

CHARITIES REGISTRATION ACT 1989

(Chapter 11)

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Received Royal Assent: 17 October 1989

Passed: 18 October 1989

GENERAL NOTE: The maximum fines in this Act are as increased by the Criminal Justice (Penalties, Etc.) Act 1993 s 1.

AN ACT

to repeal and replace the Public Charities Act 1922; to make further provision for the regulation of charities; to confer new powers for the investigation of the affairs of charities; and for connected purposes.

Restrictions on use of word 'charity'

1 Restrictions on use of word 'charity' etc

(1) Subject to subsection (3), any institution which in the Island-

(a) takes or uses any name, style, title or description implying or otherwise pretends, that it is a charity; or

(b) holds itself out as a charity,
shall be guilty of an offence.

(2) In the case of a Manx institution subsection (1) shall have effect as if the words 'or elsewhere' appeared after the words 'in the Island'.

(3) An institution shall not be guilty of an offence under subsection (1)-

(a) if it is a registered charity; or

(b) if it is exempted from section 2 by regulations under section 2(3); or

(c) in the case of an institution constituted under the law of the Island, during the 56 days immediately following the date on which it is constituted if it complies with section 2(1) within 28 days of that date.

(4) Any person who is a trustee, director, manager or other similar officer of an institution, or who is the agent of an institution, at the time of a contravention of

subsection (1) shall be guilty of an offence.

(5) Where the affairs of an institution are managed by the members, subsection (4) shall apply in relation to a member in connection with his functions of management as if he were an officer of the institution.

Registration of charitable institutions

2 Charitable institutions to file statements

(1) Every institution which is established for charitable purposes shall file in the General Registry-

(a) a statement in such form as may be prescribed; and

(b) such documents as may be prescribed.

(2) Where there is any change in any of the particulars in such statement or documents, the institution shall, within one month after such change, file in the General Registry-

(a) a statement of change in such form as may be prescribed; and

(b) such documents as may be prescribed.

(3) This section shall not apply to such institutions as may be prescribed.

(4) If a statement or document is not filed in accordance with subsection (1) or (2), the agent, and every trustee, director, manager or other similar officer of the institution shall be guilty of an offence.

3 Refusal of statements

(1) The Chief Registrar may refuse to accept any statement for filing under section 2(1) if he is satisfied that-

(a) the institution is not established for charitable purposes; or

(b) the institution does not have a substantial and genuine connection with the Island; or

(c) the name of the institution is undesirable or misleading.

(2) The power of the Chief Registrar to refuse to accept a statement under subsection (1) shall be exercised by notice in writing served by post within 28 days of receipt of the statement.

(3) For the purposes of subsection (1)(b), and section 4(1)(b) an institution shall not be treated as having a substantial and genuine connection with the Island by reason only of the fact that the institution is a Manx institution.

4 Declarations as to status of registered charities

(1) The High Court may, on the application of the Attorney General, by order declare that a registered charity-

(a) is not an institution established for charitable purposes; or

(b) does not have a substantial and genuine connection with the Island.

(2) Where an order is made under subsection (1), the institution shall cease to be a registered charity from the date of the order.

(3) Where an order is made under subsection (1), the Attorney General shall cause a copy of the order to be filed in the General Registry with the statement filed under section 2(1).

(4) Rules of court may be made to govern the practice and procedure of the High Court in relation to applications under subsection (1).

Accounts and auditors

5 Accounts of registered charities

(1) Every registered charity shall cause its accounts to be made up at least once in each calendar year.

(2) A registered charity to which this subsection applies shall cause the accounts to be audited by an accountant or an approved person.

(3) Subsection (2) applies to a charity whose gross income in the accounting year in question exceeds £100,000.

(4) A registered charity to which this subsection applies shall cause the accounts, at its option, to be either —

(a) audited by an accountant or an approved person, or

(b) examined by an independent person (an "examiner") who —

(i) is an accountant or an approved person, or

(ii) holds a qualification prescribed by regulations under section 11(1)(c).

(5) Subsection (4) applies to a charity whose gross income in the accounting year in question exceeds £5,000 but does not exceed £100,000.

(6) Every registered charity shall, within 6 months of the end of each accounting year, file the accounts for that year in the General Registry, together (in the case of a charity to which subsection (2) or (4) applies) with the report of the auditor or examiner on them.

(7) If the provisions of this section are not complied with, the agent, and every trustee, director, manager or other similar officer, of the charity shall be guilty of an offence.

(8) References in this section to the accounts of a registered charity and the report of the auditor or examiner are to accounts and reports which comply with regulations under section 11(1)(b).

(9) In this section "approved", in relation to any person, means approved by the First Deemster for the purpose of auditing or examining (as the case may be) the accounts of the charity in question; and an approval under this subsection may be revoked at any time.

(10) The Treasury may by order amend subsection (3) or (5) by substituting different amounts for the amounts specified therein (or the amounts for the time being substituted for them by a previous order under this subsection).

(11) No order under this subsection shall come into operation unless it is approved by Tynwald.

[S 5 amended by Audit Act 2006 S 17 (1).]

6 Auditors: supplementary provisions

(1) The auditor of the accounts of a registered charity shall-

(a) have a right of access to all books, accounts and documents relating to the charity;

(b) be entitled to require from any charity trustee, director, manager or other similar officer, past or present, and from any past or present agent, officer or servant of the charity such information and explanation as he thinks necessary for the performance of his duties.

(2) Where the auditor of a registered charity-

(a) is removed, resigns or is not reappointed and there are any circumstances connected with his ceasing to hold office which he considers should be brought to the Attorney General's attention; or

(b) has any information or has formed an opinion on a matter of which he has become aware in his capacity as auditor and which is relevant to any functions of the Attorney General under this Act,

the auditor shall notify the Attorney General of such circumstances, information or opinion, as the case may be.

(3) No duty to which an auditor may be subject shall be regarded as contravened by reason of his notifying the Attorney General of any matter under this Act.

Regulation and inspection

7 Power to require registered charity to abandon misleading name

(1) If, in the opinion of the Attorney General, the name of a registered charity-

- (a) gives a misleading indication as to the nature of its activities; or
- (b) is undesirable,

the Attorney General may, if he is satisfied that it is in the public interest, direct the registered charity to change its name.

(2) A copy of a direction made under subsection (1) shall be served by post on the registered charity concerned.

(3) If the direction is not complied with within a period of 6 weeks or such longer period as may be specified in the direction, the registered charity, its agent and every trustee, director, manager or similar officer of the charity shall be guilty of an offence.

8 Particulars, etc to be furnished to the Attorney General

(1) The Attorney General may require-

(a) a registered charity to furnish him with particulars as to the investment of any moneys belonging to it;

(b) a registered charity to have such investment valued by a valuer to be approved by him;

(c) a registered charity to furnish him with a report by a person to be approved by him, as to the state of repair and condition of any land or buildings belonging to it;

(d) any person having in his possession or control any document relating to a registered charity, without charge-

(i) to furnish him with copies or extracts from any of those documents; or

(ii) to transmit the document itself to him for inspection.

(2) Where a building belongs to a registered charity, the Attorney General may require the registered charity to transmit to him the policy of insurance of that building and the receipts for the current year's premium in respect of it.

(3) Any registered charity or person who fails to comply with a requirement under this section shall be guilty of an offence.

9 General power to institute inquiries

(1) The Attorney General may from time to time institute inquiries with regard to any institution which is, or which purports to be, established for charitable purposes or class of such institutions either generally or for particular purposes.

(2) The Attorney General may either conduct such an inquiry himself or appoint a person to conduct it and make a report to him.

(3) For the purposes of any such inquiry the Attorney General, and a person appointed by him to conduct the inquiry, may require any person (subject to the provisions of this section)-

(a) to furnish accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which he has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to him on any such matter, and to verify any such accounts, statements or answers by statutory declaration;

(b) to attend at a specified time and place and give evidence or produce documents in his custody or control which relate to any matter in question at the inquiry.

(4) For the purposes of any such inquiry evidence may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths, or may instead of administering an oath require the person examined to make and subscribe a declaration of the truth of the matters about which he is examined.

(5) No person claiming to hold any property adversely to an institution which is the subject of an inquiry or freed or discharged from any charitable trust or charge, shall be required under this section to furnish any information or produce any document relating

to that property or any trust or charge alleged to affect it.

(6) Where the Attorney General proposes to take any action in consequence of an inquiry under this section, he may publish the report of the person conducting the inquiry, or such other statement of the results of the inquiry as he thinks fit, in any manner calculated in his opinion to bring it to the attention of persons who may wish to make representations to him about the action to be taken.

(7) If any person fails to comply with a requirement under subsection (3), he shall be guilty of an offence.

(8) If any person wilfully alters, suppresses, conceals or destroys any document which he may be required to produce under this section, he shall be guilty of an offence.

10 Power to act for protection of charities

(1) The High Court may, on the application of the Attorney General, make an order under this section if it is satisfied that-

(a) there has been in the administration of an institution which is, or which purports to be, established for charitable purposes any misconduct or mismanagement;

(b) it is necessary or desirable to act for the purpose of protecting the property of the institution or securing a proper application for the purposes of the institution of that property or of property coming to the institution; or

(c) it is in the public interest.

(2) An order under this section may-

(a) remove or suspend any trustee, director, officer, agent or servant of the institution;

(b) appoint a new trustee or director in lieu of any trustee or director removed under paragraph (a);

(c) require any bank or other person who holds money or securities on behalf of the institution or of any trustee or agent for it not to part with the money or securities without the consent of the Attorney General;

(d) notwithstanding anything in the trusts or constitution of the institution, restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the institution without the approval of the Attorney General.

(3) The references in subsection (1) to misconduct or mismanagement shall (notwithstanding anything in the trusts or constitution of the institution) extend to the expenditure of sums-

(a) for the remuneration, reimbursement or reward of persons-

(i) raising funds for the institution; or

(ii) acting in the affairs of the institution; or

(b) for other promotional or administrative purposes,

where such sums are excessive in relation to the property which is or is likely to be applied or applicable for charitable purposes.

(4) In any proceedings under this section, the report of an inquiry under section 9 shall be admissible as evidence of the documents and facts stated therein.

Miscellaneous matters

11 Public documents

(1) The Deemsters may make such regulations as they consider are necessary or desirable to carry the provisions of this Act into effect and, without prejudice to the generality of that power, may make provision-

(a) requiring the keeping of records with respect to the transactions and financial position of registered charities and for the keeping of records on the Island;

- (b) as to the form and content of the annual accounts of registered charities and of the report of the auditor or examiner on them;
 - (c) prescribing the qualifications of examiners of such accounts;
 - (d) defining the expressions "accounting year" and "gross income" for any purposes of this Act or any other enactment relating to charities.
- (2) Regulations made under this Act shall not come into operation until they are approved by Tynwald.

[S 11 (1)(b) amended by Audit Act 2006 S 17 (2).]

12 False and misleading statements

A person commits an offence if-

- (a) for the purposes of or in connection with any statement or other document filed or to be filed in the General Registry under this Act; or
- (b) in purported compliance with any requirement imposed on him by or under this Act; or
- (c) in any statement or other document filed in the General Registry under this Act,

he furnishes information which he knows to be false or misleading in a material particular or recklessly furnishes information which is false or misleading in a material particular.

13 Review by, and reference to a Deemster

(1) Any person aggrieved by-

- (a) a decision of the Chief Registrar under section 3; or
- (b) a direction of the Attorney General under section 7,

may, within 21 days of the decision or direction, apply to a Deemster for a review of the decision or direction.

(2) A Deemster may annul or confirm, with or without modifications, the decision or direction subject to review.

(3) A review under this section shall be informal and a Deemster may adopt any procedure which he may consider to be convenient and to afford a fair and equal opportunity to the parties involved.

(4) Where a decision under section 3 is subject to review, section 1(3)(c) shall have effect as if the reference in that section to 56 days were construed as a reference to a period ending on the date on which the Deemster annuls or confirms that decision.

(5) Where a direction under section 7 is subject to review, subsection (3) of that section shall have effect as if the reference in that subsection to the period of 6 weeks were construed as a reference to a period of 6 weeks calculated from the date on which the Deemster annuls or confirms that direction.

(6) Without prejudice to subsections (1) to (4), whenever the Chief Registrar entertains a doubt as to any question of law or fact arising from his functions under this Act, he may refer the matter to a Deemster for guidance.

14 Offences: supplementary provisions

(1) Any person who commits an offence under section 1, 8, 9 or 12 shall be liable-

- (a) on summary conviction to a fine not exceeding £5,000 or to a term of imprisonment not exceeding 6 months, or to both;
- (b) on conviction on information to a fine or to a term of imprisonment not exceeding 2 years, or to both.

(2) Any person who commits an offence under section 2, 5 or 7 shall be liable on summary conviction to a fine not exceeding £5,000.

(3) No person shall be prosecuted for an offence under this Act without the consent of the Attorney General.

(4) In any proceedings for an offence under this Act it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

15 Interpretation

(1) In this Act-

'agent' means a person who, in the Island, undertakes any of the following activities on behalf of an institution-

- (a) acting as the principal or only representative of an institution;
- (b) acting as the principal or only organiser of the affairs of an institution;
- (c) accepting documents on behalf of an institution;
- (d) providing post forwarding services for an institution;
- (e) as an occupier of premises, providing registered office or accommodation address facilities for an institution;
- (f) providing an institution with corporate, secretarial or accounting services;

'charitable purposes' and **'charity'** have the meaning given by section 14 of the Charities Act 1962;

'company' means a company formed and registered under the Companies Acts 1931 to 1992, or to which the provisions of those Acts apply as they apply to such a company;

[Definition of 'company' inserted by Companies Act 1992 Sch 5.]

'institution' means any institution, (wherever established) whether corporate or not, and includes any trust or undertaking;

'Manx institution' means an institution which is-

- (a) constituted under the law of the Island;
- (b) resident in the Island;
- (c) administered in the Island;
- (d) registered under Part XI of the Companies Act 1931;

'registered charity' means-

- (a) a charity in respect of which a statement has been filed under section 2(1) and has not been refused under section 3; or
- (b) a charity which, by virtue of section 18(2), falls to be treated as a registered charity,

but excludes any institution in respect of which an order under section 4 has effect.

(2) The Deemsters may, by regulations, extend or restrict the definitions of 'agent' and 'Manx institution' contained in subsection (1).

16 Winding up of charitable companies

Where an institution established for charitable purposes may be wound up by the High Court under the Companies Acts 1931 to 1986, a petition for it to be wound up under those Acts may be presented by the Attorney General as well as by any other person authorised by that Act.

16A Charitable companies: alteration of objects clause

(1) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of-

- (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,
- (b) any property representing income which has accrued before the alteration is made, or
- (c) the income from any such property as aforesaid.

(2) Where a charity is a company, any alteration by it of the objects clause in its memorandum of association is ineffective without the prior written consent of the Attorney General; and it shall deliver a copy of that consent to the registrar of companies under section 5(10)(a) or (b) of the Companies Act 1931 along with the printed copy of the memorandum as altered.

(3) Section 5(12) of that Act (offences) applies in relation to a default in complying with subsection (2) as regards the delivery of a copy of the Attorney General's consent.

[S 16A inserted by Companies Act 1992 Sch 5.]

16B Charitable companies: invalidity of certain transactions

(1) Section 4 of the Companies Act 1986 (validity of acts of company) does not apply to the acts of a company which is a charity except in favour of a person who-

(a) gives full consideration in money or money's worth in relation to the act in question, and

(b) does not know that the act is not permitted by the company's memorandum or section 5(7) of that Act,

or who does not know at the time the act is done that the company is a charity.

(2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company's memorandum or section 5(7) of that Act, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company's act.

(3) In any proceedings arising out of subsection (1) the burden of proving-

(a) that a person knew that an act was not permitted by the company's memorandum or section 5(7) of that Act, or

(b) that a person knew that the company was a charity, lies on the person making that allegation.

[S 16B inserted by Companies Act 1992 Sch 5.]

16C Charitable companies: status to appear on correspondence, etc

(1) Where a company is a charity and its name does not include the word 'charity' or the word 'charitable', the fact that the company is a charity shall be stated in English in legible characters-

(a) in all business letters of the company,

(b) in all its notices and other official publications,

(c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company,

(d) in all conveyances purporting to be executed by the company, and

(e) in all its bills of parcels, invoices, receipts and letters of credit.

(2) In subsection (1)(d) 'conveyance' means any instrument creating, transferring, varying or extinguishing an interest in land.

(3) Section 94(3) and (4) of the Companies Act 1931 (offences in connection with failure to include required particulars in business letters, etc.) apply in relation to a contravention of subsection (1) of this section.

[S 16C inserted by Companies Act 1992 Sch 5.]

17 [Amends section 3 of the Charities Act 1986]

18 Saving and transitional provisions

(1)

[Subs (1) repealed by Statute Law Revision Act 1992 Sch 2.]

(2) All statements, returns and annual accounts filed in the General Registry under any provision of the Public Charities Act 1922 shall be treated as if they were filed under the corresponding provision of this Act.

(3) Any reference to any provision of the Public Charities Act 1922 in any

document relating to a charity established before the commencement of this Act shall be treated as a reference to the corresponding provision of this Act.

(4) Without prejudice to the operation of section 16 of the Interpretation Act 1976 apart from this subsection, any approval under section 4(3)(b) of the Public Charities Act 1922 which is extant immediately before the commencement of this Act shall cease to have effect upon such commencement.

19 Short title and commencement

(1) This Act may be cited as the Charities Registration Act 1989.

(2) This Act shall come into operation on such day as may be appointed by order of the Governor in Council.

[ADO (whole Act) 1/4/1990 (GC85/90).]

Schedule

[Sch repealed by Statute Law Revision Act 1992 Sch 2.]