

PROJET DE LOI

ENTITLED

The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. XXVI of 2008; as amended by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009 (No. ** of 2010); the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2008 (No. XLIX of 2008); the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008 (No. XXXVI of 2008).

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The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008

ARRANGEMENT OF SECTIONS

1. Register of Non Profit Organisations.
- 1A. Office of Registrar of Non Profit Organisations.
- 1B. Functions of Registrar.
- 1C. Ancillary powers of Registrar.
- 1D. Reports.
- 1E. Financial and accounting provisions.
- 1F. Power to apply for directions.
- 1G. Power to amend sections concerning Office of Registrar, etc.
2. Offences as to false or misleading information, etc.
3. Penalties.
4. Regulations as to the keeping of records, etc.
5. Amendment to section 40(k) of the Income Tax (Guernsey) Law, 1975.
6. Amendment to section 40(r) of the Income Tax (Guernsey) Law, 1975.
7. Amendment to section 56 of the Income Tax (Guernsey) Law, 1975.
8. Amendment to section 65(1) of the Income Tax (Guernsey) Law, 1975.
9. Amendment to section 65(2) of the Income Tax (Guernsey) Law, 1975.
10. Offences by bodies corporate, etc.
11. General provisions as to subordinate legislation.
12. Interpretation.
13. Extent.
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SCHEDULE 1 Register of Non Profit Organisations.
SCHEDULE 2 Office of the Registrar.

The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008

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, Herm and Jethou.

Register of Non Profit Organisations.

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

(2) A non profit organisation wishing to be registered on the Register shall make an application in accordance with [Schedule 1].

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

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

(5) A non profit organisation based in the Island of Guernsey, Herm or Jethou which without reasonable excuse is not registered on the Register in accordance with [paragraph 2(1)(a)] of [Schedule 1] is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

^a Articles VIII and IX of Billet d'État No. XX of 2007.

NOTES

In section 1,

the words in the first pair of square brackets in subsection (1) were substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 2, with effect from 15th April, 2010, subject to the savings in section 13 of the 2009 Law;

the words in the second pair of square brackets in subsection (1), square brackets in subsection (2) and the second pair of square brackets in subsection (5) were substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 3, with effect from 15th April, 2010;

the words in the first pair of square brackets in subsection (5) were substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008, section 2, with effect from 26th November, 2008.

Office of Registrar of Non Profit Organisations.

1A. (1) The States Treasury and Resources Department ("**the Department**") 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 the Department.

(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 the

Department may from time to time think fit, and

- (c) may be varied or terminated at any time by the Department, 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^{aa} –

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

(7) The provisions of Schedule 2 have effect in respect of the Office of the Registrar.]

NOTE

Section 1A was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 4, with effect from 15th April, 2010.

[Functions of Registrar.]

^{aa} Order in Council No. XXI of 1991.

1B. The functions of the Registrar are –

- (a) to maintain the Register in accordance with Schedule 1,
- (b) to advise the Department generally in relation to the administration and enforcement of this Law and the practice and procedures relating thereto,
- (c) to administer the Office of the Registrar,
- (d) to determine –
 - (i) the fees payable (whether generally or in any particular case) under paragraphs 1 and 11 of Schedule 1,
 - (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
- (e) to exercise, subject to the terms and conditions of his appointment, such other functions as may be assigned or transferred to him –
 - (i) by or under this Law and any other enactment,
or

- (ii) by Resolution of the States.]

NOTE

Section 1B was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 4, with effect from 15th April, 2010.

[Ancillary powers of Registrar.]

1C. (1) The Registrar, having regard to the provisions of section 1B, has power to do anything that appears to him to be necessary or expedient for the purposes of or in connection with the exercise of his functions including, without limitation, power –

- (a) to require the production of and otherwise obtain such documents, accounts and information from such persons and within such periods and at such times and intervals as he thinks fit,
 - (b) to prepare and, subject to any provision to the contrary in this Law or any other enactment, to publish information, reports, codes of practice, guidance, recommendations and other documents,
 - (c) to appoint any person or body to advise him in relation to the exercise of any of his functions, and
 - (d) to apply to the Court for directions under section 1F.
- (2) For the purposes of exercising his functions the Registrar

may, having regard to the provisions of section 1B –

- (a) acquire, lease, use, dispose of, exchange or otherwise deal with any movable or immovable property and any interest in it, and
 - (b) enter into any contract, including any contract of purchase, sale, insurance, hire or bailment, or make any arrangement with any person.
- (3) The Registrar may sue and be sued as Registrar.]

NOTE

Section 1C was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 4, with effect from 15th April, 2010.

Reports.

1D. (1) The Registrar shall, whenever directed by the Department, and without prejudice to his powers to prepare and publish reports of his own motion, submit to the Department a report on the exercise of his functions in such form and in respect of such matters and such periods as the Department may specify.

- (2) The Department –
- (a) may submit the Registrar's report made under subsection (1) to the States, and

- (b) may at the same time or at any other time submit their own report to the States on the exercise by the Registrar of his functions.]

NOTE

Section 1D was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 4, with effect from 15th April, 2010.

Financial and accounting provisions.

1E. (1) All fees and similar sums received by the Registrar in the exercise of his functions shall be paid by him to the Department for the general revenue account of the States.

(2) Subsection (1) does not apply if and to the extent that, in accordance with financial procedures agreed between the Department and the Registrar, the Department directs otherwise.

(3) The Registrar shall –

- (a) keep proper accounts and proper records in relation to those accounts, and
- (b) submit to the Department, whenever the Department may direct but not less than once in any 12 month period, a statement of account giving a true and fair view of the state of affairs of the Office of the Registrar.

(4) Without prejudice to the preceding provisions of this section, the Registrar shall, whenever directed by the Department, submit to the Department, in respect of such period as the Department may specify, audited accounts of the Office of the Registrar together with the auditors' report thereon prepared by auditors appointed by the Registrar with the approval of the Department.]

NOTE

Section 1E was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 4, with effect from 15th April, 2010.

[Power to apply for directions.]

1F. (1) The Registrar may, if he believes that it would assist him in the proper and lawful exercise of his functions, apply to the Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the Royal Court, and on such an application the Court may make such order as it thinks fit.

(2) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an application under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

(3) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(4) Section 21 of the Court of Appeal (Guernsey) Law, 1961^{ab} ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.]

NOTE

Section 1F was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 4, with effect from 15th April, 2010.

Power to amend sections concerning Office of Registrar, etc.

1G. The States may by Ordinance amend sections 1A to 1F where it appears to them to be necessary or expedient to do so for any of the purposes set out in section 11(1)(a).]

NOTE

Section 1G was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 4, with effect from 15th April, 2010.

Offences as to false or misleading information, etc.

2. 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

^{ab} Ordres en Conseil Vol. XVIII, p. 315.

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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.

NOTE

In section 2, the word in square brackets was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 5, with effect from 15th April, 2010, subject to the savings in section 13 of the 2009 Law.

Penalties.

3. A person guilty of an offence under section 2 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 three months or to a fine not exceeding level 5 on the uniform scale or to both.

Regulations as to the keeping of records, etc.

4. (1) The Department 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 or manumitted 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.

(2) Regulations under subsection (1) may make provision for non profit organisations who fail to comply with their obligations thereunder to be struck off the Register.

NOTE

In section 4,

the words in square brackets in paragraph (a) of subsection (4) were substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008, section 3, with effect from 26th November, 2008;

the word in square brackets in paragraph (b) of subsection (4) was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 6, with effect from 15th April, 2010, subject to the savings in section 13 of the 2009 Law.

Amendment to section 40(k) of the Income Tax (Guernsey) Law, 1975.

5. For section 40(k) of the Law of 1975, substitute –

- "(k) the income of a Guernsey Registered Charity (registered in accordance with the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008), if and so far as the income is applied to charitable purposes only,".

Amendment to section 40(r) of the Income Tax (Guernsey) Law, 1975.

6. For section 40(r) of the Law of 1975, substitute –

"(r) the income derived from investments or deposits of any body of persons or trust established in the United Kingdom or in the Island of Jersey for charitable purposes only where the person entitled to the income proves to the satisfaction of the Administrator that the Commissioners for Her Majesty's Revenue and Customs or the Comptroller of Income Tax of the Island of Jersey, as the case may be, have allowed a claim for exemption from tax on that income under the relevant provisions of the laws relating to income tax or charities in those territories,".¹

Amendment to section 56 of the Income Tax (Guernsey) Law, 1975.

7. In section 56 of the Law of 1975 after the words "(whether incorporated in Guernsey or elsewhere)" insert –

"(a) that is not a non profit organisation within the meaning of the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, or

(b) that is a Guernsey Registered Charity or a Guernsey Registered Non Profit Organisation within the meaning of the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008,".

Amendment to section 65(1) of the Income Tax (Guernsey) Law, 1975.

8. For the proviso to section 65(1) of the Law of 1975, substitute –

"Provided that in the case of a settlement made –

- (a) before the date of commencement of the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, on a charity, or
- (b) after that date, on a Guernsey Registered Charity (registered in accordance with that Law),

paragraph (a) of this subsection shall have effect with the substitution of "three years" for "six years".

Amendment to section 65(2) of the Income Tax (Guernsey) Law, 1975.

9. (1) In section 65(2) of the Law of 1975, for the text preceding the proviso substitute –

"(2) Where, in respect of any year of charge, the amount of a covenanted donation –

- (a) before the date of commencement of the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, to a charity, or
- (b) after that date, to a Guernsey Registered

Charity (registered in accordance with that Law),

or the amount of covenanted donations in the aggregate to such charities made by a person under a settlement or settlements made or entered into on or after the 14th April, 1978, exceeds the approved sum, any part of such donation or donations in the aggregate in excess of the approved sum shall be deemed to be the income of the settlor: "

(2) In section 65(2) of the Law of 1975, in paragraphs (a) and (b) of the proviso before the words "a charity or charities" wherever appearing insert "such".

Offences by bodies corporate, etc.

10. (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.

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(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.

11. (1) The States may by Ordinance –

- [(a) amend section 12 or [Schedule 1 or 2] where it appears to the States to be necessary or expedient to do so for the purpose of –

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- (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 the States 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

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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) [subject to subsection (3A),] as to the creation of new liabilities, obligations, penalties and offences,

(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

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

[(3A) The power conferred by subsection (3)(c)(i) to create new liabilities, obligations, penalties and offences does not include power –

- (a) to provide for offences to be triable only on indictment,
- (b) to 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) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.]

(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 –

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- (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 the States as soon as possible after being made; and if, at that or their next meeting, the States 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.

NOTES

In section 11,

paragraph (a) of subsection (1) was substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2008, section 1(2), with effect from 3rd November, 2008;

the words and figures in square brackets within paragraph (a) of subsection (1) were substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 7, with effect from 15th April, 2010;

subsection (3A), and the words in square brackets in paragraph (c)(i) of subsection (3), were inserted by the Charities and Non Profit

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Organisations (Registration) (Guernsey) Law, 2008 (Amendment) Ordinance, 2008, respectively section 1(4) and section 1(3), with effect from 3rd November, 2008.

The following Ordinance has been made under section 11:

Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008.

Interpretation.

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

[...]

["**Bailiff**" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,]

"**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,

"**Department**" means the Treasury and Resources Department,

["**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,]

"**the Law of 1975**" means the Income Tax (Guernsey) Law, 1975^b,

["**manumitted organisation**" means an organisation which is administered, controlled or operated by a person –

- (a) who holds or is deemed to hold a licence granted by the Guernsey Financial Services Commission under the regulatory Laws, and
- (b) who administers, controls or operates the organisation in the course of his regulated activities,]

"**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,

^b Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; Nos. IV and VIII of 1993; No. XXV of 1994; Nos. III and VII of 1995; No. V of 1996; Nos. IV and XXII of 1997; Nos. II and VI of 1999; No. IV of 2000; Nos. VI and XVII of 2001; No. VII of 2002; Nos. IV, XVIII and XXVI of 2003; Nos. XII and XVI of 2004; Nos. V, VI and XVII of 2005; Nos. II and VII of 2006; the Income Tax (Guernsey) (Amendment) Law, 2007; and (with effect from the 1st January, 2008) the Income Tax (Zero 10) (Guernsey) Law, 2007 and the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

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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 1A(1),]

"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 1A(2),]

["regulated activities" means activities which can only lawfully be carried on under the authority of a licence granted by the Guernsey Financial Services Commission under the regulatory Laws,]

["regulatory Laws" means –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987,
- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994,
- (c) the Regulation of Fiduciaries, Administration

Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,

(d) the Insurance Business (Bailiwick of Guernsey) Law, 2002,

(e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,]

"**States**" means the States of Guernsey, and

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^c.

(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.

NOTES

In section 12,

the words omitted in the first pair of square brackets in subsection (1) were repealed by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 8(a), with effect from 15th April, 2010, subject to the savings in section 13 of the 2009 Law;²

the definitions of the expressions "Bailiff", "employee", "Office of the Registrar" and "Registrar" in subsection (1) were inserted by the

^c Ordres en Conseil Vol. XXXI, p. 278; amended by Ordinance No. XXIX of 2006.

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Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 8(b), with effect from 15th April, 2010;

the words in square brackets in the definition of the expressions, first, "based in" and, second, "non profit organisation" in subsection (1) were substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008, respectively section 4(b) and section 4(d), with effect from 26th November, 2008;

the definitions of the expressions, first, "manumitted organisation" and, second, "regulated activities" and "regulatory Laws" in subsection (1) was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008, respectively section 4(c) and section 4(e), with effect from 26th November, 2008.

Extent.

13. This Law shall have effect in the islands of Guernsey, Herm and Jethou.

Citation.

14. This Law may be cited as the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

Commencement.

15. (1) Subject to subsection (2), this Law shall come into force on the date of its registration on the records of the Island of Guernsey.

(2) Section 1(5) shall come into force on the expiration of two calendar months after the date referred to in subsection (1).

NOTE

The Law was registered on the Records of the Island of Guernsey on 3rd November, 2008.

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 –

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- (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) A non profit organisation based in –

- [(a) the Island of Guernsey, Herm or Jethou with gross assets and funds of, or over, £10,000 or gross annual income of, or over, £5,000 and which is not a manumitted organisation, must,
- (b) the Island of Guernsey, Herm or Jethou (other than an organisation referred to in item (a) above) or any other Island of the Bailiwick of Guernsey, may,]

apply to the [Registrar] to be placed on the Register, in such form as may be specified by the [Registrar].

(2) 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

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(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.

(3) A non profit organisation not based in the Bailiwick of Guernsey may not be placed on the Register.

(4) The Department may, by regulation, alter the amounts in subparagraph (1)(a) 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 Guernsey

Registered Charity, or

- (b) a non profit organisation that is not a charity, which shall be known as a Guernsey 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) A 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.

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 –

- (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 registered [and manumitted] organisations.

8. (1) Registered [and manumitted] 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) [in the case of a registered organisation,] file annual financial statements with the [Registrar], in such form as may be specified by him, and

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- (c) [in the case of a registered organisation,] 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(2).
- (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 Department may by regulation exempt any, or any class or description of, registered [or manumitted] organisations from complying with any of the obligations of subparagraph (1)(a) or (b) –
- (a) if they have assets, funds or income below a certain amount to be specified in the regulations, or
 - (b) if their assets, funds and income are, except to such extent as may be specified in the regulations, applied or used exclusively within the Bailiwick.
- (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 5 on the uniform scale.

(5) The provisions of this paragraph are without prejudice to the provisions of regulations under section 4 ("regulations as to the keeping of records, etc").

Requests for information.

9. (1) The [Registrar] may by notice in writing require a registered [or manumitted] 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 –
- (a) the [Registrar] has reason to believe that the organisation is not a non profit organisation,
 - (b) the organisation fails to comply with any request for information by the [Registrar],
 - (c) the organisation fails to comply with any obligation or requirement imposed by or under this Law,
 - (d) a person is found guilty of an offence under section 2 in respect of statements made or information or documents produced or furnished for or on behalf of the organisation, or
 - (e) the organisation fails to pay any fee imposed under paragraph 11,

provided in each case that the [Registrar] has given the organisation 2 weeks' notice of his intention to strike it off the Register.

(2) The [Registrar] may publish the fact of an organisation being struck off the Register in such manner as he thinks fit (including, without limitation, by publication in La Gazette Officielle).

Annual fee.

- 11.** 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].

12. (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 or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^d.

- (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.

^d Order of the Royal Court No. IV of 2007.

(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 Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; 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 [...]].

13. (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 –

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- (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 Bailiwick, 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 3 months or to a fine not exceeding level 5 on the uniform scale or to both.]

[Legal professional privilege, liens and duties of confidentiality.]

14. (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.]

NOTES

The Schedule was renumbered as "Schedule 1" by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 9, with effect from 15th April, 2010.

In Schedule 1,

the words "Registrar" and "Registrar's" in square brackets, wherever occurring, were substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 10, with effect from 15th April, 2010, subject to the savings in section 13 of the 2009 Law;

paragraph 1(2)(a), the words in square brackets in paragraph 1(2)(b), and subparagraphs (1)(a) and (1)(b) of paragraph 2 were substituted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008, respectively section 5, section 6 and section 7, with effect from 26th November, 2008;

the words in, first, square brackets in the title to, second, square brackets in subparagraph (1) of, third, the first pairs of square brackets in subparagraphs (1)(b) and (1)(c) of, fourth, square brackets in subparagraph (3) of paragraph 8 and, fifth, the second pair of square brackets in subparagraph (1) of paragraph 9 were inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008, respectively section 8(a), section 8(b), section 8(c), section 8(d) and section 9, with effect from 26th November, 2008;

paragraph 13 and paragraph 14 were inserted by the Charities and

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Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008, section 10, with effect from 26th November, 2008;

the words omitted in the heading to paragraph 13 were repealed, and subparagraph (2)(i) thereof was inserted, by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, respectively section 11(a) and section 11(b), with effect from 15th April, 2010, subject to the savings in section 13 of the 2009 Law.

The following Regulations have been made under Schedule 1:

Charities and Non Profit Organisations (Exemption) Regulations, 2008.

OFFICE OF THE REGISTRAR

Salary or fees of Registrar.

1. The Registrar shall be paid such salary, fees, emoluments and other allowances as the Department may determine.

Appointment of staff.

2. (1) The Registrar may –

(a) subject to the approval of the Department, appoint such officers and employees, and

(b) appoint and instruct such other persons,

on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as he thinks necessary for the exercise of his functions.

(2) The Registrar may, subject to the approval of the Department, establish and maintain such schemes or make such other arrangements as he thinks fit for the payment of pensions and other benefits in respect of his officers and employees.

Delegation of functions.

3. (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 paragraph 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 paragraph 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 paragraph, and of paragraph 4, are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^{da}.

Appointment of Deputy Registrar.

4. (1) Without prejudice to the Registrar's powers under paragraph 3, the Department may, subject to such terms and conditions as it may from time to time think fit, appoint any person as Deputy Registrar with authority to exercise the Registrar's functions during any period in which the Registrar is unavailable or unable to act or during any vacancy in that office.

(2) A function exercised by a Deputy Registrar pursuant to an appointment under this paragraph is for all purposes exercised by the Registrar; and

^{da} Order in Council No. XXI of 1991.

every decision taken or other thing done by a Deputy Registrar pursuant to such an appointment has the same effect as if taken or done by the Registrar.

- (3) An appointment under this paragraph of a Deputy Registrar –
 - (a) may be varied or terminated at any time by the Department, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,
 - (b) does not prevent the exercise of the function by the Registrar while the appointment subsists.

Disclosure of interests.

5. (1) The Registrar shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seised under this Law or any other enactment, disclose the nature of his interest to the Department.

(2) For the purposes of this paragraph, a general notice given by the Registrar to the effect that he is a shareholder in, or a director of, a body corporate, and is to be regarded as interested in any matter concerning that body corporate, is a sufficient disclosure in relation to any such matter.

Proof of documents.

6. (1) In any legal proceedings the provisions of subparagraph (2) apply in relation to any document purporting to be –

- (a) issued by or on behalf of the Registrar, or

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(b) signed by the Registrar, by any of his officers or employees or by any person to whom, pursuant to paragraph 3, 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

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

NOTE

Schedule 2 was inserted by the Charities and Non Profit Organisations (Registration) (Guernsey) (Amendment) Law, 2009, section 12, with effect from 15th April, 2010.

¹ For subsequent amendments, see the consolidated text of the Income Tax (Guernsey) Law, 1975.

² Prior to their repeal, these words were amended by the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (Amendment) (No. 2) Ordinance, 2008, section 4(a), with effect from 26th November, 2008.