

# ORDER IN COUNCIL

**XXVI**  
**2008**

ratifying a Projet de Loi

ENTITLED

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

(Registered on the Records of the Island of Guernsey  
on the 28th October, 2008.)



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2008

## ORDER IN COUNCIL



### IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

3<sup>rd</sup> day of November, 2008 before Geoffrey Robert Rowland, Esquire, Bailiff; present:- David Charles Lowe, OBE, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, John Ferguson and Stephen Murray Jones Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 9<sup>th</sup> July 2008 approving and ratifying a Projet de Loi entitled “The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008”, THE COURT, after the reading of the said Order in Council and after having heard Majesty’s Comptroller thereon, ORDERED that the said Order in Council be registered on the records of this Island.



*At the Court at Buckingham Palace*

THE 9th DAY OF JULY 2008

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolution of 27th September 2007, the States of Deliberation at a meeting on 12th March 2008 approved a *Projet de Loi* entitled *The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008* and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction *The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008*, and to order that it shall have force of law in the Islands of Guernsey, Herm and Jethou.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Herm and Jethou and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

*Judith Simpson*

# PROJET DE LOI

ENTITLED

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

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> September, 2007<sup>a</sup>, 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 Administrator of Income Tax ("**the Administrator**") 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 wishing to be registered on the Register shall make an application in accordance with the Schedule.

(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.

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<sup>a</sup> Articles VIII and IX of Billet d'État No. XX of 2007.

(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)(i) of the Schedule is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**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 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 Administrator 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.**

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 organisation, and
- (b) the disclosure and publication of any such record or document, whether by the Administrator 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.

**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,".

**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 14<sup>th</sup> 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.

(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 this Law, 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,

(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 Department 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 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.

**Interpretation.**

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

**"Administrator"** means the Administrator of Income Tax and includes the Assistant Administrator,

**"based in"** a place means established, administered or using business services 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,

**"the Law of 1975"** means the Income Tax (Guernsey) Law, 1975<sup>b</sup>,

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<sup>b</sup> 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; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; the Income Tax (Guernsey) (Amendment) Law, 2007; and (with effect from the 1<sup>st</sup> 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).

**"non profit organisation"** means any organisation established 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,

**"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,

**"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<sup>c</sup>.

(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.

### **Extent.**

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<sup>c</sup> Ordres en Conseil Vol. XXXI, p. 278; amended by Ordinance No. XXIX of 2006.

**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).



## **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 Administrator thinks fit and may, without limitation, be kept in electronic form.

(2) The Administrator shall make arrangements for -

- (a) public inspection of the Register, and
- (b) subject to payment of the fee specified by him, the supply of certified or uncertified copies or extracts of entries in the Register.

(3) A copy, certified by or on behalf of the Administrator 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 Administrator thinks fit.

#### **Application for registration.**

2. (1) A non profit organisation based in -

- (a) the Island of Guernsey, Herm or Jethou –
  - (i) with gross assets and funds of, or over, £10,000 or gross annual income of, or over, £5,000, must,
  - (ii) with gross assets and funds of less than £10,000 and gross annual income of less than £5,000, may,
- (b) any other Island of the Bailiwick of Guernsey, may,

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

- (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
    - (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 Administrator 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 Administrator 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 Administrator 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 Administrator.

(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 Administrator 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 Administrator 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 Administrator 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 Administrator 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 organisations.**

8. (1) Registered 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 Administrator, in such form as may be specified by him, and
- (c) inform the Administrator 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 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 Administrator 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 Administrator'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 Administrator may specify, and
- (b) if so required by the Administrator, the originals of the documents must be made available for inspection by the Administrator 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 Administrator 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 Administrator,
- (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 Administrator has given the organisation 2 weeks' notice of his intention to strike it off the Register.

(2) The Administrator 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 Administrator may, in his discretion, charge an annual fee for registration which shall be paid at such time as the Administrator 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 Administrator.**

**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 Administrator.

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 Administrator 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<sup>d</sup>.

(4) On an appeal under this paragraph the Court may -

- (a) set the decision of the Administrator aside and, if the Court considers it appropriate to do so, remit the matter to the Administrator with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part.

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<sup>d</sup> Order of the Royal Court No. IV of 2007.

(5) On an appeal under this paragraph against a decision of the Administrator 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.

K.H. TOUGH,  
Her Majesty's Greffier.





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