to payment of the fee specified by him, the supply of certified or uncertified copies or extracts of entries in that part of the Register.

(3) A copy, certified by or on behalf of the Registrar as being a correct copy of an entry in the Register, is, in any legal proceedings, evidence of the matters stated in the entry.

(4) There shall be entered in the Register -



- (a) the full name and business address of the organisation,  
and
- (b) such other matters as the Registrar thinks fit.

**Application for registration.**

2. (1) All non profit organisations based in the Island of Sark at the date of commencement of this Law must apply to Registrar to be registered within 2 months from that date. Thereafter, any new non-profit organisation must apply to the Registrar to be registered within 1 month of –

- (a) the organisation's creation, or
- (b) the date on which it becomes based in the Island of Sark.

(2) An application to the Registrar in accordance with subsection (1) must be made in such form as may be specified by the Registrar.

(3) An application for registration shall contain –

- (a) the full names of the persons who own, direct or control the activities of the organisation including (without limitation) its directors, officers and trustees and, for each of those persons -
  - (i) in the case of an individual, his current home and business addresses, or

- (ii) in the case of an organisation, its registered office or anything similar under the legislation of the country of incorporation or establishment or (if it has no such office) its principal place of business,
  - (b) a contact address within the Bailiwick at which all communications from the Registrar may be served,
  - (c) details of the purposes, objectives and objects of the organisation, and
  - (d) details of the manner in which the assets, funds and income of the organisation are applied or used.
- (4) A non profit organisation with –
- (a) gross assets and funds of, or over, £10,000, or
  - (b) gross annual income of, or over, £5,000

is a "**large organisation**".

(5) A non profit organisation solely for the benefit of any cause or people outside Sark is an "**international organisation**", whether or not it is also a large organisation.

(6) A non profit organisation not based in the Island of Sark may not be placed on the Register.

(7) The Committee may, by regulation, alter the amounts in subparagraph (4) in respect of any class, or description, of non profit organisations.

3. The Registrar may require any other information to be provided in connection with the application which, in his opinion, is relevant to determining whether the organisation is a non profit organisation.

4. If the Registrar is of the opinion that the organisation is a non profit organisation he must enter it in the Register either as –

- (a) a charity, which shall be known as a Sark Registered Charity, or
- (b) a non profit organisation that is not a charity, which shall be known as a Sark Registered Non Profit Organisation,

as he, in his discretion, thinks appropriate.

**Annual renewal of registration.**

5. (1) Each registered organisation shall apply to renew its registration at the commencement of each calendar year, in such form as may be specified by the Registrar.

(2) An registered organisation which fails to apply to renew its registration in respect of any calendar year by the end of January in that year shall be struck off the Register, provided that the Registrar has given the organisation 2 weeks' notice of his intention to strike it off.

(3) No offence is committed by an organisation under section 1(4) of this Law, if within 1 month of being given notice of being struck off the Register in accordance with subparagraph (2), the organisation applies to be put on the Register.

6. An application for renewal -

- (a) shall state that the organisation confirms that the information provided in the original application form is still correct, or
- (b) if the information is not still correct, shall give full particulars of any change to that information,

and the Registrar may require any other information to be provided which, in his opinion, is relevant to determining whether the organisation is still a non profit organisation.

**Refusal of registration or renewal.**

7. (1) If, on receipt of the application for registration or renewal, the Registrar is not satisfied that the organisation is a non profit organisation he may

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- (a) require further information or clarification from the organisation including, without limitation, documentary proof of all the facts stated in the application, or
- (b) refuse the organisation's application for registration or renewal, as the case may be.

(2) If the Registrar exercises his powers under paragraph (1)(a), and on receipt of further information he is still not satisfied that the organisation is a non profit organisation, he may refuse the application for registration or renewal, as the case may be.

**Duties of international organisations and large organisations.**

8. (1) International organisations must –
- (a) make, keep and retain records of all financial transactions (with whosoever made) in order to evidence the application or use of the organisation's assets, funds and income,
  - (b) file annual financial statements with the Registrar, in such form as may be specified by him, and
  - (c) inform the Registrar as soon as is reasonably practicable of any change to any of the matters required to be stated in the application for registration under paragraph 2(3).
- (2) The records referred to in paragraph (1)(a) -
- (a) shall be retained in a readily retrievable form for a period of not less than six years after the date of being made, and
  - (b) shall be sufficiently detailed to enable verification that the organisations assets, funds and income have been

applied or used in a manner consistent with the purposes, objectives and objects of the organisation stated in the Register.

(3) The Committee may by regulation direct that any, or any class or description of, large organisation must comply with any of the obligations of subparagraph (1)(a) or (b) if they have assets, funds or income above a certain amount to be specified in the regulations.

(4) An organisation which, without reasonable excuse, fails to comply with subparagraph (1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

(5) The provisions of this paragraph are without prejudice to the provisions of regulations under section 8 ("regulations as to the keeping of records, etc").

### **Requests for information.**

9. (1) The Registrar may by notice in writing require a registered organisation to deliver to him such documents as are in that organisation's possession or power and which in the Registrar's opinion contain, or may contain, information relevant to -

- (a) the organisation's assets, funds and income, and
- (b) the application or use of any such assets, funds or income.

(2) To comply with a notice under subparagraph (1), copies of documents may be delivered instead of originals, but -

- (a) the copies must be in such form as the Registrar may specify, and
- (b) if so required by the Registrar, the originals of the documents must be made available for inspection by the Registrar in accordance with the requirement,

and a failure to comply with a requirement under this paragraph constitutes a failure to comply with the notice under paragraph (1).

**Strike off.**

**10.** (1) An organisation may be struck off the Register at any time if the Registrar has reason to believe that the organisation is not a non profit organisation.

(2) The Registrar may publish the fact of an organisation being struck off the Register in such manner as he thinks fit.

**Failure to provide information.**

**11.** Where a registered organisation fails to -

- (a) comply with any request for information by the Registrar,
- (b) comply with any obligation or requirement imposed by or under this Law, or
- (c) pay any fee imposed under paragraph 12,

it is guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the uniform scale.

**Annual fee.**

12. The Registrar may, in his discretion, charge an annual fee for registration which shall be paid at such time as the Registrar may direct and which shall be set at a level such that it shall only cover his administrative costs in dealing with the registration of non profit organisations and the administration of the Register.

**Appeals from determinations of Registrar.**

13. (1) An organisation may appeal to the Court against -

- (a) the refusal of an application for registration,
- (b) the refusal of an application for renewal, or
- (c) being struck off the Register,

by a summons served on the Registrar.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the refusal or strike off, as the case may be.

(2) The grounds of an appeal under this paragraph are that -

- (a) the decision was ultra vires or there was some other error of law,



- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(3) The Registrar may, where an appeal under this paragraph has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

The provisions of this subparagraph are without prejudice to the inherent powers of the Court.

- (4) On an appeal under this paragraph the Court may -
- (a) set the decision of the Registrar aside and, if the Court considers it appropriate to do so, remit the matter to the Registrar with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(5) On an appeal under this paragraph against a decision of the Registrar the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(6) An appeal from a decision of the Court under this paragraph lies to the Court of Appeal on a question of law.

(7) In this paragraph "**the Court**" means the Court of the Seneschal and for the purposes of an appeal under this paragraph the Court may appoint one or more assessors to assist it in the determination of any matter before it.

**Use of information .**

**14.** (1) Subject to the provisions of subparagraph (2), no person -

(a) who under or for the purposes of this Law receives information relating to the business or other affairs of any person,

(b) who obtains any such information directly or indirectly from a person who has so received it,

shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) Subparagraph (1) does not preclude -

- (a) the disclosure of -
  - (i) information which at the time of disclosure is or has already been made available to the public from other sources, or
  - (ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
- (b) the disclosure of information for the purpose of enabling or assisting the Registrar to discharge his functions,
- (c) where, in order to enable or assist him to discharge his functions conferred by or under this Law, the Registrar considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation or any other matter requiring the exercise of professional skill, the disclosure by the Registrar to that person of such information as appears to the Registrar to be necessary to ensure that that person is properly informed as to the matters on which his advice is sought,
- (d) the disclosure of information for the purpose of enabling or assisting an authority exercising, in a place outside the Island of Sark, functions equivalent to those of the Registrar under this Law to exercise its

functions,

- (e) the disclosure of information for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings in the Bailiwick or elsewhere,
- (f) the disclosure of information for the purposes of enabling or assisting Her Majesty's Procureur to discharge his functions,
- (g) the disclosure of information in connection with any other proceedings arising out of this Law,
- (h) the disclosure of information to comply with an order of a court,
- (i) the disclosure of information which is authorised or required by or under this Law or any other enactment.

(3) A person who discloses or causes or permits the disclosure of any information in contravention of this paragraph is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding 1 month or to a fine not exceeding level 4 on the uniform scale or to both.

**Legal professional privilege, liens and duties of confidentiality.**

**15.** (1) Nothing in this Law compels the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name

and address of any client.

(2) Where a person claims a lien on a document, its production under this Law is without prejudice to his lien.

(3) A requirement imposed by or under this Law to provide any information or document has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.