

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE CHARITIES ETC. (GUERNSEY AND ALDERNEY) ORDINANCE, 2021

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Charities etc. (Guernsey and Alderney) Ordinance, 2021", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

This Ordinance is made under the Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009. Its effect is to repeal and replace the legal framework currently in place for the oversight of charities and other non profit organisations (NPOs) under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (the 2008 Law). The purpose of the draft Ordinance is to consolidate and clarify the requirements applicable to charities and other NPOs, and also to make a number of revisions to ensure that the framework is sufficient to protect the public and to enable the jurisdiction to meet international standards for addressing money laundering and terrorist financing.

While the framework under the Ordinance is broadly in line with that under the 2008 Law, it differs from it in the following respects:

- the range of organisations required to be registered has been changed in two respects, in order to bring compulsory registration more in line with the risks that are considered to be presented by the sector. First, the exemption under the 2008 Law applicable to organisations administered by parties licensed by the Guernsey Financial Services Commission has been removed. Second, the financial thresholds for compulsory registration have been raised. Voluntary registration by organisations that no longer meet these thresholds will however still be possible,
- the meaning of charity has been clarified by introducing a charitable purposes test,
- persons who do not meet a "fit and proper test" (who have, for example, been convicted of criminal offences or disqualified from acting as a company

director) are prohibited from running a charity or other NPO unless the Registrar directs otherwise,

- the scope of the information that must be provided by charities and NPOs has been expanded, and a reporting obligation has been introduced in relation to payments made abroad (subject to certain risk-based exemptions such as where a payment is made to an affiliated organisation in the UK or another Crown Dependency), and
- the information gathering and sanctioning powers of the Registrar have been brought in line with the powers that exist under other registration regimes (e.g. the registration of beneficial ownership), to enable compliance with the framework to be properly overseen and, where necessary, enforced.

There are also regulation making powers in the Ordinance which may be used to introduce further requirements (e.g. in relation to governance measures) or to provide for exemptions from the obligations under the Ordinance.

The Ordinance also makes a number of consequential amendments to other enactments.

The Charities etc. (Guernsey and Alderney) Ordinance, 2021

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The Charities etc. (Guernsey and Alderney) Ordinance, 2021

THE STATES, in pursuance of their Resolution of the 15th January, 2020^a, and in exercise of the powers conferred on them by sections 1, 2, 3 and 4 of the Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009^b, and all other powers enabling them in that behalf, hereby order:-

PART I

OFFICE OF THE REGISTRAR

Office of Registrar of Charities etc.

1. (1) There is established the Office of the Registrar of Charities and other Non Profit Organisations ("**the Office of the Registrar**").

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

(3) The Registrar shall be appointed by the Committee.

(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 Committee may from time to time think fit, and

^a Article III of Billet d'État No. I of 2020.

^b Order in Council No. V of 2010; as amended by Ordinance No. IX of 2016.

(c) without prejudice to any other powers of variation or termination conferred on the Committee under any other enactment, may be varied or terminated at any time by the Committee, 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 appointment to the office, exercise the functions assigned or transferred to the Registrar by or under this Ordinance and any other enactment, or by Resolution of the States.

(6) For the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^c -

(a) the Office of the Registrar is a public office, and

(b) the Registrar is an office holder.

(7) The provisions of Schedule 1 have effect in respect of the Office of the Registrar.

Register of Charities etc.

2. (1) The Registrar shall establish, keep and maintain a register of charities and other non profit organisations to be called the Register of Charities and other Non Profit Organisations ("**the Register**") in accordance with Schedule 2.

^c Ordres en Conseil Vol. XXXIII, p. 478; as amended by Ordinance No. XXXIII of 2003; and No. IX of 2016.

(2) The Registrar shall enter charities and other non profit organisations on the Register in accordance with Part III.

(3) A charity or other non profit organisation that is registered on the Register in accordance with Part III is a registered organisation for the purposes of this Ordinance.

Functions of the Registrar etc.

3. (1) The functions of the Registrar are –
- (a) to establish and maintain the Register, and ensure its security and confidentiality, in accordance with Schedule 2,
 - (b) to ensure the accuracy of information relating to registered organisations,
 - (c) to monitor and enforce the compliance of registered organisations and other relevant entities with provisions of or under this Ordinance and the provisions of any other enactment relating to relevant entities in Guernsey or Alderney,
 - (d) to advise the Committee and other authorities within the Bailiwick in relation to the nature and activities of registered organisations, relevant entities or of any charities or other non profit organisations that may be linked to Guernsey or Alderney, and the extent to

which such nature or activities affect or are likely to affect the Bailiwick, including but not limited to exposing the Bailiwick to the risks of -

- (i) money laundering,
 - (ii) bribery and corruption,
 - (iii) the financing of terrorism,
 - (iv) the financing of the proliferation of weapons of mass destruction, or
 - (v) any other form of financial or non-financial crime,
- (e) to advise the Committee generally in relation to the administration and enforcement of provisions of or under this Ordinance and the practices and procedures relating thereto,
- (f) to administer the Office of the Registrar,
- (g) to determine –
- (i) the fees payable under regulations made under section 46,
 - (ii) the interest payable in the event of default in

the payment of fees, and

(iii) the classes or descriptions of person by whom such fees and interest are to be payable, and

(h) to exercise, subject to the terms and conditions of the appointment of the Registrar, such other functions as may be assigned or transferred to the Registrar -

(i) under this Ordinance and any other enactment, or

(ii) by Resolution of the States.

(2) Paragraph 2(5) of Schedule 2 has effect in relation to the persons who may disclose information to the Registrar.

Ancillary powers of the Registrar etc.

4. (1) The Registrar, having regard to the provisions of section 3, has power to do anything that appears to the Registrar to be necessary or expedient for the purposes of or in connection with the exercise of the Registrar's functions, including, without limitation, power -

(a) to request and obtain information and enter premises in accordance with the provisions of Schedule 3,

(b) to prepare and, subject to any provision to the contrary in this Ordinance or any other enactment, to publish

information, reports, forms, codes of practice, guidance, recommendations and other documents,

- (c) to appoint any person to provide advice in relation to the exercise of any of the functions of the Registrar, and
- (d) to apply to the Court for directions under section 7.

(2) For the purposes of exercising the functions of the Registrar, and having regard to the provisions of section 3, the Registrar may -

- (a) acquire, lease, use, dispose of, exchange or otherwise deal with any moveable or immoveable 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.

(4) Paragraph 7 of Schedule 3 has effect in relation to the power of the Bailiff to grant a warrant in relation to a request or requirement for information by the Registrar under paragraphs 1 or 6 of that Schedule.

Reports.

5. (1) The Registrar shall, whenever directed by the Committee, and without prejudice to any powers to prepare and publish independent reports, submit to the Committee a report on the exercise of the Registrar's functions in such

form and in respect of such matters and periods as the Committee may (subject to any provision to the contrary in this Ordinance or any other enactment) specify in writing.

(2) The Committee -

- (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 its own report to the States on the exercise of functions by the Registrar.

Financial and accounting provisions.

6. (1) All fees and penalties received by the Registrar in the exercise of the functions of the office shall be paid by the Registrar to the Committee for the general revenue of the States.

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

(3) The Registrar shall -

- (a) keep proper accounts and proper records in relation to those accounts, and
- (b) submit to the Committee whenever the Committee 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 Committee, submit to the Committee, in respect of such period as the Committee may specify in writing, 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 Committee.

Power to apply for directions.

7. (1) The Registrar may, if of the belief that it would assist in the proper and lawful exercise of the functions of the Registrar, 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 the 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^d ("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.

PART II
RELEVANT ENTITIES

Meaning of "relevant entity".

8. In this Ordinance, "**relevant entity**" has the meaning given in the 2009 Law, that is -

- (a) a charity or other non profit organisation that is based in Guernsey or Alderney, and
- (b) a charity or other non profit organisation is based in Guernsey or Alderney if it is established, administered, controlled in or operating from either Guernsey or Alderney.

Meaning of "charity".

9. (1) In this Ordinance, "**charity**" has the meaning given in the 2009 Law, that is, any –

^d Ordres en Conseil Vol. XVIII, p. 315; as amended by Ordres en Conseil Vol. XXIII, p. 188; Order in Council No. III of 2012; Ordinance No. XXXIII of 2003; No. XIII of 2017; Alderney Ordinance No. VIII of 2018; and Sark Ordinance No. II of 2020.

- (a) organisation that meets the conditions at subsections (2) and (3), or
- (b) person falling within subsection (4).

(2) The first condition is that all of the purposes of the organisation are –

- (a) charitable purposes, or
- (b) purposes that are purely ancillary or incidental to any of its charitable purposes.

(3) The second condition is that the organisation provides or intends to provide benefit for the public or a section of the public in Guernsey, Alderney or elsewhere to a reasonable degree in giving effect to its purposes.

(4) A person falls within this subsection if the person has been entrusted with a property or fund that is not a relevant entity and the income from that property or fund -

- (a) is applicable only to purposes that are charitable purposes or purposes that are purely ancillary or incidental to any of those charitable purposes, and
- (b) provides or is intended to provide benefit for the public or a section of the public in Guernsey, Alderney or elsewhere to a reasonable degree.

(5) Organisations that constitute other non profit organisations for the purposes of this Ordinance are any organisations other than charities that come within the definition of non profit organisation within the 2009 Law, that is to say, any organisations established solely or principally either for the non-financial benefit of their members or for the benefit of society and , without limitation, includes any organisations established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works.

(6) For the avoidance of doubt, only a relevant entity that meets the conditions at subsections (2) and (3) or that comes within subsection (4) is a Guernsey Registered Charity for the purposes of the Income Tax (Guernsey) Law, 1975^e.

PART III REGISTRATION

Application to register.

10. (1) A relevant entity that comes within subsection (3) must apply to the Registrar to be placed on the Register subject to the provisions of any regulations made under section 14.

(2) A relevant entity that does not come within subsection (3), or which is exempt from the requirement to register in accordance with regulations under section 14, may apply to the Registrar to be placed on the Register.

(3) A relevant entity comes within this subsection if –

^e Ordres en Conseil Vol. XXV, p.124; as amended.

- (a) it has -
 - (i) gross assets and funds of, or over, £100,000, or
 - (ii) a gross annual income of, or over, £20,000, or
- (b) its activities involve raising or distributing assets outside the Bailiwick, other than distributions of assets that -
 - (i) comprise expenditure incidental to the activities of the relevant entity, or
 - (ii) are *de minimis*.

(4) For the avoidance of doubt, a charity or other non profit organisation that is not based in Guernsey or Alderney may not be placed on the Register.

Contents of application.

11. (1) An application for registration shall be made in such form and manner as may be specified by the Registrar and shall contain the details set out in Schedule 5 and any other details that may be specified by the Registrar.

(2) The identification duties imposed on relevant entities and other parties under Schedule 6 apply for the purposes of an application under this section.

Annual validation

12. (1) In each calendar year before the last day of February, every relevant entity that was a registered organisation as at the 1st December in the previous calendar year must complete and deliver to the Registrar an annual validation containing information current on the 31st December in that previous year.

(2) An annual validation shall be in such form and manner, and shall contain such information, as may be specified by the Registrar.

(3) The identification duties imposed on relevant entities and other parties under Schedule 6 apply for the purposes of completing and submitting an annual validation.

Refusal of registration.

13. (1) If, on receipt of an application for registration the Registrar –
- (a) is not satisfied that the subject of the application ("**the subject**") is a charity or other non profit organisation,
 - (b) is not satisfied that the subject is based in Guernsey or Alderney,
 - (c) considers that the application contains no, or insufficient, information about any of the matters set out in Schedule 5,
 - (d) considers that the proposed name of the subject could be misleading as to the subject's purpose,

- (e) considers that the control and governance of the subject or its assets is unlikely to be adequate,
- (f) considers that a person who owns, controls or directs the activities of the subject is prohibited from acting as such under section 15,
- (g) considers that any of the persons owning, controlling or directing the activities of the subject are unlikely to ensure that the obligations applicable to the subject under this Ordinance are met, or
- (h) otherwise considers that it would not be in the public interest to register the subject,

the Registrar may refuse the application for registration.

(2) Before determining an application for registration, the Registrar may require the subject or any person acting on behalf of the subject to provide further information or clarification including, without limitation, documentary proof of any of the facts stated in the application.

Regulations as to the application of the obligation to register.

14. (1) The Committee may, after consultation with the Registrar, by regulation –

- (a) amend or substitute section 10(3) to change the descriptions of relevant entity falling within that subsection for which registration is compulsory, and

- (b) exempt particular relevant entities within those descriptions from the requirement to register under section 10(1).

Prohibition on ownership etc. of registered organisations.

15. (1) Subject to subsections (2) to (4), a person who -
- (a) has been convicted of a criminal offence, whether in the Bailiwick or elsewhere,
 - (b) is the subject of a disqualification order made under any of the following enactments –
 - (i) the Guernsey Companies Law 1994,
 - (ii) the Alderney Companies Law,
 - (iii) the Guernsey Companies Law 2008,
 - (iv) the Foundations Law, or
 - (v) the Limited Liability Partnerships Law,
 - (c) is disqualified, by reason of misconduct or unfitness, from acting as a director or similar managing official under the law of a country or territory outside Guernsey or Alderney, or

(d) is a minor,

may not own, control or direct the activities of a registered organisation.

(2) Subsection (1)(a) does not apply to convictions that are spent within the meaning of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002^f.

(3) The Registrar may decide to disapply subsection (1)(a) in the case of any person, upon the application of that person or a third party.

(4) A person ("P") who is subject to a disqualification under subsection (1)(c) may make an application to the Court for an order that, subject to such terms and conditions as the Court may direct, the prohibition or restrictions under that disqualification shall not apply to P for the purposes of this section, on the same grounds and subject to the same considerations, where relevant, as would apply under sections 137(2A) and 137(2B) of the Guernsey Companies Law 2008 if the application had been made in respect of acting as director under that Law.

(5) A registered organisation and its officers shall take all reasonable care to ensure that none of its functions in relation to the carrying on of any activities of the registered organisation is performed by a person who is disqualified from performing that function under subsection (1).

^f Order in Council No. XIV of 2002; as amended by Order in Council No. XVI of 2009; No. IX of 2019; Ordinance No. XXVI of 2010; and No. XXXIX of 2015.

(6) A person who without reasonable excuse owns, controls or directs the activities of a registered organisation in contravention of this section is guilty of an offence and liable to a civil penalty.

PART IV

DUTIES OF REGISTERED ORGANISATIONS

Financial records and statements.

16. (1) Subject to any applicable exemption in regulations made under section 20, 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 its assets, funds and income, and
- (b) file annual financial statements with the Registrar in such form and manner as the Registrar may specify in writing.

(2) The records referred to in subsection (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 assets, funds and income of the registered organisation have been applied or used in a manner

consistent with its purposes, objectives and objects stated in the Register and in any constitutional documents.

(3) The provisions of this section are without prejudice to the provisions of regulations under section 17.

Regulations as to governance etc. of registered organisations.

17. (1) The Committee may, after consultation with the Registrar, by regulation make such provision as it sees fit in relation to the governance measures that must be applied by registered organisations, including but not limited to measures relating to –

- (a) constitutional documents,
- (b) the identification of donors and beneficiaries of the registered organisation where necessary to mitigate the risks referred to in section 3(1)(d), and any other matters relevant to mitigating those risks,
- (c) the making, maintenance, keeping and retention of any records and any other documents, and the disclosure and publication of any such record or document by any person,
- (d) financial probity and transparency, including auditing or similar measures, and
- (e) standards of ethical conduct.

(2) Subject to section 50(5), regulations under subsection (1) may make provision for the application of offences or other enforcement measures under Part V to registered organisations who fail to comply with the regulations.

Reporting of payments.

18. (1) Subject to subsection (2) and to any applicable exemption in regulations made under section 20, a registered organisation must inform the Registrar as soon as reasonably possible of any payments it makes to any party outside the Bailiwick of Guernsey that meet or exceed the specified amount.

(2) Subsection (1) does not apply to payments that -

- (a) are made to an organisation in the United Kingdom, Jersey or the Isle of Man to which the relevant organisation is affiliated, or
- (b) comprise expenditure incidental to the activities of the registered organisation.

(3) For the purposes of subsection (1), the specified amount means such amount as the Committee may prescribe by regulations.

(4) Information required to be provided to the Registrar under this section shall be of such nature and in such form as may be specified by the Registrar.

Notification of changes etc.

19. (1) Subject to subsection (4), a registered organisation must notify the Registrar of any change to any of the matters required to be stated in the application for registration, whether under Schedule 5 or as otherwise specified by the Registrar.

(2) A notification under this section must be made within 21 days of -

(a) the change occurring, or

(b) the date on which the registered organisation could reasonably be expected to be aware that the change had occurred, if later than the date on which the change occurred.

(3) Where a change for the purposes of this section comprises a criminal conviction in respect of any person, that person must notify the Registrar of that conviction within 21 days of the date of the conviction.

(4) Subsection (1) does not apply in respect of a conviction that has been notified to the Registrar under subsection (3).

(5) The identification duties imposed on relevant entities and other parties under Schedule 6 apply for the purposes of notifications under this section.

Regulations as to the application of requirements etc.

20. The Committee may, after consultation with the Registrar, by regulation -

- (a) amend section 18(2) to change the categories of payment that are exempt from the reporting obligation under section 18,
- (b) amend, or provide for exemptions from the obligation in section 16 on registered organisations to maintain records and file annual financial statements, and
- (c) exempt any particular registered organisation, whether or not within section 10(3), from any of the duties of registered organisations under this Part.

PART V
ENFORCEMENT

Failure to be registered.

21. (1) Where a relevant entity within section 10(3) is, without reasonable excuse, not registered on the Register -

- (a) the relevant entity is -
 - (i) guilty of an offence, and
 - (ii) liable to a civil penalty, and
- (b) any person who owns, directs or controls the activities of the relevant entity including (without limitation) any of its directors, officers or trustees, is liable to a civil penalty.

(2) Subsection (1) is subject to any exemption in regulations made under section 14.

(3) For the avoidance of doubt, relevant entities that are not registered on the Register for the purposes of this section include relevant entities whose applications for registration have been refused under section 13 or which have been struck off by the Registrar under section 30 except -

(a) in the case of a refusal of an application for registration, where it is on the grounds set out at sections 13(1)(a) or (b), or

(b) where the period for instituting an appeal against the refusal under section 42 has not yet expired or, where the decision is the subject of an appeal under that section, until that appeal and any further appeal is withdrawn or finally determined.

Failure to submit annual validation.

22. (1) Where a registered organisation fails, without reasonable excuse, to submit an annual validation as required under section 12 -

(a) the registered organisation is -

(i) liable to a civil penalty, and

(ii) liable to be struck off under section 30(b), and

- (b) any person who owns, directs or controls the activities of the registered organisation including (without limitation) any of its directors, officers or trustees, is liable to a civil penalty.

(2) Section 22(1) does not apply where a registered organisation has made an application for removal from the Register under section 41 before the date by which the annual validation was due and -

- (a) a determination of that application has not yet been made, or
- (b) where the period for instituting an appeal against the decision under section 42 has not yet expired or, where the decision on the application is the subject of an appeal under that section, until that appeal and any further appeal is withdrawn or finally determined.

(3) For the avoidance of doubt, section 22(1) does not apply to a relevant entity that has been removed from the Register in the calendar year preceding the date by which the annual validation was due.

Failure to comply with duties.

23. (1) Where a registered organisation fails, without reasonable excuse, to comply with any of the duties applicable to it under Part IV or Schedule 6-

- (a) the registered organisation is -

(i) guilty of an offence, and

(ii) liable to a civil penalty, and

(b) any person who owns, directs or controls the activities of the registered organisation including (without limitation) any of its directors, officers or trustees, is liable to a civil penalty.

(2) A person who without reasonable excuse fails to comply with the obligation to report a criminal conviction under section 19(3) is guilty of an offence and is liable to a civil penalty.

Failure to provide information etc. and tipping off.

24. (1) Any person who, without reasonable excuse, obstructs or fails to comply with a request or requirement of a person exercising or purporting to exercise any power conferred under Schedule 3 of this Ordinance is guilty of an offence and liable to a civil penalty.

(2) A person ("P") is guilty of an offence if a notice is served on P under Schedule 3 and P discloses to any person information or any other matter which may prejudice -

(a) any criminal or regulatory investigation which is being or may be carried out, whether in the Bailiwick or elsewhere, or

(b) any criminal or regulatory proceedings which have been or may be initiated, whether in the Bailiwick or

elsewhere,

which are connected with the service of that notice.

(3) Nothing in subsection (2) makes it an offence for an Advocate or other legal adviser to disclose any information or other matter -

(a) to, or to a representative of, a client of that Advocate or legal adviser in connection with the giving of legal advice to the client, or

(b) to any person -

(i) in contemplation of or in connection with legal proceedings, and

(ii) for the purpose of those proceedings.

(4) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(5) In proceedings against P for an offence under subsection (2), it is a defence to prove that P did not know or suspect that the disclosure might be prejudicial in the way mentioned in subsection (2).

(6) A person who without reasonable excuse fails to comply with

(a) a notice served on that person under paragraph 1 of Schedule 6, or

- (b) a duty under paragraphs 2 or 3 of Schedule 6, is liable to a civil penalty.

Provision of false or misleading information.

25. If a person -

- (a) in connection with an application for registration, an annual validation or an application for removal from the Register under this Ordinance,
- (b) in purported compliance with a request for information or any other requirement imposed under this Ordinance, or
- (c) otherwise than as mentioned in paragraphs (a) and (b) but in circumstances in which the person intends, or could reasonably be expected to know, that the statement, or information provided by the person would or might be used by the Registrar for the purpose of exercising the functions conferred by or under this Ordinance,

does any of the following –

- (i) makes a statement which the person 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 which the person 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 which is false, deceptive or misleading in a material particular,

that person is guilty of an offence and liable to a civil penalty.

Criminal penalties.

26. (1) A person guilty of an offence under this Ordinance is liable -
- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 6 months, or to both, and
 - (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years, or to both.

(2) In deciding whether a person is guilty of an offence under this Ordinance the court must consider whether the person followed any relevant codes of practice, guidance, recommendations or other documents which were at the time concerned -

- (a) made or issued by the Registrar under this Ordinance or any other enactment, and
- (b) published in a manner approved by the Registrar as appropriate in the opinion of the Registrar to bring the codes of practice, guidance, recommendations or other documents to the attention of persons likely to be affected by them.

Criminal liability of officers etc.

27. (1) Where an offence under this Ordinance (except, in the case of a registered organisation, for an offence under sections 21 or 23) is committed by a body corporate, limited partnership with legal personality or foundation 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 body corporate, any director, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or

- (d) any person purporting to act in any capacity described in paragraphs (a) to (c),

that person, as well as the body corporate, limited partnership or foundation 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 that member's functions of management as if that member were a director.

(3) In this section -

"foundation" means -

- (a) a foundation created under the Foundations Law, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (however named),

"foundation official" means -

- (a) in relation to a foundation created under the Foundations Law, a foundation official within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a

person with functions corresponding to those of a foundation official described in paragraph (a) of this definition, and

"general partner" means -

(a) in relation to a limited partnership falling within paragraph (a) of the definition in this section of **"limited partnership"**, a general partner within the meaning of the Limited Partnerships Law, and

(b) in relation to a limited partnership falling within paragraph (b) of the definition in this section of **"limited partnership"**, a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition.

(4) In this section and in section 28 **"limited partnership"** means -

(a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships Law, or

(b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which -

- (i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and
- (ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality.

Criminal proceedings against unincorporated bodies.

28. (1) Where an offence under this Ordinance, except for an offence under section 21 or 23, is committed by an unincorporated body 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 (not being a limited partnership with legal personality or a limited liability partnership), any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of

which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or

- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction for an offence under this Ordinance must be paid from the funds of the body.

(4) In this section "**limited liability partnership**" means -

- (a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships Law, or
- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a limited liability partnership described in paragraph (a).

Enforcement Powers of the Registrar.

29. (1) The Registrar may impose an applicable sanction in accordance with the provisions of this Part and with Schedule 7.

(2) The Committee may, after consultation with the Registrar, by regulation make such provision as it sees fit in relation to preventive measures, including but not limited to the application of conditions to registration and the suspension of transactions that may be imposed by the Registrar if considered by the Registrar to be necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre.

(3) Subject to section 50(5), regulations under subsection (2) may make provision for the application of offences or other enforcement measures under Part V to registered organisations who fail to comply with the regulations.

Strike off.

30. The Registrar may strike a registered organisation off the Register at any time if –

- (a) the Registrar has reason to believe that any of the matters that would justify refusing an application for registration under section 13 apply in relation to the registered organisation,
- (b) the registered organisation fails to submit an annual validation within the period specified in section 12(1),
- (c) the registered organisation fails to comply with any request for information from the Registrar,

- (d) a person is found guilty of an offence under section 25 in respect of statements made or information produced or furnished for or on behalf of the registered organisation,
- (e) the registered organisation fails to pay any fee imposed under section 46,
- (f) there has been a failure by a registered organisation or any person who owns, directs or controls the activities of a registered organisation, including (without limitation) a director, officer or trustee, to comply with the obligation to pay an administrative penalty or civil penalty imposed under this Ordinance, or
- (g) the registered organisation fails to comply with any other duty imposed under this Ordinance.

Civil penalties.

31. (1) Where the Registrar is satisfied that any relevant entity or other person is liable to a civil penalty under this Ordinance, the Registrar may impose on that relevant entity or other person a financial penalty in respect of the conduct that gave rise to the liability to a civil penalty of such amount as considered appropriate and proportionate by the Registrar, but not exceeding £20,000, or such other amount as the States may prescribe by Ordinance.

(2) Any financial penalty imposed under this section is payable to the States and is recoverable as a civil debt.

Private reprimands.

32. (1) Where the Registrar considers that, having regard to the conduct of a registered organisation or a person who owns, controls or directs the activities of a registered organisation, it is appropriate to do so, the Registrar may issue a private reprimand to the registered organisation.

(2) The Registrar may not publish a private reprimand without the consent of the registered organisation.

(3) A private reprimand issued under subsection (1) may be taken into account by the Registrar in considering any matter under this Ordinance concerning the registered organisation.

Public statements.

33. (1) Where in the opinion of the Registrar a relevant entity or a person who owns, controls or directs the activities of a relevant entity has contravened in a material particular -

- (a) a provision of this Ordinance, or
- (b) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed under this Ordinance,

the Registrar may publish, in such manner and for such period as may be determined by the Registrar, a statement to that effect.

(2) The statement may contain such information in respect of any relevant entity or person named therein, and such ancillary, incidental and supplementary information, as the Registrar may determine.

(3) If at any time it appears to the Registrar that a statement published under this section or any information contained in it is or has become misleading, inaccurate or incomplete, or that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre to do so, the Registrar shall make such addition, erasure or other alteration to the statement or content thereof as the Registrar considers necessary.

(4) A statement published under subsection (1) may be taken into account by the Registrar in considering any matter under this Ordinance concerning the relevant entity or other person in question.

Disqualification orders.

34. (1) Where the Registrar considers that a person who owns, controls or directs the activities of a relevant entity has contravened in a material particular –

- (a) a provision of this Ordinance, or
- (b) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

the Registrar may make and subsequently renew, on one or more occasions, an order (a "**disqualification order**") disqualifying that person from owning, controlling or

directing the activities of a registered organisation.

(2) A person who performs or agrees to perform any function in contravention of a disqualification order is guilty of an offence and liable to a civil penalty.

(3) A registered organisation and its officers shall take all reasonable care to ensure that none of its functions in relation to the carrying on of any business of the registered organisation is performed by a person who is disqualified from performing that function by a disqualification order.

(4) A disqualification order and any renewal thereof -

(a) shall have effect for such period (which may be indefinite), and

(b) may contain such ancillary, incidental and supplementary terms and conditions,

as shall be specified in it.

Imposition of applicable sanctions.

35. In deciding whether or not to impose an applicable sanction (and, where relevant, the amount or terms thereof), the Registrar must take into consideration the following factors -

(a) in the case of a contravention of or under any provisions of this Ordinance -

- (i) whether the contravention was brought to the attention of the Registrar by the relevant entity or other person concerned, as the case may be,
 - (ii) the seriousness of the contravention, and
 - (iii) the efforts, if any, that have been made to rectify the contravention and to prevent a recurrence,
- (b) the potential financial consequences to the relevant entity or other person concerned, and to third parties including customers and creditors of that relevant entity or other person, of imposing an applicable sanction,
- (c) the action taken by the Registrar in relation to applicable sanctions in other cases, and
- (d) any other matter the Registrar considers relevant.

Notification.

36. (1) Where the Registrar decides to impose an applicable sanction, he or she must issue to the relevant entity or other person, as the case may be, notice of that decision.

(2) A notice under this section must include a statement of the right to appeal under section 42.

Effect of applicable sanctions.

37. (1) Subject to subsections (2) and (3), a decision of the Registrar to impose an applicable sanction does not have effect until -

- (a) 28 days immediately following the date of the notice of the decision issued under section 36, or
- (b) if an appeal to the Court is instituted within that period under section 42, the final determination, or withdrawal, of that appeal,

and for the purposes of this subsection, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

(2) Subsection 1 does not apply to a decision to impose a private reprimand.

(3) Where the Registrar is of the view that it is necessary or desirable to do so -

- (a) in the interests of the public, or
- (b) in the interests of the reputation of the Bailiwick as a financial centre,

the Registrar may apply to the Ordinary Court ("**the Court**") for an order under this subsection directing that the Registrar's decision to impose an applicable sanction should, without prejudice to any appeal in respect of the decision under section 42,

have immediate effect; and the Court may make an order under this subsection subject to such terms and conditions as it thinks just.

(4) An application by the Registrar for an order under subsection (2) may, with the approval of the Court, and subject to such terms and conditions as the Court may direct, be made ex parte.

Publication of applicable sanctions.

38. (1) Subject to section 32(2) and subsection (2), where an applicable sanction has effect under section 37, the Registrar may publish, in such manner and for such period as the Registrar may determine -

- (a) the name of the relevant entity or other person concerned as the case may be,
- (b) the nature of the applicable sanction imposed and, where relevant, the amount or terms thereof,
- (c) such information in respect of -
 - (i) any relevant entity or other person named therein, and
 - (ii) such ancillary, incidental and supplementary information, as the Registrar may determine.

(2) Where the Registrar makes a decision to strike off a registered organisation under section 30, the Registrar may publish that decision in such a manner and for such period as the Registrar may determine, notwithstanding that

the decision may not have effect when the notice is published.

Relationship of civil penalties with prosecutions etc.

39. (1) A person is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after the civil penalty has been paid, the Registrar shall repay the civil penalty to the person who has paid it.

(3) Subject to subsection (1), the application of one power, sanction or remedy provided for by or under this Ordinance is without prejudice to the application of any other such power, sanction or remedy.

Interpretation of Part V.

40. In this Part, "**applicable sanction**" means -

- (a) a civil penalty under section 31,
- (b) a private reprimand under section 32,
- (c) a public statement under section 33,
- (d) an administrative penalty under Schedule 7,
- (e) in the case of a registered organisation, the striking off of that registered organisation under section 30, or
- (f) in the case of a person who owns, directs or controls the activities of a relevant entity, a disqualification

order under section 34.

PART VI
MISCELLANEOUS

Application for removal from Register.

41. (1) A registered organisation may apply to the Registrar at any time, in such form and manner as may be specified in writing by the Registrar, to be removed from the Register on the grounds that –

- (a) in the case of a registered organisation that is registered under section 10(1), there has been a change in circumstances with the result that the registered organisation is no longer obliged to be registered under section 10(1) and does not wish to be registered under section 10(2), or
- (b) in the case of a registered organisation that is registered under section 10(2), the registered organisation no longer wishes to be so registered and there has been no change in circumstances so as to oblige the registered organisation to be registered section 10(1).

(2) On receiving an application under this section, the Registrar shall remove the registered entity from the Register if satisfied that the registered organisation in question is not subject to the obligation to register under section 10(1).

(3) The removal of a registered organisation from the Register under subsection (2) may be of immediate effect or may be at such later date, and subject to such conditions, as the Registrar considers necessary for the protection of third parties or otherwise to be in the public interest.

(4) Before determining an application under this section, the Registrar may require the registered organisation or any person acting on behalf of the registered organisation to provide further information or clarification including, without limitation, documentary proof of any of the facts stated in the application.

(5) Where a registered organisation has been, or will be, removed from the Register under this section, the Registrar may publish that fact and such other matters as the Registrar considers necessary for the protection of third parties or otherwise to be in the public interest, in such manner and for such period as the Registrar may determine.

Appeals.

42. (1) A person aggrieved by a decision of the Registrar made under this Ordinance may appeal to the Court against that decision on the grounds 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.

(2) An appeal under this section shall be instituted -

(a) within a period of 28 days immediately following the date on which notice in writing of the decision was served by the Registrar on the person to whom the decision relates (or such other period as the Court may in any particular case direct), and

(b) by summons served on the Registrar stating the grounds and material facts on which the appellant relies.

(3) The Registrar may, where an appeal under this section 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 Registrar's 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,

and the provisions of this subsection are without prejudice to the inherent powers of

the Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007⁸.

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

(5) On an appeal under this section the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

(6) An appeal from a decision of the Court made under the provisions of this Ordinance lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961 ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(8) Save as provided for under section 37 and subject to subsection (5), the making of an appeal under this section does not suspend the

⁸ O.R.C. No. IV of 2007; amended by No. II of 2008; No. IV of 2009.

effect of that decision.

Service of documents.

43. (1) Any notice or document other than a summons to be served under or for the purposes of provisions of or under this Ordinance may be served on

-

- (a) an individual ("A"), by being delivered to A, or by being left at, or sent by post or transmitted to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,
- (b) a legal person with a registered office in Guernsey, by being left at, or sent by post or transmitted to, that office, or by being transmitted to its relevant electronic address,
- (c) a legal person without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere, or by being transmitted to its relevant electronic address,
- (d) an unincorporated body -
 - (i) by being served on any partner, member of the committee or other similar governing body,

manager, director or other similar officer thereof in accordance with paragraph (a), or

(ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere, or by being transmitted to its relevant electronic address,

(e) the Registrar, by being left at, or sent by post or transmitted to, the Registrar's offices.

(2) If service of a notice or document cannot, after reasonable enquiry, be effected in accordance with subsection (1), the notice or document may be served by being published -

(a) in such manner and for such period as determined by the Registrar, or

(b) in La Gazette Officielle (or, where service is required to be effected in Alderney, in the Alderney Official Gazette) on two occasions falling in successive weeks.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service.

(4) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of the provisions of this Ordinance to have been received -

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.

(5) For the purposes of provisions of or under this Ordinance, service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(6) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be served on the Registrar under or for the purposes of the provisions of this Ordinance shall be deemed to have been served until it is received.

Exclusion of liability, etc.

44. (1) No liability is incurred by -

(a) the Registrar,

(b) any person to whom a function under this Ordinance has been delegated under paragraph 3 of Schedule 1

or under the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991,

(c) any person appointed as Deputy Registrar under paragraph 4 of Schedule 1, or

(d) any officer or servant of the Registrar or of the States,

in respect of anything done or omitted to be done after the commencement of this Ordinance in the discharge or purported discharge of their functions under this Ordinance, unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not apply so as to prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^h.

(3) A requirement or power under this Ordinance to provide any information 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.

(4) Nothing in this Ordinance authorises -

(a) a disclosure in contravention of any provisions of the

^h Order in Council No. XIV of 2000; as amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; and G.S.I. No. 27 of 2006.

Data Protection (Bailiwick of Guernsey) Law, 2017ⁱ of personal data which are not exempt from those provisions, or

- (b) a disclosure which is prohibited by Part I of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003^j.

(5) Nothing in this Ordinance compels the production or divulgence by an Advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^k), but an Advocate or other legal adviser may be required to give the name and address of any client.

Guidance etc.

45. (1) The Registrar may issue such guidance, or revisions to the same, as he or she thinks necessary for the purposes of this Ordinance and other enactments making provision in respect of relevant entities.

(2) The Registrar may issue standard forms as a means of specifying in writing the form and manner in which an applicant must make an

ⁱ Order in Council No. VI of 2018; as amended by Order in Council No. IV of 2018; Ordinance No. X of 2018; No. VIII of 2018; and G.S.I. No. 21 of 2018.

^j Order in Council No. XXX of 2003; as amended by Ordinance No. XXXIII of 2003; No. XXIX of 2013; No. IX of 2016; No. III of 2017; No. XVII of 2018; No. XXVI of 2018; and G.S.I. No. 26 of 2004.

^k Order in Council No. XXIII of 2003; as amended by Order in Council No. XVI of 2009; No. XV of 2011; Ordinance No. XXXIII of 2003; No. XXIX of 2001; No. XXXIX of 2015; No. IX of 2016; and No. XXVI of 2018.

application or a person is required to file an annual statement, report a payment or provide information to the Registrar under this Ordinance.

Fees.

46. (1) The Registrar, after consultation with the Committee, may make regulations which prescribe -

- (a) the fees payable (whether generally or in any particular case) in respect of the exercise of any of the Registrar's functions,
- (b) the interest payable in the event of default in the due payment of fees, and
- (c) the persons by whom such fees are payable.

(2) The Registrar may refuse to exercise the functions of the Registrar in any particular case if the fees payable have not been paid.

Power to amend this Ordinance by regulations.

47. (1) The Committee may by regulation amend section 12 and Schedules, 1, 2, 5 and 7, after consultation with the Registrar.

(2) The provisions of this section are without prejudice to any other provision of this Ordinance conferring power to amend this Ordinance or to make regulations, and vice-versa.

Power of Committee to make certain consequential amendments to other enactments by regulations.

48. (1) The Committee may by regulation amend any enactment having effect in Guernsey or Alderney in order to –

- (a) amend definitions in that enactment of the terms "charity", "charitable purposes", and "non profit organisation",
- (b) insert into that enactment definitions of the terms referred to in paragraph (a), and
- (c) make other amendments to that enactment consequential on an amendment or insertion made under paragraph (a) or (b).

Regulations made by the Registrar.

49. (1) Without prejudice to any other power to make regulations under this Ordinance or to the Registrar's functions under section 3(1)(h), the Registrar may make such regulations as the Registrar considers fit in relation to the practice and procedure of the Office of the Registrar and in relation to the exercise of the Registrar's functions.

(2) The Registrar must consult with and obtain the approval of the Committee before making the regulations.

General provisions as to subordinate legislation.

50. (1) Regulations made by the Committee or the Registrar under this Ordinance 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.

(2) Regulations under this Ordinance applying to Alderney shall cease to have effect in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove their application to Alderney.

(3) If the States of Alderney resolve to disapprove the application of regulations in accordance with the provisions of this section, the regulations cease to have effect in Alderney but without prejudice to -

- (a) anything done under the regulations in Alderney, or
- (b) the making of new regulations having effect in Alderney.

(4) In this section, "**approval date**" means the date of the making of the regulations in question by the Committee.

(5) The power to amend this Ordinance by the making of regulations 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 Magistrates' Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008^l, or

- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

Interpretation.

51. In this Ordinance, unless the context otherwise requires -

"**the 2008 Law**" means the Charities and Non profit Organisations (Registration) (Guernsey) Law, 2008^m,

"**the 2009 Law**" means the Charities and Non Profit Organisations (Enabling Provisions) (Guernsey and Alderney) Law, 2009,

"**administrative penalty**": see Schedule 7,

"**Alderney Beneficial Ownership Law**" means the Beneficial Ownership of Legal Persons (Alderney) Law, 2017ⁿ,

^l Order in Council No. XVIII of 2009; as amended by Ordinance No. XXII of 2009; and No. IX of 2016.

^m Order in Council No. XXVI of 2008; as amended by Order in Council No. III of 2010; No. VIII of 2011; Ordinance No. XXXVI of 2008; No. XLIX of 2008; No. XXIX of 2010; No. VI of 2015; No. IX of 2016; and No. XXVII of 2018.

ⁿ Order in Council No. VII of 2017; as amended by Alderney Ordinance No. X of 2017; and Ordinance No. XXVII of 2018.

"**Alderney Company**" means a company incorporated under the Alderney Companies Law,

"**the Alderney Companies Law**" means the Companies (Alderney) Law, 1994^o,

"**Alderney Gambling Control Commission**" means the body established by section 1 of the Gambling (Alderney) Law, 1999^P,

"**applicable sanction**": see section 40,

"**Bailiff**": see paragraph 7 of Schedule 3,

"**charity**": see section 9(1),

"**charitable purposes**": see Schedule 4,

"**civil penalty**": see section 31,

"**the Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of

^o Ordres en Conseil Vol. XXXV(2), p. 777; as amended by Order in Council No. I of 2001; No. XV of 2002; No. XIII of 2010; No. XIX of 2012; No. VII of 2017; Ordinance No. III of 1995; No. V of 1995; No. I of 1996; No. II of 1997; No. XXXIII of 2003; No. XI of 2007; No. XVII of 2008; No. VII of 2009; No. VI of 2009; No. XIV of 2010; No. I of 2011; No. XV of 2011; No. VIII of 2012; No. XVI of 2013; No. IX of 2016; Alderney Ordinance No. V of 2017; No. XXVII of 2018; and G.S.I. No. 90 of 2018.

^P Order in Council No. XIV of 1999; as amended by No. I of 2000; No. XXVII of 2001; No. IX of 2018; No. X of 2018; Alderney Ordinance No. XVI of 2003; No. VII of 2006; and No. I of 2018.

Guernsey) Law, 1987^q,

"**the Committee**" means the States Policy & Resources Committee,

"**conduct**" includes acts, omissions and statements,

"**the Court**" means the Royal Court sitting as an Ordinary Court,

"**the Data Protection Authority**" means the Data Protection Authority established by the Data Protection (Bailiwick of Guernsey) Law, 2017^r,

"**Director of the Revenue Service**" means the Director referred to in section 205 of the Income Tax (Guernsey) Law, 1975, and includes the Deputy Director,

"**Financial Intelligence Service**" has the same meaning as in the Disclosure (Bailiwick of Guernsey) Law, 2007^s,

"**foundation**" has the same meaning as in the Foundations Law,

^q Ordres en Conseil Vol. XXX, p. 243; there are amendments not relevant to this Ordinance.

^r Order in Council No. VI of 2018; No. IV of 2018; Ordinance No. X of 2018; No. VIII of 2018; and G.S.I. No. 21 of 2018. there are amendments not relevant to this Ordinance.

^s Order in Council No. XVI of 2007; the definition of "financial intelligence service" in section 17(1) was inserted by Ordinance No. XIX of 2010; there are other amendments not relevant to this Ordinance.

"**the Foundations Law**" means the Foundations (Guernsey) Law, 2012^t,

"**Guernsey**" includes Herm and Jethou,

"**Guernsey Beneficial Ownership Law**" means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017^u,

"**the Guernsey Companies Law 1994**" means the Companies (Guernsey) Law, 1994^v,

"**the Guernsey Companies Law 2008**" means the Companies (Guernsey) Law, 2008^w,

"**Guernsey legal person**" means –

- (a) a company incorporated under the Guernsey Companies Law 2008,
- (b) a foundation incorporated under the Foundations Law,

^t Order in Council No. I of 2013; amended by No. VI of 2017; Ordinance No. IX of 2016; and No. XXVII of 2018.

^u Order in Council No. VI of 2017; amended by Ordinance No. XXVIII of 2017 and No. XXVII of 2018.

^v Order in Council No. XXXIII of 1994.

^w Order in Council No. VIII of 2008; as amended.

(c) a limited liability partnership incorporated under the Limited Liability Partnerships Law, and

(d) a limited partnership with legal personality incorporated under the Limited Partnerships Law,

"identification duties": see Schedule 6,

"information" includes documents,

"the Limited Liability Partnerships Law" means the Limited Liability Partnerships (Guernsey) Law, 2013^x,

"the Limited Partnerships Law" means the Limited Partnerships (Guernsey) Law, 1995^y,

"the minimum retention period" means –

(a) a period of at least 5 years starting from the date of the dissolution or termination of the registered organisation in question, or

(b) such longer period as the Registrar may direct,

^x Order in Council No. VI of 2014; amended by No. VI of 2017; Ordinance No. XII of 2015; No. IX of 2016; and No. XXVII of 2018.

^y Ordres en Conseil Vol XXXVI, p. 264; amended by Order in Council No. V of 1996; No. IV of 2001; No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; No. IX of 2016; and G.S.I. No. 89 of 2008; G.S.I. No. 51 of 2016; and G.S.I. No. 69 of 2016.

"the Office of the Registrar": see section 1(1),

"organisation" has the meaning in the 2009 Law, that is to say, it includes a body of persons (corporate or unincorporate), a trust, any other legal entity and any equivalent or similar structure or arrangement,

"other non profit organisation": see section 9(5),

"the Overseas Aid Commission" means the body responsible for distributing funds voted by the States for aid and development overseas,

"person whose identification details are required": see Schedule 6,

"the Register": see section 2(1),

"the Registrar": see section 1(2),

"registered organisation": see section 2(3),

"relevant entity": see section 8,

"the Social Investment Fund" means the company incorporated by the States to provide support and guidance to charitable organisations and others, 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^z.

Repeals and consequential amendments.

52. (1) The 2008 Law is repealed.

(2) The States may by Ordinance amend or repeal the Charities and Non profit Organisation (Investigatory Powers) (Bailiwick of Guernsey) Law, 2008^{aa}, insofar as it applies to Guernsey or Alderney.

(3) Schedule 8 (Consequential Amendments) has effect.

Citation and commencement.

53. (1) This Ordinance may be cited as the Charities etc. (Guernsey and Alderney) Ordinance, 2021.

(2) This Ordinance shall come into force on the date appointed by regulations made by the Committee, and without prejudice to section 50, regulations made under this section may appoint different days for different provisions of this Ordinance and for different purposes.

Transitional provisions.

54. The Committee may by regulation make any transitional, savings or consequential provisions it thinks fit in connection with the commencement of any provision of this Ordinance.

^z Ordres en Conseil Vol. XXXI, p.78, amended by No. XVIII of 2009; No. IV of 2018; Recueil d'Ordonnances XXV, Ordinance No. XXII of 1998; No. XXIX of 2006; No. XXIX of 2013.

^{aa} Order in Council No. IV of 2010; amended by Ordinance No. VII of 2009; No. IX of 2016; and No. XXVII of 2018.

SCHEDULE 1

Section 1(7)

OFFICE OF THE REGISTRAR

Salary or fees of Registrar.

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

Appointment of staff.

2. (1) The Registrar may -
- (a) subject to the approval of the Committee, 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 the Registrar deems necessary for the exercise of the functions of the Registrar.

(2) The Registrar may, subject to the approval of the Committee, establish and maintain such schemes or make such other arrangements as the Registrar deems fit for the payment of pensions and other benefits in respect of such 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 functions of the Registrar to be exercised on behalf of the Registrar 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, and

(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.

Appointment of Deputy Registrar.

4. (1) Without prejudice to the Registrar's powers under paragraph 3, the Committee 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 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 Committee, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment, and

(b) does not prevent the exercise of the function by the Registrar while the appointment subsists.

Disclosure of interests.

5. (1) Where the Registrar has any direct or indirect personal interest in the outcome of any matter of which the Registrar is seized under this Ordinance or any other enactment, the Registrar shall disclose the nature of that interest to the Committee.

(2) For the purposes of this paragraph, a general notice given by the Registrar to the effect that the Registrar 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
 - (b) signed by the Registrar, by any officers or employees of the Registrar, or by any person to whom, pursuant to paragraph 3 or under the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991, authority has been delegated 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 identity, signature or official capacity, and
 - (c) is evidence of the matters stated therein.

SCHEDULE 2

Section 2(1), 3 and 4

REGISTER OF CHARITIES ETC.

Register of Charities.

1. (1) The Registrar shall establish the Register which 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 in writing by the Registrar, the supply of certified or uncertified copies or extracts of entries in that part of the Register.

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

(4) There shall be entered in the Register –

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

(5) Subject to subparagraphs (2) to (4), the Registrar shall take all reasonable steps to ensure the confidentiality and security of the Register and of information kept on the Register, and of other information disclosed to the Registrar under this Ordinance or under any other enactment, and (subject to paragraphs 2 and 3) shall not disclose to any other person the Register or any part of it, or information obtained by or disclosed to the Registrar -

- (a) under this Ordinance or any other enactment, or
- (b) in connection with the carrying out of any of the functions of the Registrar.

Disclosure of information by the Registrar.

2. (1) Subject to paragraph 1, information obtained by the Registrar -

- (a) under this Ordinance or any other enactment, or
- (b) in connection with the carrying out of any of the Registrar's functions,

may be disclosed if the disclosure is -

- (i) of information which at the time of the disclosure is or has already been made available to the public from other sources, including (for the avoidance of doubt) information on the Register that is available for public inspection,
- (ii) of 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,
- (iii) to enable the discharge of the Registrar's functions (including, where the Registrar considers it necessary to seek advice relating to the exercise of those functions from a qualified person on any matter of law, accountancy or valuation or other matter requiring the exercise of professional skill, for the purpose of ensuring that the qualified person is properly informed on all matters on which that person's advice is sought),
- (iv) in connection with any proceedings under this Ordinance,
- (v) to comply with an order of a court, or
- (vi) for any purposes set out in subparagraph (2).

- (2) The purposes are any of the following –
- (a) the prevention, detection, investigation or prosecution of criminal conduct, whether in the Bailiwick or elsewhere,
 - (b) the prevention, detection, investigation or sanctioning of conduct for which penalties other than criminal penalties are provided under the law of the Bailiwick or of any country or territory outside the Bailiwick,
 - (c) the conduct of any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007^{bb}, or any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law,
 - (d) the implementation of, compliance with or enforcement of international sanctions measures within the Bailiwick,
 - (e) the prevention, detection or investigation of contraventions of international sanctions measures

^{bb} Order in Council No. XVII of 2008; amended by Order in Council No. XIII of 2010; No. XVI of 2012; Ordinance No. XXX of 2008; No. VII of 2009; No. XX of 2015; No. IX of 2016; No. XXVI of 2018; and No. XXVII of 2018.

that have been given effect within the Bailiwick,

- (f) assisting or enabling the Financial Intelligence Service to carry out its functions,
- (g) assisting or enabling the carrying out of functions by Her Majesty's Procureur,
- (h) assisting or enabling the Commission to carry out its functions,
- (i) assisting or enabling the carrying out of functions by the Director of the Revenue Service,
- (j) assisting or enabling any person or body within the Bailiwick, whose functions include any of the matters set out at items (d) and (e), to carry out those functions,
- (k) assisting or enabling the Alderney Gambling Control Commission to carry out its functions,
- (l) assisting or enabling an authority exercising, in a place outside the islands of Guernsey or Alderney, functions equivalent to those of the Registrar under this Ordinance to carry out those functions,
- (m) assisting or enabling any of the Registrars to carry out their functions,

- (n) assisting or enabling the Data Protection Authority to carry out its functions,
 - (o) assisting or enabling any person or body in another country or territory, with similar functions to those set out at items (d) and (e), to carry out those functions,
 - (p) assisting or enabling any person with functions relating to the Overseas Aid Commission to carry out those functions,
 - (q) assisting or enabling any person with functions relating to the Social Investment Fund to carry out those functions, and
 - (r) assessing, or assisting another authority within the Bailiwick to assess, the risks referred to at section 3(1)(d).
- (3) For the purposes of subparagraph (2)(m), the Registrars are -
- (a) the Registrar of Beneficial Ownership of Legal Persons under the Guernsey Beneficial Ownership Law,
 - (b) the Registrar of Companies under the Guernsey Companies Law 2008,

- (c) the Registrar of Foundations under the Foundations Law,
- (d) the Registrar of Limited Liability Partnerships under the Limited Liability Partnerships Law,
- (e) the Greffier,
- (f) the Registrar for the purposes of the Alderney Beneficial Ownership Law, and
- (g) the Registrar for the purposes of the Alderney Companies Law.

(4) The list of purposes at subparagraph (2) may be substituted or amended by regulations made by the Committee.

(5) Any person to whom information may be disclosed for a purpose within subparagraph (2) may disclose information to the Registrar for the purposes of –

- (a) ensuring that the Registrar is properly informed on all matters in respect of which information from the Registrar is being requested or provided, or
- (b) enabling the carrying out of the Registrar's functions.

(6) Nothing in this paragraph prejudices any power to disclose which exists apart from this paragraph.

Rectification of the Register.

3. (1) The Registrar may with absolute discretion and on such terms and conditions as the Registrar deems fit -

- (a) on an application by or on behalf of a registered organisation,
- (b) on an application by or on behalf of any other person, or
- (c) of the Registrar's own motion,

rectify any error or formal defect in the Register.

(2) Where the Registrar rectifies the Register in respect of a registered organisation, notice shall be given by the Registrar of that rectification to that registered organisation.

(3) Except where the Registrar directs otherwise, the effect of rectification of the Register is that the error or defect in question shall be deemed never to have been made.

Retention of information on the Register after dissolution, etc.

4. In the case of a registered organisation that has been dissolved, terminated or struck off, the Registrar shall retain information relating to that registered organisation at the date of its dissolution, termination or striking off (as the case may be) for the minimum retention period after that date.

SCHEDULE 3

Section 4

INFORMATION ETC. POWERS

Power of Registrar to request and obtain information.

1. (1) The Registrar may, by notice in writing served on any person, require that person to provide the Registrar in such form and manner, at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as may reasonably be required by the Registrar for the performance of the Registrar's functions.

(2) The Registrar may, by notice in writing served on any person -

(a) require that person to produce, in such form and manner, within such time and at such place as may be specified in the notice, such information of such description as may be so specified, for the purposes of the Registrar inspecting them,

(b) require that person to furnish, to any of the Registrar's officers, servants or agents authorised for the purposes of this paragraph, on production of evidence of such authority, such information or information of such description as may be specified in the notice or as the officer, servant or agent may otherwise specify, either forthwith or within such time, and at such place, and in such form and manner, as may be so specified, for the purposes of their inspecting them,

being information reasonably required by the Registrar for the performance of the Registrar's functions.

(3) Where under subparagraph (2) the Registrar or any officer, servant or agent thereof has power to require the production of any information from a person, the Registrar or that officer, servant or agent has the like power to require the production of that information from any person who appears to be in possession of it.

(4) The powers conferred by this paragraph to require a person to produce any information comprised in documents include the power -

- (a) if the documents are produced, to take copies of them or extracts from them, in circumstances where the Registrar is satisfied that the taking of such copies or extracts is necessary for the proper exercise by the Registrar of the functions of the Registrar under this Ordinance, and
- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of that person's knowledge and belief, where they are.

(5) The powers conferred by this paragraph to require a person to provide any information include power to require that person to attend at such time and place as may be required and to give an explanation of and to answer questions relating to any matters in relation to which the production of the information may be required.

Site visits with notice and with agreement.

2. (1) The Registrar may, at such times, intervals and places as the Registrar deems fit, and –

- (a) with a view to the performance of the Registrar's statutory functions, or
- (b) if it is considered desirable to do so by the Registrar for the protection of the interests of the public or any class thereof, or any particular persons, or the reputation of the Bailiwick as a finance centre,

make arrangements with any relevant entity for the making, in such manner and for such purposes as may be mutually agreed, of site visits to the offices of the relevant entity or any associated party thereof (or any person acting for or on behalf of the relevant entity or associated party) for the purpose of ascertaining whether or not the entity or associated party is complying with the provisions of this Ordinance or any Ordinance, regulation, guidance, condition or direction made under it.

(2) Site visits may take place at any or all of the premises where the activities of the relevant entity are conducted or records are maintained by the relevant entity or associated party and are not limited to premises in Guernsey or Alderney.

(3) Where a relevant entity or associated party fails to co-operate with the Registrar when exercising or attempting to exercise functions for the purposes of this section (whether by declining to reach agreement as to the making, timing or scope of a site visit, or by failing to provide any information or document

or to answer any question, or otherwise), that failure may be taken into account by the Registrar in deciding whether and in what manner to exercise statutory functions arising otherwise than under this section.

Site visits with notice and without agreement.

3. The Registrar may on request, and with 48 hours' notice given before 4 p.m. on a business day, enter any premises in Guernsey or Alderney owned, leased or otherwise controlled or occupied by a relevant entity.

Site visits without notice and where suspicion of documents being removed etc.

4. If the Registrar has grounds to suspect that a site visit made under paragraphs 2 or 3 would result in any documents being removed, tampered with, falsified or destroyed, the Registrar may enter any premises in Guernsey or Alderney owned, leased or otherwise controlled or occupied by a relevant entity on request but without notice.

Use of the right of entry in paragraphs 3 and 4.

5. Except in cases of urgency the right of entry conferred by paragraphs 3 and 4 may only be exercised between 9.00a.m. and 4.00p.m. on a business day.

Request for information during site visits.

6. (1) If the Registrar exercises the right of entry under paragraphs 2, 3 or 4, the Registrar may require the officers, servants or agents of the relevant organisation -

- (a) to produce for examination (whether at the premises of the relevant entity or at the offices of the Registrar) any documents held by them,

- (b) to produce copies of any documents in a legible form for the Registrar to take away,
- (c) to answer questions for the purpose of verifying compliance with this Ordinance.

Power of Bailiff to grant a warrant.

7. (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting -

- (a) that a request or requirement under paragraphs 1 or 6 has not been complied with,
- (b) that any information or document furnished pursuant to such a request or requirement is false, misleading, inaccurate or incomplete,
- (c) that if such a request or requirement were made -
 - (i) it would not be complied with,
 - (ii) any documents to which it would relate would be removed, tampered with, falsified or destroyed, or
 - (iii) the making of the request or requirement or any attempt to enforce it might significantly prejudice any inquiry to which the request or requirement would relate,

the Bailiff may grant a warrant.

(2) A warrant under this section authorises any police officer, together with any other person named or described in the warrant (including, without limitation, the Registrar or any person authorised by the Registrar under paragraph 10) -

- (a) to enter any premises specified in the warrant using such force as may be reasonably necessary,
- (b) to search the premises and, in relation to any documents or other information appearing to be relevant for the purpose of establishing whether a relevant entity or associated party thereof has complied with any of the provisions of or under this Ordinance, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,
- (c) to take copies of or extracts from any such documents or other information,
- (d) to require any person named in, or of a class or description specified in, the warrant -
 - (i) to answer any questions relevant to establishing whether a relevant entity or associated party thereof has complied with any of the provisions

of or under this Ordinance,

- (ii) to state to the best of that person's knowledge and belief the whereabouts of any documents or other information described in item (b),
- (iii) to make an explanation of any such documents or other information.

(3) A warrant under this section ceases to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any documents or other information of which possession is taken under the powers conferred by a warrant under this paragraph may be retained -

- (a) for a period of 4 months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or
- (b) if within that period proceedings to which the documents or other information are relevant are commenced against any person, until the conclusion of those proceedings.

(5) Where a warrant is to be executed in Alderney, references to the Bailiff in this paragraph include the Chairman of the Court of Alderney or, the Chairman is unavailable, a Jurat thereof.

Use of statements

8. A statement made by a person ("P") under paragraphs 1(5), 6(1)(c) or 7(2)(d) -

(a) may be used in evidence against P in proceedings other than criminal proceedings, and

(b) may not be used in evidence against P in criminal proceedings except -

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for -

(A) an offence under section 25,

(B) some other offence where, in giving evidence, P makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.

Lien

9. Where a person claims a lien on a document, its production pursuant to a request under this Schedule or by or under a warrant granted under paragraph 7 is without prejudice to that person's lien.

Exercise of the Registrar's powers.

10. The Registrar's powers under this Schedule may also be exercised by any person who has been authorised by the Registrar to do so.

SCHEDULE 4

Section 51

CHARITABLE PURPOSES

Charitable purposes.

1. For the purposes of this Ordinance, charitable purposes are any of the following–

- (a) the prevention or relief of poverty,
- (b) the advancement of education,
- (c) the advancement of religion,
- (d) the advancement of health,
- (e) the saving of lives,
- (f) the advancement of citizenship or community development,
- (g) the advancement of the arts, heritage, culture or science,
- (h) the advancement of public participation in sport,
- (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for

whom the facilities or activities are primarily intended,

- (j) the advancement of human rights, conflict resolution or reconciliation,
- (k) the promotion of religious or racial harmony.
- (l) the promotion of equality and diversity,
- (m) the advancement of environmental protection or improvement,
- (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage,
- (o) the advancement of animal welfare, and
- (p) any other purpose that may reasonably be regarded as analogous to any of the purposes listed in subparagraphs (a) to (o).

Interpretation and application etc. of paragraph 1.

2. In paragraph 1 –

- (a) in item (d), "the advancement of health" includes the prevention or relief of sickness, disease or human suffering,

- (b) item (f) includes –
 - (i) rural or urban regeneration, and
 - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of registered charities,
- (c) in item (h), "sport" means sport that involves physical skill or exertion,
- (d) item (i) applies only in relation to recreational facilities or recreational activities that are –
 - (i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or
 - (ii) available to members of the public at large or to male or female members of the public at large,
- (e) item (n) includes relief given by the provision of accommodation or care,
- (f) item (p) includes, without limitation, the advancement of any philosophical belief (whether or

not involving belief in a god) as analogous to the purpose set out in item (c).

Power to add to charitable purposes by regulation.

3. (1) The Committee may (after consultation with the Registrar) by regulation –

- (a) add items to paragraph 1, and
- (b) add items to paragraph 2 making interpretation, application or other explanatory provision in relation to any purposes added to paragraph 1.

(2) The power in subparagraph (1) does not include power –

- (a) to amend or restrict the effect of any of paragraphs 1(a) to (p) and 2(a) to (f), or
- (b) to alter the effect of paragraph 4.

4. The purpose of advancing a political party or promoting a candidate for election to any office, whether in Guernsey or Alderney or elsewhere, is neither a charitable purpose nor a purpose ancillary or incidental to a charitable purpose, irrespective of whether it would otherwise fall within paragraph 1.

SCHEDULE 5

Section 11

APPLICATION FOR REGISTRATION

1. An application for registration shall contain the following -
 - (a) where the relevant entity is a Guernsey legal person, a statement of that fact,
 - (b) where the relevant entity is an Alderney company, a statement of that fact,
 - (c) where the relevant entity is not a Guernsey legal person or an Alderney company, the full names of the persons who own, direct or control the activities of the relevant entity including (without limitation) its directors, officers or trustees and, for each of those persons -
 - (i) in the case of an individual, that individual's -
 - (A) name,
 - (B) nationality (including, where an individual holds more than one nationality, each nationality held),
 - (C) date of birth, and

- (D) principal residential address,
- (ii) subject to paragraph 2, in the case of a legal person or legal arrangement -
 - (A) its registered office or anything similar under the legislation of the country or territory of incorporation or establishment or (if it has no such office) its principal place of business,
 - (B) details about the directors, officers or trustees of that legal person or legal arrangement, and
 - (C) details about the beneficial owners of that legal person or legal arrangement within the meaning of paragraph 22 of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^{cc},

^{cc} Ordres en Conseil, Vol. XXXIX, p.137; amended by Order in Council No. I of 2000; No. II of 2005; No. XV of 2007; No. XIII of 2010; No. XI of 2011; Ordinance No. XXVIII of 1999; No. XII of 2002; No. XXXIII of 2003; No. XLVII of 2007; No. XXXVII of 2008; No. XVI of 2010; No. XXXIV of 2010; No. XVII of 2014; No. IX of 2016; No. XVIII of 2017; No. XLIV of 2018; No. XLIX of 2019; G.S.I. No. 56 of 1999; G.S.I. No. 4 of 2002; G.S.I. No. 27 of 2002; G.S.I. No. 33 of 2007; G.S.I. No. 48 of 2008; G.S.I. No. 73 of 2008; G.S.I. No. 12 of 2010; G.S.I. No. 14 of 2013; and G.S.I. No. 45 of 2016.

- (d) a contact address within the Bailiwick at which all communications from the Registrar may be served, and a contact email address,
- (e) details of the purposes, objectives and objects of the organisation,
- (f) details of the manner in which the assets, funds and income of the organisation are applied or used, and
- (g) details of any criminal conviction, whether in the Bailiwick or elsewhere, on the part of any person who owns, directs or controls the activities of the relevant entity.

2. Where a legal person or legal arrangement that owns, directs or controls the activities of a relevant entity -

- (a) comes within the definition of regulated person within the meaning of the Guernsey Beneficial Ownership Law,
- (b) is a Guernsey legal person, or
- (c) is an Alderney company,

the only information about that legal person or legal arrangement that has to be included in an application for registration is a statement of the fact that the legal person or legal arrangement comes within item (a), (b), or (c), as the case may be.

SCHEDULE 6

Sections 11, 12 and 19

IDENTIFICATION DUTIES

Duty of relevant entity to obtain information in respect of owners etc.

1. (1) A relevant entity (other than one to which paragraph 1(a) or (b) of Schedule 5 applies) must -

- (a) before making an application for registration under section 10, and
- (b) if registered under section 10, for as long it remains a registered organisation,

take reasonable steps to ascertain the identity of any person whose identification details are required.

(2) Subject to subparagraph 3, if a relevant entity that comes within subparagraph 1 has reasonable grounds to believe that a person is or may be a person whose identification details are required in relation to it, the relevant entity must serve a notice on the person requiring the person -

- (a) to state whether they are a person whose identification details are required in relation to the relevant entity, and

- (b) if so, to confirm or correct any identification details of theirs that are included in the notice, and to supply any that are missing.

(3) A relevant entity is not under a duty to serve a notice under subparagraph 2 if –

- (a) the relevant organisation has already been informed that the person is a person whose identification details are required in relation to the relevant entity, and
- (b) that information was provided either by that person or with their knowledge.

(4) A relevant entity that comes within paragraph 1 may also serve a notice on a person under this paragraph if it has reasonable cause to believe that the person knows the identity of any person whose identification details are required in relation to the relevant entity, or knows the identity of someone likely to have that knowledge.

(5) A notice under paragraph 4 must require the addressee –

- (a) to state whether or not the addressee knows the identity of –
 - (i) any person whose identification details are required in relation to the relevant entity, or
 - (ii) any person likely to have that knowledge, and

- (b) if so, to supply any identification details of a person within (a) that are within the addressee's knowledge, and state whether or not those details are being supplied with the knowledge of the each of the persons concerned.

(6) A notice under this paragraph must state that the addressee is to comply with the notice by no later than the end of a period of one month beginning with the date of the notice.

(7) In this paragraph, a reference to knowing the identity of a person includes knowing information from which that person can be identified.

Duty of owners etc., to provide information.

- 2. (1) This paragraph applies to a person if –
 - (a) that person is a person whose identification details are required in relation to a relevant entity,
 - (b) the relevant entity is not aware that subparagraph (a) applies in respect of that person,
 - (c) that person knows, or ought reasonably to know, (a) and (b) to be the case, and
 - (d) that person has not been served with a notice by the relevant entity under paragraph 1.

(2) Within 21 days of this section applying to the person, the person must –

- (a) notify the relevant entity of their status as a person whose identification details are required in relation to the relevant entity,
- (b) state the date on which, to the best of that persons' knowledge, the person acquired that status, and
- (c) serve on the relevant entity their identification details.

Duty of owners etc. to update information.

3. (1) This paragraph applies to a person if –

- (a) that person is a person whose identification details are required in relation to a relevant entity,
- (b) the details held by the relevant entity in respect of that person are incorrect,
- (c) that person knows, or ought reasonably to know, (a) and (b) to be the case, and
- (d) that person has not been served with a notice by the relevant entity under paragraph 1.

(2) Within 21 days of this paragraph applying to the person, the person must –

- (a) notify the relevant entity that the identification details it holds in respect of that person are incorrect,
- (b) state the date on which , to the best of that person's knowledge, the identification details held by the relevant entity in respect of that person became incorrect, and
- (c) serve on the relevant entity any information required to correct the identification details held by the relevant entity in respect of that person.

Meaning of identification details etc.

4. For the purposes of this Schedule,

- (a) a person whose identification details are required is any person that comes within paragraph 1(c) of Schedule 5, and
- (b) identification details are the details required in respect of a person under paragraph 1(c)(i) or (ii), as the case may be.

SCHEDULE 7

Sections 29 and 51

ADMINISTRATIVE PENALTIES

1. The Registrar may impose the penalties specified in the Penalties Table below which shall be payable to the Registrar by a relevant entity upon or in relation to the event, circumstance or matter specified in the Penalties Table.

2. Where the penalty refers to a period of a month or more, the amount of the fine shall be cumulative and it shall be calculated in accordance with paragraph 3.

PENALTIES TABLE	
Event, circumstance or matter	Penalty
Failure to register in accordance with section 10	£2,000
Failure to submit annual validation in accordance with section 12	£250 per calendar month
Failure to file annual financial statements in accordance with section 16	£250 per calendar month
Failure to respond to request for information made under paragraph 3 of Schedule 2	£250 per calendar month

3. A financial penalty imposed in accordance with paragraph 1 is payable in respect of each month between the date by which the relevant entity should have submitted an annual validation, filed annual financial statements or (as the case may be) responded to the request for information and the date when it in fact did so ("**the period of default**").

4. In this Schedule "**month**" -
 - (a) includes part of a month, and
 - (b) means a calendar month calculated from the beginning of the first day of the period of default (and for the avoidance of doubt if a month starts at the end of a month of the calendar which contains more days than the next month of the calendar, the month expires at the end of the next month of the calendar).
5. Any penalty imposed under this section is recoverable as a civil debt.

SCHEDULE 8

Section 52(3)

CONSEQUENTIAL AMENDMENTS

Amendments to the 2009 Law.

1. (1) The 2009 Law is amended as follows.

(2) In section 2(c), after "Registrar of Non Profit Organisations", insert "or such other title as the States may see fit".

(3) In section 4 -

(a) before the definition of charity, insert -

""**charitable purposes**" has such meaning as the States may prescribe by Ordinance",

(b) for the definition of charity, substitute -

""**charity**" has the meaning given in subsection (1B) ",

(c) after the definition of Registrar, insert -

""**relevant entity**" has the meaning given in subsection (1A)",
and

(d) after subsection (1), insert the following -

"(1A) For the purposes of this Law, a "**relevant entity**" is a charity or other non profit organisation that is based in Guernsey or Alderney, and for these purposes, a charity or other non profit organisation is based in Guernsey or Alderney if it is established, administered, controlled in or operating from either Guernsey or Alderney.

(1B) For the purposes of this Law, a "**charity**" is any -

- (a) organisation that meets the conditions at subsections (1C) and (1D), or
- (b) a person falling within subsection (1E).

(1C) The first condition is that all of the purposes of the organisation are –

- (a) charitable purposes, or
- (b) purposes that are purely ancillary or incidental to any of its charitable purposes.

(1D) The second condition is that the organisation provides or intends to provide benefit for the public or a section of the public in Guernsey, Alderney or elsewhere to a reasonable degree in giving effect to its purposes.

(1E) A person falls within this subsection if the person has been entrusted with a property or fund that is not a relevant entity and the income from that property or fund -

- (a) is applicable only to purposes that are charitable purposes or purposes that are purely ancillary or incidental to any of those charitable purposes, and
- (b) provides or is intended to provide benefit for the public or a section of the public in Guernsey, Alderney or elsewhere to a reasonable degree."

Amendments to the Income Tax Law

- 2. (1) The Income Tax (Guernsey) Law, 1975 is amended as follows.
- (2) For section 40(k), substitute -

"(k) the income of a charity registered in accordance with the Charities etc. (Guernsey and Alderney) Ordinance, 2021 which is a relevant entity within the meaning of that Ordinance (a "**Guernsey Registered Charity**") or a charity not required to be registered in accordance with that Ordinance, if and in so far as the income is applied to charitable purposes only, and for the purposes of this Law "**charity**" and "**charitable purposes**" have the same meaning as in the Charities etc. (Guernsey and Alderney) Ordinance, 2021,".

(3) In section 56, for paragraphs (a) and (b) substitute -

"(a) that is not a charity or an organisation that is another non profit organisation within the meaning of the Charities etc. (Guernsey and Alderney) Ordinance, 2021, or

(b) that is a registered organisation within the meaning of the Charities etc. (Guernsey and Alderney) Ordinance, 2021 or a charity not required to be registered under that Ordinance,".

(4) In section 64(F), for the definition of Guernsey Registered Charity substitute –

""**Guernsey Registered Charity**" means a charity within the meaning of the Charities etc. (Guernsey and Alderney) Ordinance, 2021 that is registered in accordance with, and is a relevant entity within the meaning of, the provisions of that Ordinance.".

Amendments to certain environmental and waste charges legislation.

3. (1) In the enactments listed in subparagraph (2), for a reference to–

(a) the 2008 Law, or

(b) one or more provisions of the 2008 Law,

substitute a reference to the 2009 Law.

- (2) The enactments referred to in subparagraph (1) are –
- (a) the Environmental Pollution (Air Pollution) Ordinance, 2019^{dd},
 - (b) the Environmental Pollution (Prescribed Operations) (Exemptions) Regulations, 2019^{ee}, and
 - (c) the Waste Disposal and Recovery Charges Regulations, 2020^{ff}.

Amendments to other enactments.

4. (1) In the enactments listed to in subparagraph (2) –
- (a) for a reference to –
 - (i) the 2008 Law, or
 - (ii) one or more provisions of the 2008 Law,
- substitute a reference to this Ordinance,

dd Ordinance No. XXXVIII of 2019.

ee G.S.I. No. 117 of 2019.

ff G.S.I. No. 109 of 2020.

- (b) for a reference to "the Register" or to "the Registrar", substitute a reference to "the Register of Non Profit Organisations" or "the Registrar of Non Profit Organisations", as the case may be, and
 - (c) for a reference, however expressed, to an organisation that is a charity or other non profit organisation, substitute a reference to an organisation that is a non profit organisation.
- (2) The enactments referred to in subparagraph (1) are –
- (a) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^{gg},
 - (b) the Disclosure (Bailiwick of Guernsey) Law, 2007,
 - (c) the Aviation (Bailiwick of Guernsey) Law, 2008^{hh},
 - (d) the Air Navigation (Bailiwick of Guernsey) Law, 2012ⁱⁱ,

^{gg} Order in Council No. XVI of 2002, as amended.

^{hh} Order in Council No. XXVIII of 2008; amended by No. X of 2013; Ordinance No. XX of 2015; No. IX of 2016; No. XXVI of 2018; G.S.I. No. 90 of 2008; and G.S.I. No. 91 of 2008.

ⁱⁱ Order in Council No. XI of 2013; amended by Ordinance No. XVII of 2016; No. IX of 2016; G.S.I. No. 46 of 2017; and G.S.I. No. 47 of 2017.

- (e) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,
- (f) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
- (g) the Document Duty (Guernsey) Law, 2017^{jj},
- (h) the Document Duty (Anti-Avoidance) (Guernsey) Law, 2017^{kk},
- (i) the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008^{ll},
- (j) the Regulation of Fiduciaries (Fiduciary Advertisements and Annual Returns) Regulations, 2012^{mm},
- (k) the Foundations (Fees) Regulations, 2013ⁿⁿ,

^{jj} Order in Council No. IX of 2017; amended by Ordinance No.1 of 2018; and No. XXVIII of 2020.

^{kk} Order in Council No. X of 2017; amended by Ordinance No. III of 2018; and No XXVII of 2018.

^{ll} Ordinance No. XLVIII of 2008; amended by Ordinance No. XXX of 2014; No. IX of 2016; and No. XIV of 2020.

^{mm} G.S.I. No. 28 of 2012

ⁿⁿ G.S.I. No. 2 of 2013.

- (l) the Motor Taxation (First Registration Duty) (Exemptions and Preferential Rates) Regulations, 2016^{oo}, and
 - (m) the Firearms and Weapons (Approved Ranges) (Guernsey) Regulations, 2018^{pp}.
- (3) The Committee may amend this paragraph by regulations.

^{oo} G.S.I. No. 22 of 2016.

^{pp} G.S.I. No. 46 of 2018.