

# CHARITIES REGISTRATION AND REGULATION BILL 2018

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## Explanatory Memorandum

1. This Bill is promoted by HM Attorney General in his capacity as de facto guardian of Manx charities.
2. *Part 1* comprises *clauses 1 to 3* which respectively provide for the resulting Act's short title (*clause 1*) and commencement (*clause 2*) and define certain terms which will be used in the Act (*clause 3*).
3. *Part 2* sets out the definitions of "charity" and "charitable purposes".
4. *Clause 4* restates the existing definition of "charity", which is set out in *section 14 of the Charities Act 1962*.
5. *Clause 5* sets out a definition of charitable purpose which requires the purpose to be one included in the list set out in *clause 6(1)* as well as being for the public benefit. This is to ensure that the definition of "charitable purpose" in the Island and, thus, what constitutes a charity, to be at least as broad as in England and Wales.
6. *Clause 6* sets out a list of descriptions of purposes which are charitable. The Charities Act 2006 extended the ambit of charity in England and Wales beyond the four traditional "heads" of charity, which had been derived from the Preamble to the Charitable Uses Act 1601. In considering what constituted a charitable purpose in the Island, the Manx courts continued to have regard to the traditional four heads, as the legislative changes in England and Wales were of no effect here. This means that a bona fide charity established in England and Wales may be unable to carry out any activities in the Island. A specific example of this would be a charity established for the advancement of amateur sport if its activities did not fall entirely within the promotion of education (which would encompass sporting activities for children and young people), the promotion of public health or the provision of recreational facilities in the interests of social welfare.
7. As well as providing for the adoption of the thirteen purposes, *clause 6(1)* preserves existing purposes which are provided for by statute in the Island.
8. *Clause 7* sets out the public benefit requirement which must be satisfied in order for a purpose in *clause 6(1)* to be charitable. Although the definition of "charity" which had been developed by the courts in both the Island and England and Wales required public benefit to be demonstrated in order for the activities to be charitable, there was no statutory requirement to do so in the latter jurisdiction until 2006. Giving statutory force to the requirement

underlined its importance and, accordingly, it is proposed that the Island follow suit.

9. *Clause 8* re-enacts the current statutory restriction on using the use of word “charity” or of an institution holding itself out as being a charity without being registered as a charity in the Island. Contravention of the restriction is an offence.
10. *Part 3* makes updated provision for the keeping of a register of charities in the Island and for the inclusion in, and removal from, the register of a charity. The requirement for Manx charities to file documents at the General Registry was first provided by the Public Charities Act 1922, which was replaced by the Charities Registration Act 1989.
11. *Clause 9(1)* provides for there to continue to be a register of charities which will be kept by the Attorney General. The effect of this will be to combine the role of registrar with that of regulator, thus reflecting the position in England and Wales where those roles are combined in the Charity Commission. This will have the benefit of streamlining the regulatory function and also providing a “one stop shop” for members of the public, who are often uncertain as to the respective roles of the registrar and the Attorney General.
12. *Clause 9(2)* sets out the information which must be contained in the register and enables the Attorney General to prescribe the particulars of the charity which are to be included. *Clause 9(3)* enables to the Attorney General to prescribe information concerning charities which may be made public. As an example, although the register will contain detailed particulars concerning a charity and its trustees, in order to ensure adequate respect for the privacy of individuals, it is anticipated that publically available information concerning trustees will not include details such as addresses. *Clause 9(3)* will also enable the Attorney General to prescribe that all details about certain trustees be kept private, for example in circumstances where there was a genuine risk to them in being identifiable on a public register.
13. *Clause 10* sets out the circumstances in which a charity must be registered and places a duty on the charity’s trustees to ensure that it is registered. Failure to register is an offence.
14. *Clause 11* provides for the making of the registration application and sets a time limit of 28 days for its approval or refusal.
15. *Clause 12* sets out the matters which must be considered by the Attorney General in determining whether to approve or refuse an application for registration. These include matters such whether the institution is a charity under Manx law, the nature of its connection with the Island, whether its name can be considered to be undesirable or misleading, whether the governing instrument is fit for purpose (i.e. it sets out the necessary powers and management/administrative procedures to enable it to function effectively), that the persons appointed as its trustees (i.e. the persons who have general control and management of its administration, whether described, for example, as

- directors, trustees or committee members) are suitable to undertake such role and the risk of the charity being used for money laundering activities or of its property being used to finance terrorism.
16. *Clause 13* sets out the steps to be taken by the Attorney General to register the charity on the approval of an application, including notifying the Isle of Man Financial Services Authority (“the FSA”).
  17. *Clause 14* clarifies that the Attorney General is not liable for the accuracy of the information submitted for inclusion on any register maintained under the Act and, despite that, to empower the Attorney General to make such enquiries as appropriate to establish the accuracy of any such information.
  18. *Clause 15* provides the circumstances in which a charity is to be removed from the charities register.
  19. *Part 4* sets out formal requirements as regards a charity’s governing instrument and its name and as to notification of changes to certain particulars.
  20. *Clause 16(1)* imposes a requirement that every registered charity have a written governing instrument, which will apply to all charities and not just those registered after the Act come into force. A lack of a written governing instrument can cause uncertainty as to the purposes for which a charity was established, as well as regards the powers of the trustees concerning its day to day management. In many instances, only the High Court can resolve such uncertainties.
  21. Although adopting a written governing instrument should not be a complex task in most circumstances, *clause 6(2)* provides that existing charities without written governing instruments will have at least a period of two years from the date the requirement comes into force in order to adopt one.
  22. *Clause 17* provides that any amendment by a registered charity to its governing instrument requires the consent of the Attorney General or the High Court. This is to ensure that the governing instrument remains fit for purpose. This requirement will not apply in the case of a charity which has been established outside the Island (“a foreign charity”).
  23. *Clause 18* re-enacts existing provisions concerning the effect on certain property of the charity of amending the objects of a charity so that the institution ceases to be a charity.
  24. *Clauses 19 and 20* contain provisions with regard to the amendment of a charity’s name, including re-enacting the existing power of the Attorney General to direct that a charity abandon a misleading or undesirable name. Failure to comply with such a direction is an offence.
  25. *Clauses 21 and 22* provide for charities which registered prior to the Act coming into force to be able to seek the consent of the Attorney General to amend their governing instruments, or to adopt a governing instrument, in circumstances where the only alternative would be to make an application to the High Court. In the case of a charity which has been constituted under an Act of Tynwald, the

Attorney General is able to make an order amending the Act of Tynwald to effect the necessary amendments.

26. In order that the charities register be kept up to date, *clause 23* imposes a requirement to notify the Attorney General of certain changes, including an amendment of the governing instrument, an amendment of the name, a change to the trustees or to their details, a change of the charity's correspondence address and the winding up or dissolution of the charity. Failure to comply with the notification requirements is an offence.
27. *Part 5* sets out provisions regarding charity trustees, such term being defined in *clause 24*.
28. *Clause 25* provides the automatic disqualification of a person for acting as a charity trustee in circumstances which give rise to concern as to his or her suitability to undertake such a role, given the degree of trust involved. Such circumstances include being convicted of an offence of dishonesty, being disqualified for being a company director, being an undischarged bankrupt, being subject to an order of the High Court removing or suspending him or her as a trustee of a charity, or being on the sex offenders' register. Under *clause 25(5)*, it is an offence to act as a charity trustee whilst disqualified.
29. As there may be circumstances where a person remains suitable to be appointed as a trustee of a charity notwithstanding the application of the disqualification provisions, *clause 25(4)* provides that the Attorney General may disapply the provisions in relation to any person where he or she considers that it is in the public interest to do so.
30. *Clause 26* requires the Attorney General to notify the FSA of any changes of trustees, or to their details, which have been notified under *clause 23*, and to inform the FSA if any person named in the notification is the subject of an order of the High Court removing or suspending him or her as a trustee of a charity
31. *Part 6* makes provision for the filing by registered charities of annual accounts and annual reports.
32. *Clauses 27 and 28* re-enact existing provisions concerning the requirements for filing of annual accounts and for their inspection or audit if the charity's income exceeds the specified amounts as well as for the powers of auditors.
33. In order to improve regulatory oversight, *clause 29* requires registered charities to submit annual reports to the Attorney General as to the activities of the charity at the same time as filing the annual accounts.
34. Failure to comply with the requirements to file annual accounts and annual reports is an offence.
35. *Clause 30* clarifies that, in the case of a foreign charity, the accounts and reports to be filed should relate to the activities which are carried on by the charity in, or are otherwise connected with, the Island.
36. *Part 7* makes provision for charity mergers.

37. *Clause 31* provides for a register of charity mergers and *clause 32* describes what constitutes a merger for the purpose of the register.
38. *Clause 33* describes the notification requirement and identifies the party on whom it is placed.
39. *Clause 34* sets out the details which are to be entered onto the register of charity mergers.
40. *Clause 35* describes the effect of registering a charity merger, namely that the gift to a charity which ceases to exist following the merger takes effect as if it were a gift to the charity to which the former's property was transferred as a consequence of the merger. This means that it will no longer be necessary to retain a charity in existence, and on the register, merely to receive future gifts.
41. *Part 8* makes provision for the regulation and inspection of charities.
42. *Clause 36* re-enacts the existing powers of the Attorney General in relation to requiring a registered charity to furnish him or her with information as to its investments or property. Failure to comply with such a requirement is an offence.
43. *Clause 37* re-enacts the existing powers of the Attorney General to institute inquiries with regard to any institution which is, or purports to be, established for charitable purposes. An inquiry may be conducted by the Attorney General, or by another person appointed by him or her, and *Clause 37* sets out the powers to be exercised in conducting the inquiry. Failure to comply with any requirement imposed by the person conducting the inquiry is an offence, as is the wilful alteration, suppression, concealment or destruction of any document which may be required to be produced.
44. *Clause 38* enhances the effectiveness of an inquiry by enabling search warrants to be obtained and executed for the purpose of obtaining any document or information which is relevant to the inquiry.
45. *Clause 39* re-enacts the existing powers of the High Court, on the application of the Attorney General, to take steps to protect charities, including the removal or suspension of trustees and placing restrictions on the carrying out of transactions without the Attorney General's approval or consent, as the case may be.
46. *Part 9* makes additional provision as regards foreign charities.
47. *Clause 40* provides the definition of a "foreign charity".
48. *Clause 41* requires that, if none of its trustees are ordinarily resident on the Island, a foreign charity must appoint a person who is resident in the Island as its "responsible person". The purpose of this is to ensure that there is an identified person within this jurisdiction who is accountable as regards compliance with the requirements of the Act.
49. *Part 10* makes provision for appeals in relation to decisions of the Attorney General.

50. *Clause 42* establishes the Charities Tribunal as the appeal body.
51. *Clause 43* describes the decisions of the Attorney General in respect of which an appeal lies to the Charities Tribunal, sets out the powers of the Tribunal on hearing an appeal and provides for a right of appeal to the High Court on a point of law.
52. *Part 11* sets out various miscellaneous provisions.
53. *Clause 44* imposes certain requirements as regards decisions which are subject to appeal.
54. *Clause 45* enables the Attorney General to appoint an officer employed within the Attorney General's Chambers to exercise specified functions on his or her behalf.
55. *Clause 46* provides a general regulation making power to carry the provisions of the Act into effect.
56. *Clause 47* re-enacts the existing provision that enables the Attorney General to apply to the High Court for the winding up of an institution established for charitable purposes, notwithstanding that he or she is not authorised to do so by the enactment providing for such winding up.
57. *Clause 48* re-enacts the existing provision concerning the validity of certain transactions of charitable companies.
58. *Clause 49* enables the Attorney General, by regulations, to require a registered charity to state specified information on documents or communications.
59. *Clause 50* re-enact the existing offences of making false and misleading statements.
60. *Clause 51* makes supplemental provision in relation to offences, including re-enacting the existing requirement that the Attorney General consent to any prosecution under the Act and also providing that the trustees, managers and similar officers of an institution, or any agent, are liable for the non-compliance under the Act by any institution which is not a body corporate. In the case of a body corporate, liability of officers is provided by *section 54 of the Interpretation Act 2015*. *Clause 51* also provides a defence of having taken reasonable precautions and exercised all due diligence.
61. *Clause 52* provides that the restrictions on the delegation by trustees under *section 11 of the Trustee Act 2001* apply in relation to all charities and not just to those constituted as trusts to which the provisions of that Act apply.
62. *Clause 53* enables the Attorney General to publish approved forms or templates in any medium for submitting information required under the Act.
63. *Clause 54* makes provision as regards the keeping of records by the Attorney General.
64. *Clause 55* enables the Attorney General to enter into arrangements with the Registrar General for the provision of services in connection with the delivery of the Attorney General functions under the Act. The purpose of this is primarily

to enable the registers to be kept under the Act to be hosted by the Registrar General, thus making use of existing IT systems.

65. *Clause 56* enables the Attorney General to reject documents which do not meet the acceptability criteria.
66. *Part 12* makes provision for amendment and repeals.
67. *Clause 57* amends *section 14 of the Charities Act 1962* so that the definitions of “charitable purpose” and “charity” are set out in the Act.
68. *Clause 58* makes certain consequential amendments to the *Charities Act 1986*.
69. *Clause 59* makes a consequential amendment to *section 10I of the Representation of the People Act 1995*.
70. As well as making a consequential amendment, *clause 60* amends *section 7(2) of the Foundations Act 2011* to remove the reference to a foundation being both charitable and non-charitable. This is because, in order to be charitable under Manx law, an institution must be established for wholly charitable objects.
71. *Clause 61* amends *Schedule 2 to the Tribunals Act 2006* by inserting reference to the Charities Tribunal.
72. *Clause 62* repeals the *Charities Registration Act 1989*.
73. *The Schedule* sets out the provisions regarding the obtaining and execution of search warrants, as provided by *clause 38*.
74. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.







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# CHARITIES REGISTRATION AND REGULATION BILL 2018

A **BILL** to repeal and replace the Charities Registration Act 1989; to make further provision for the registration and regulation of charities; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

## PART 1 – INTRODUCTORY

### 1 Short title

The short title of this Act is the Charities Registration and Regulation Act 2018.

### 2 Commencement

- (1) This Act comes into operation on such day or days as the Attorney General by order appoints and different days may be appointed for different provisions and for different purposes.
- (2) An order under subsection (1) may make such supplemental, incidental, consequential, transitional and saving provisions as appear to the Attorney General to be necessary or expedient.

*Tynwald procedure – laying only*

### 3 Interpretation

[1989/11/15 and Drafting]

- (1) In this Act —

“**action**” includes —

- (a) fundraising;
- (b) advertising;
- (c) organising events; and
- (d) doing anything which is in furtherance of the objects of an institution;

“**agent**” means a person who, in the Island, undertakes any of the following activities on behalf of an institution —

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

“**approved form**” has the meaning given by section 54;

“**charitable purposes**” has the meaning given by section 5;

“**charity**” has the meaning given by section 4(1);

“**charity trustee**” has the meaning given by section 24;

“**company**” means a company formed and registered under the *Companies Acts 1931 to 2004* or the *Companies Act 2006*, or to which the provisions of those Acts apply as they apply to such a company;

“**the Court**” means the High Court;

“**foreign charity**” has the meaning given by section 40;

“**FSA**” means the Isle of Man Financial Services Authority;

“**governing instrument**” means a document under which an institution is constituted and includes the following —

- (a) in the case of a company, its Memorandum and Articles of Association;
- (b) a declaration of trust;
- (c) in the case of a foundation established under the *Foundations Act 2011*, the foundation instrument and the foundation rules;
- (d) an Act of Tynwald;

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

“**Manx institution**” means an institution which is —

- (a) constituted under the law of the Island;
- (b) resident in the Island;
- (c) administered in the Island; or
- (d) registered under the *Foreign Companies Act 2014*;

“**prescribed**” means prescribed by regulations made by the Attorney General;

“**the register**” means the register of charities kept under section 9 and “**registered**” is to be interpreted accordingly;

“**the register of charity mergers**” means the register kept under section 31;

“**registered charity**” means —

- (a) a charity in respect of which a certificate of registration has been issued by the Attorney General under section 13(1)(c); or
- (b) a charity registered under the *Public Charities Act 1922* and the *Charities Registration Act 1989*;

but excludes any institution which has been removed from the register under section 15;

“**responsible person**” has the meaning given by section 41; and

“**unacceptable document**” has the meaning given by section 56.

- (2) For the meaning of “**the Registrar General**” see section 4(1) of the *Central Registry Act 2018*.
- (3) The Attorney General may, by order, amend the definitions of “**agent**” and “**Manx institution**” contained in subsection (1).

*Tynwald procedure – approval required*

## PART 2 – MEANING OF “CHARITY” AND “CHARITABLE PURPOSE”

### 4 Meaning of “charity”

[1962/1/14]

- (1) “**Charity**” means an institution which is established for charitable purposes only, and is subject to the control of the Court in the exercise of the Court’s jurisdiction with respect to charities.
- (2) But “**charity**” does not include —
  - (a) an ecclesiastical charity within the meaning of Schedule 3 to the *Church Act 1992*; or
  - (b) a trust of property falling within paragraph 1(2) of that Schedule.

### 5 Meaning of “charitable purposes”

[P2011/25/2]

- (1) For the purposes of the law of the Island, a “**charitable purpose**” is a purpose which —
  - (a) falls within section 6(1); and
  - (b) is for the public benefit (see section 7).
- (2) Any reference in any enactment or document (in whatever terms) —

- (a) to charitable purposes, or
- (b) to institutions having purposes that are charitable under the law relating to charities in the Island,

is to be read in accordance with subsection (1).

- (3) Subsection (2) does not apply where the context otherwise requires.

## 6 Description of purposes

[P2011/25/3 and drafting]

- (1) A purpose falls within this subsection if it falls within any of the following descriptions of purposes —
  - (a) the prevention or relief of poverty;
  - (b) the advancement of education;
  - (c) the advancement of religion;
  - (d) the advancement of health or the saving of lives;
  - (e) the advancement of citizenship or community development;
  - (f) the advancement of the arts, culture, heritage or science;
  - (g) the advancement of amateur sport;
  - (h) the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity;
  - (i) the advancement of environmental protection or improvement;
  - (j) the relief of those in need because of youth, age, ill-health, disability, financial hardship or other disadvantage;
  - (k) the advancement of animal welfare;
  - (l) the promotion of the efficiency of the armed forces of the Crown or of the efficiency of the police, fire and rescue services or ambulance services;
  - (m) any other purposes —
    - (i) that are not within paragraphs (a) to (l) but are recognised as charitable purposes by virtue of section 1 of the *Recreational Charities (Isle of Man) Act 1960* (recreational and similar trusts, etc) or section 2 of the *Charities Act 1962* (trusts for the purpose of benevolence philanthropy or social welfare and gifts, devises, bequests or trusts for the proper repair, etc of private graves and monuments) or under existing charity law;
    - (ii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes falling within any of paragraphs (a) to (l) or sub-paragraph (i); or



- (iii) that may reasonably be regarded as analogous to, or within the spirit of, any purposes which have been recognised, under the law relating to charities in the Island, as falling within sub-paragraph (ii) or this sub-paragraph.
- (2) In subsection (1) —
- (a) in paragraph (c), “religion” includes —
    - (i) a religion which involves belief in more than one god; and
    - (ii) a religion which does not involve belief in a god;
  - (b) in paragraph (d), “the advancement of human health” includes the prevention or relief of sickness, disease and human suffering;
  - (c) paragraph (e) includes —
    - (i) rural or urban regeneration; and
    - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;
  - (d) in paragraph (g), “sport” means sports or games which promote health by involving physical or mental skill or exertion;
  - (e) paragraph (j) includes relief given by the provision of accommodation or care to the persons mentioned in that paragraph; and
  - (f) in paragraph (l), “fire and rescue services” means services provided by the fire brigade under the *Fire Services Act 1984*.
- (3) Where any of the terms used in any of paragraphs (a) to (l) of subsection (1), or in subsection (2), has a particular meaning under the law relating to charities in the Island, the term is to be taken as having the same meaning where it appears in that provision.
- (4) In subsection (1)(m)(i) “existing charity law” means the law relating to charities in the Island as in operation immediately before the day on which this section comes into operation.

## 7 The public benefit requirement

[P2011/25/4]

- (1) In this Act “**the public benefit requirement**” means the requirement in section 5(1)(b) that a purpose falling within section 6(1) must be for the public benefit if it is to be a charitable purpose.
- (2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 6(1), it is not to be presumed that a purpose of a particular description is for the public benefit.

- (3) In this Part any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in the Island.
- (4) Subsection (3) is subject to subsection (2).

## 8 Restriction on use of word “charity” and holding out as a charity etc

[1989/11/1]

- (1) An institution commits an offence if in the Island it —
- (a) takes or uses any name, style, title or description implying or otherwise pretends that it is a charity; or
- (b) holds itself out as a charity.

This is subject to subsection (3).

*Maximum penalty —*

- (a) *(on information) — 2 years’ custody, or a fine or both;*
- (b) *(summary) — 6 months’ custody, or a fine of level 5 on the standard scale or both.*
- (2) In the case of an institution which is a Manx institution subsection (1) has effect as if the words “or elsewhere” appeared after the words “in the Island”.
- (3) An institution does not commit an offence under subsection (1) —
- (a) if it is a registered charity;
- (b) if it is a charity referred to in section 10(3);
- (4) In the case of an institution constituted under the law of the Island which —
- (a) makes an application for a certificate of fitness within 28 days of its constitution; and
- (b) within 14 days of the grant of the certificate, makes an application for registration under section 12,

no offence under subsection (1) is committed until final determination of the application in question.

## PART 3 – THE REGISTER AND REGISTRATION

### 9 The Register

- (1) There continues to be a register of charities, to be kept by the Attorney General in such manner as he or she thinks fit.
- (2) The register must contain —

- (a) the name of every registered charity; and
  - (b) such other particulars of, and such other information relating to, every such charity as may be prescribed.
- (3) The Attorney General may prescribe information or classes of information which may be made available in such circumstances and to such persons as may be prescribed.

## 10 Requirement to register

- (1) A charity which carries on, or is held out as carrying on, any action in the Island must be registered.
- (2) It is the duty of the charity trustees to ensure that a charity is registered.
- (3) The Attorney General may by regulations made under section 46 exempt any charity or class of charity from the requirement to register under subsection (1).
- (4) A charity cannot be registered unless it has a substantial and genuine connection with the Island.
- (5) For the purpose of subsection (4), and sections 12(1)(a)(i) and 15(1)(d), a charity is not to be treated as having a substantial and genuine connection with the Island by reason only of the fact that the charity is a Manx institution.
- (6) A charity which contravenes subsection (1) commits an offence.  
*Maximum penalty —*
  - (a) *(on information) — 2 years' custody, or a fine or both;*
  - (b) *(summary) — 6 months' custody, or a fine of level 5 on the standard scale or both.*

## 11 Application for registration

- (1) An application for registration of the charity must be made by or on behalf of the charity trustees to the Attorney General in the approved form and accompanied by such documents as may be prescribed.
- (2) The Attorney General must, within 28 days of receipt of an application under subsection (1) —
  - (a) approve the application; or
  - (b) refuse the application.This is subject to section 12(4) and (5).

## 12 Application for registration – supplemental

- (1) The Attorney General must approve the application —

- (a) if it appears to the Attorney General that —
    - (i) the charity has a substantial and genuine connection with the Island;
    - (ii) the name of the charity is not undesirable or misleading;
    - (iii) the governing instrument of the charity makes adequate provision for such matters as may be prescribed;
    - (iv) no charity trustee is disqualified for acting as such;
    - (v) it would not be contrary to the public interest for any charity trustee named in the application to act as such; and
    - (vi) the charity is being established *bona fide* for charitable purposes; and
  - (b) taking account of matters such as the proposed activities of the charity, the Attorney General has no reasonable grounds to believe —
    - (i) that the charity trustees do not have appropriate expertise and experience to ensure the successful delivery of the charity's objectives; or
    - (ii) that there is a substantial risk of the charity becoming involved in or reasonably susceptible to being used for money laundering activities or of its property being used to finance terrorism.
- (2) In the case of a charity to which the Attorney General has granted a licence under section 18 of the *Companies Act 1931*, the Attorney General is deemed to have been satisfied as to subsection (1)(a)(ii) and (iii).
- (3) The Attorney General may refuse the application for registration if —
- (a) not satisfied that the institution which has made the application is a charity;
  - (b) not satisfied as to any of the matters referred to in subsection (1)(a) or (b);
  - (c) the application has not been accompanied by the documents referred to in section 11(1); or
  - (d) the application contains or is accompanied by an unacceptable document.
- (4) In the case of an application to which subsection (3)(c) or (d) applies, as an alternative to refusing the application, the Attorney General may, by written notice, require the charity to provide supplemental information, including further documents, to him or her within a specified period of no less than 28 days, to enable him or her to decide the application.
- (5) Where the Attorney General gives notice under subsection (4), the 28 day period referred to in section 11(2) commences on the day on which the supplemental information is provided by the charity.

- (6) If the supplemental information is not provided by the charity within the period specified in the notice, the Attorney General must refuse the application.
- (7) If the application is refused, the Attorney General must provide the charity with a statement of reasons for the decision.

### **13 Registration**

- (1) If the application is approved, the Attorney General must —
  - (a) register such information as may be prescribed;
  - (b) allot a unique number to the charity;
  - (c) issue a certificate of registration to the charity containing such information as may be prescribed;
  - (d) retain a copy of the certificate issued; and
  - (e) send a copy of the certificate to the FSA.
- (2) A certificate issued under subsection (1)(c) is conclusive evidence that the charity is registered under this Act on the date specified in the certificate.

### **14 Attorney General not liable for accuracy of information submitted**

[2018/11/13]

- (1) To avoid doubt, the Attorney General is not liable for the accuracy of any document submitted for inclusion on any register maintained under this Act.
- (2) Despite subsection (1), the Attorney General may make such inquiries as he or she considers appropriate in the circumstances to establish the accuracy of any such information.

### **15 Removal of charities**

[P2011/25/34(1) and (2)]

- (1) The Attorney General must remove from the register —
  - (a) any charity which has ceased to exist;
  - (b) any charity which, after reasonable inquiry, he or she considers to have ceased to operate;
  - (c) any charity which he or she considers no longer has a genuine and substantial connection with the Island; and
  - (d) any institution which he or she no longer considers is a charity.
- (2) If the removal of an institution under subsection (1)(d) is due to any change in its trusts, the removal takes effect from the date of the change.
- (3) The Attorney General must notify the FSA of the removal of any institution from the register.

- (4) The Attorney General must publicise the removal of any institution from the register in such manner as the Attorney General thinks fit.

## **PART 4 – REGISTERED CHARITY: FORMAL REQUIREMENTS**

### **16 Requirement for a governing instrument**

- (1) Every registered charity must have a written governing instrument.
- (2) Subsection (1) does not apply to a charity which is in existence on the day on which subsection (1) comes into operation until a date prescribed, which shall be no earlier than the second anniversary on which subsection (1) comes into operation for other purposes.

### **17 Amendment of governing instrument**

- (1) Subject to subsection (5), any amendment by a registered charity of its governing instrument is ineffective without the prior written consent of the Attorney General.
- (2) Subsection (1) does not apply in the case of an amendment to a governing instrument which is authorised by the Court under any Manx enactment.
- (3) The Attorney General must not give consent under subsection (1) unless he or she is satisfied that, the proposed amendment having been made, the governing instrument will comply with the requirement in section 12(1)(a)(iii).
- (4) Section 18 applies in relation to any amendment of the governing instrument which is an amendment of the objects for which the charity has been established.
- (5) This section does not apply to a foreign charity.

*Note:*

*See also sections 3 and 4 of the Charities Act 1962 (which concern cy-près application of property).*

### **18 Amendment of objects**

[1989/11/16A and Drafting]

No amendment of the objects of a registered charity which has the effect of the institution ceasing to be a charity shall be valid so as to affect the application of –

- (a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired;

- (b) any property representing income which has accrued before the amendment is made; or
- (c) the income from any property falling within paragraph (a) or (b).

## 19 Amendment of name

- (1) No amendment by a registered charity of its name shall be effective without the prior written consent of the Attorney General.
- (2) But subsection (1) does not apply —
  - (a) if the Attorney General has given a direction to a registered charity under section 20; or
  - (b) in the case of a foreign charity.

## 20 Power to require registered charity to abandon misleading name

[1989/11/7 and drafting]

- (1) If, in the opinion of the Attorney General, the name of a registered charity —
  - (a) gives a misleading indication as to the nature of its activities; or
  - (b) is undesirable,the Attorney General may, if he or she is satisfied that it is in the public interest, direct the registered charity to change its name.
- (2) A direction made under subsection (1) must specify a period, being not less than 6 weeks from the date on which it is served on the registered charity, within which the registered charity must comply with the direction.
- (3) A charity which fails to comply with a direction given under subsection (1) within the specified period commits an offence.  
*Maximum penalty — (summary) — a fine of level 5 on the standard scale.*
- (4) On conviction of the charity for an offence under subsection (3), or of any other person under section 51(3), the Attorney General may change the name of the charity.
- (5) If the Attorney General changes the name of the charity, he or she must —
  - (a) amend the register;
  - (b) issue a certificate of change of name to the charity;
  - (c) retain a copy of the certificate issued;
  - (d) send a copy of the certificate to the FSA; and
  - (e) publicise the change of name in such manner as the Attorney General thinks fit.

**21 Existing charities – power to adopt or amend governing instrument**

- (1) This section does not apply to a registered charity constituted by an Act of Tynwald.
- (2) Subject to subsection (3), the charity trustees of a registered charity may pass a resolution to do either of the following –
  - (a) where the charity has no governing instrument, to adopt a governing instrument; and
  - (b) where the governing instrument of the charity makes no, or no adequate, provision for its amendment, to amend the governing instrument.
- (3) A resolution under this section –
  - (a) may be passed only with the prior written consent of the Attorney General; and
  - (b) must be in such form as the Attorney General may direct.
- (4) The Attorney General must not give consent unless he or she is satisfied that –
  - (a) the governing instrument to be adopted complies with the requirement in section 12(1)(a)(iii); or
  - (b) the proposed amendment having been made, the governing instrument will comply with the requirement in section 12(1)(a)(iii).
- (5) The consent of the Attorney General referred to in subsection (3) is effective as consent for the purposes of section 17(1).

**22 Existing charities constituted under an Act of Tynwald – amending governing instrument**

- (1) In the case of a governing instrument of a registered charity which is contained in an Act of Tynwald, the Attorney General may by order make such amendment to the governing instrument as he or she thinks appropriate and, in consequence, amend the Act of Tynwald.

This is subject to subsection (2).

*Tynwald procedure – approval required*

- (2) When making an order under subsection (1), the Attorney General must have regard to the requirement in section 12(1)(a)(iii).

**23 Filing requirements**

- (1) A registered charity must notify the Attorney General within one month of the occurrence of an event described in subsection (2).
- (2) The events are –



- (a) an amendment of the governing instrument;
  - (b) an amendment of name;
  - (c) any appointment or change of charity trustee or change of the details of a charity trustee;
  - (d) a change of address or place at which the charity accepts service of process and any notices required to be served on the charity or which it has given as its correspondence address;
  - (f) in the case of a foreign charity, any appointment of or a change of responsible person or his or her details; and
  - (g) the winding up or dissolution of the charity.
- (3) Subsection (2)(c) does not apply to a change of trustee by order of the court under section 39.
- (4) A notification under subsection (1) must be —
- (a) in the approved form; and
  - (b) in the case of an event referred to in —
    - (i) subsection (2)(a), accompanied by the consent of the Attorney General or order of the court;
    - (ii) subsection (2)(b), accompanied by the consent or direction of the Attorney General;
    - (iii) subsection (2)(f), accompanied by such evidence of the winding up or dissolution of the charity as may be prescribed.
- This is subject to subsection (5).
- (5) In the case of a foreign charity, subsection (4)(b)(i) and (ii) do not apply and the notification must be accompanied by such information as appears to the Attorney General to be sufficient for the purpose.
- (6) On receipt of a notification which is accompanied by the documents referred to in subsection (4), the Attorney General must amend the register.
- (7) Subsection (8) applies if the registered charity is —
- (a) a company established under the *Companies Act 1931*;
  - (b) a company established under the *Companies Act 2006*; or
  - (c) a foundation established under the *Foundations Act 2011*.
- (8) If this subsection applies, a copy of the Attorney General's consent or direction must also be filed in that part of the Central Registry which holds the information relating to the registered charity in its capacity as a body mentioned in subsection (7) when notification is given under subsection (2).
- (9) A registered charity which fails to comply with subsection (1), (4), (5) or (8) commits an offence.

*Maximum penalty — (summary) — a fine of level 5 on the standard scale.*

## PART 5 – CHARITY TRUSTEES

### 24 Meaning of “charity trustee”

“Charity trustee” means a person having the general control and management of the administration of a charity.

### 25 Disqualification for being a charity trustee

[P2011/25/179,180,181,183 and 184 and drafting]

- (1) A person is disqualified for being a charity trustee who —
  - (a) has been convicted of an offence (whether in the Island or elsewhere) involving dishonesty;
  - (b) is subject to a disqualification order or disqualification undertaking under the *Company Officers (Disqualification) Act 2009* or to an order or undertaking of equivalent effect (whether in the Island or elsewhere);
  - (c) is an undischarged bankrupt (whether in the Island or elsewhere);
  - (d) has made a composition or arrangement with, or granted a trust deed for, creditors and has not been discharged in respect of it;
  - (e) is the subject of an order under section 39(2)(a) of this Act or section 10 of the *Charities Registration Act 1989* (power to act for protection of charities); or
  - (f) is subject to the notification requirements of Schedule 1 to the *Criminal Justice Act 2001* or to equivalent notification requirements elsewhere in the British Islands.
- (2) Subsection (1) applies to events occurring before, as well as after, the commencement of this section.
- (3) But subsection (1)(a) does not apply in relation to a conviction which is a spent conviction for the purposes of the *Rehabilitation of Offenders Act 2001*.
- (4) The Attorney General may by written decision waive the application of subsection (1) in relation to any person where the Attorney General considers that the public interest does not require that person to be, or to continue to be, disqualified either —
  - (a) generally; or
  - (b) in relation to a particular charity or particular class of charities.
- (5) It is an offence for any person to act as a charity trustee whilst disqualified for being a charity trustee by virtue of this section.

*Maximum penalty — (summary) — 12 months' custody, or a fine of level 5 on the standard scale or both.*

- (6) Any acts done as a charity trustee by a person disqualified by virtue of this section are not invalid merely because of that disqualification.
- (7) The Court may, on the application of the Attorney General, by order direct that any person disqualified by this section who has received any sums from a charity by way of remuneration or expenses, or any benefit in kind, in connection with acting as such whilst so disqualified —
  - (a) repay to the charity the whole or part of any such sums; or
  - (b) pay to the charity the whole or part of the monetary value (as determined by the Court) of any such benefit.
- (8) For the purpose of this section, the Attorney General must keep, in such manner as the Attorney General thinks fit, a register of all persons in respect of whom an order has been made under section 39(2)(a).
- (9) Section 9(3) applies to a register kept under subsection (8) as it does to the register of charities.

## 26 Notification to the FSA of appointment of charity trustee

On receipt of a notification under section 23(2)(c) the Attorney General must —

- (a) send a copy of the notification to the FSA; and
- (b) inform the FSA as to whether the person referred to in the notification is a person in respect of whom an order has been made under section 39(2)(a).

## PART 6 – CHARITY ACCOUNTS AND ANNUAL REPORTS

### 27 Accounts of registered charities

[1989/11/5]

- (1) A registered charity must cause its accounts to be made up at least one in each calendar year.
- (2) Subsection (3) applies to a charity whose gross income in the accounting year in question exceeds £25,000 but does not exceed £250,000.
- (3) A registered charity to which this subsection applies must cause the accounts, at its option, to be either —
  - (a) audited by an accountant or an approved person; or
  - (b) examined by an independent person (an “**examiner**”) who —
    - (i) is an accountant or an approved person; or
    - (ii) holds a qualification prescribed by regulations under section 46.

- (4) Subsection (5) applies to a charity whose gross income in the accounting year in question exceeds £250,000.
- (5) A registered charity to which this subsection applies must cause the accounts to be audited by an accountant or an approved person.
- (6) A registered charity must, within 6 months of the end of each accounting year, send the accounts for that year to the Attorney General, together (in the case of a charity to which subsection (3) or (5) applies) with the report of the auditor or examiner on them.
- (7) A registered charity which contravenes subsection (6) commits an offence.

*Maximum penalty – (summary) – a fine of level 5 on the standard scale.*

- (8) References in this section to the accounts of a registered charity and the report of the auditor or examiner are to accounts and reports which comply with regulations under section 46(b).
- (9) In this section “approved”, in relation to any person, means approved by the Attorney General for the purpose of auditing or examining (as the case may be) the accounts of the charity in question; and an approval under this subsection may be revoked at any time.
- (10) The Attorney General may by order amend subsections (2) and (4) so as to substitute for the monetary amounts there shown such other higher amounts as it thinks appropriate.

*Tynwald procedure – approval required.*

## 28 Auditors – supplementary provisions

[1989/11/6]

- (1) The auditor of the accounts of a registered charity –
  - (a) has a right of access to all books, accounts and documents relating to the charity; and
  - (b) is entitled to require from any charity trustee, director, manager or other similar officer, past or present, and from any past or present agent, officer or servant of the charity such information and explanation as he or she thinks necessary for the performance of his or her duties.
- (2) Where the auditor of a registered charity –
  - (a) is removed, resigns or is not reappointed and there are any circumstances connected with his or her ceasing to hold office which he or she considers should be brought to the Attorney General’s attention; or
  - (b) has any information or has formed an opinion on a matter of which he or she has become aware in his or her capacity as

auditor and which is relevant to any functions of the Attorney General under this Act,

the auditor must notify the Attorney General of such circumstances, information or opinion.

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

## **29 Annual reports of registered charity**

- (1) A registered charity must cause to be prepared in respect of each accounting year an annual report containing –
  - (a) such a report by the charity trustees on the activities of the charity during that year; and
  - (b) such other information relating to the charity or to the charity trustees or officers,  
as may be prescribed.
- (2) A registered charity must send the annual report prepared under subsection (1) in respect of that year to the Attorney General at the same time as it sends the accounts prepared under section 27(1).
- (3) A registered charity which contravenes subsection (2) commits an offence.

*Maximum penalty – (summary) – a fine of level 5 on the standard scale.*

## **30 Application of this Part to foreign charities**

- (1) The requirements of sections 27 to 29 have effect in relation to a foreign charity as provided by subsections (2) and (3).
- (2) In sections 27 and 28, “accounts” means accounts in relation to the activities carried on by the charity in, or otherwise connected with, the Island.
- (3) In section 29, the activities of the charity are those carried on by it in, or otherwise connected with, the Island.

# **PART 7 – CHARITY MERGERS**

## **31 Register of charity mergers**

- (1) There shall be a register of charity mergers, to be kept by the Attorney General in such manner as he or she thinks fit.
- (2) The register of charity mergers must contain an entry in respect of every relevant charity merger which is notified to the Attorney General in

accordance with section 33 and such procedures as he or she may determine.

- (3) Section 9(3) applies to the register of charity mergers as it does to the register of charities.

### 32 Meaning of “relevant charity merger”

In this Part “**relevant charity merger**” means —

- (a) a merger of two or more charities in connection with which one of them (“**the transferee**”) has transferred to it all the property of the other or others, each of which ( a “**transferor**”) ceases to exist, or is to cease to exist, on or after the transfer of its property to the transferee; or
- (b) a merger of two or more charities (“**transferors**”) in connection with which both or all of them cease to exist, or are to cease to exist, on or after the transfers of all of their property to a new charity (“**the transferee**”).

### 33 Notification of charity mergers

- (1) A notification under section 31(2) must be given by the charity trustees of the transferee within one month of the date on which —
- (a) the transfer of the property involved in the merger has taken place; or
- (b) (if more than one transfer of property is involved) the last of those transfers has taken place.
- (2) A notification under section 31(2) must —
- (a) specify the transfer or transfers of property involved in the merger and the date or dates on which it or they took place; and
- (b) include a statement that appropriate arrangements have been made with respect to the discharge of any liabilities of the transferor charity or charities.

### 34 Details to be entered in register of charity mergers

- (1) Subsection (2) applies to the entry to be made in the register of charity mergers in respect of a relevant charity merger, as required by section 31(2).
- (2) The entry must —
- (a) specify the date when the transfer or transfers of property involved in the merger took place; and
- (b) contain such other particulars of the merger as the Attorney General thinks fit.

**35 Effect of registering charity merger on gifts to transferor**

- (1) This section applies where a relevant charity merger is registered in the registry of charity mergers.
- (2) Subsection (3) applies to a gift if —
  - (a) the gift would have taken effect as a gift to the transferor if the transferor had been in existence; and
  - (b) the date on which the gift would have taken effect is a date on or after the date of the registration of the merger.
- (3) The gift takes effect as a gift to the transferee, subject to subsection (4).
- (4) If the gift was intended to be held as part of the permanent endowment of the transferor, then it will be held as part of the permanent endowment of the transferee, subject to any provisions applying to the transferee, whether set out in its governing instrument or by rule of law, which free it from any restrictions imposed by law with respect to the expenditure of capital.

**PART 8 - REGULATION AND INSPECTION****36 Particulars, etc to be furnished to the Attorney General**

[1989/11/8]

- (1) The Attorney General may require —
  - (a) a registered charity to furnish him or her with particulars as to the investment of any monies belonging to it;
  - (b) a registered charity to have such investment valued by a valuer to be approved by him or her;
  - (c) a registered charity to furnish him or her with a report by a person to be approved by him or her, as to the state of repair and condition of any land or buildings or any immoveable property belonging to it;
  - (d) any person having in his or her possession or control any document relating to a registered charity, without charge —
    - (i) to furnish him or her with copies or extracts from any of those documents; or
    - (ii) to transmit the document itself to him or her for inspection.
- (2) Where a building or immoveable property belongs to a registered charity, the Attorney General may require the registered charity to transmit to him or her the policy of insurance of that building or asset and the receipts for the current year's premium in respect of it.
- (3) Any person who fails to comply with a requirement under this section commits an offence.

*Maximum penalty —*

- (a) *(on information) — 2 years' custody, or a fine or both;*
- (b) *(summary) — 6 months' custody, or a fine of level 5 on the standard scale or both.*

### **37 General power to institute inquiries**

[1989/11/9]

- (1) The Attorney General may from time to time institute inquiries with regard to any institution which is, or which purports to be, established for charitable purposes or a class of such institutions either generally or for particular purposes.
- (2) The Attorney General may either conduct such an inquiry personally or appoint another to conduct it and report to him or her.
- (3) For the purposes of any such inquiry the person conducting it, may require any person (P) (subject to the provisions of this section) —
  - (a) to furnish accounts and statements in writing in respect to any matter in question at the inquiry, being a matter on which P has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to P on any such matter, and to verify any such accounts, statements or answers by statutory declaration; and
  - (b) to attend at a specified time and place and give evidence or produce documents in P's custody or control which relate to any matter in question at the inquiry.
- (4) For the purposes of any such inquiry —
  - (a) evidence may be taken on oath; and
  - (b) the person conducting the inquiry may for that purpose administer an oath.
- (5) The person conducting the inquiry may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matters about which that person is examined.
- (6) Where the Attorney General proposes to take any action in consequence of an inquiry under this section, he or she may publish the report of the person conducting the inquiry, or such other statement of the results of the inquiry as the Attorney General thinks fit, in any manner calculated in his or her opinion to bring it to the attention of persons who may wish to make representations to the Attorney General about the action to be taken.
- (7) A person who fails to comply with a requirement under subsection (3) commits an offence.



- (8) Any person who wilfully alters, suppresses, conceals or destroys any document which he or she may be required to produce under this section commits an offence.

*Maximum penalty —*

- (a) *(on information) — 2 years' custody, or a fine or both;*  
(b) *(summary) — 6 months' custody, or a fine of level 5 on the standard scale or both.*

### **38 Search warrants**

[P2011/25/48/49]

The Schedule has effect as regards the obtaining and execution of search warrants for the purpose of obtaining any document or information relevant to an inquiry under section 37.

### **39 Power to act for protection of charities**

[1989/11/10]

- (1) The Court may, on the application of the Attorney General, make an order under this section if it is satisfied that —
- (a) the administration of an institution which is, or which purports to be established for charitable purposes has involved any misconduct or mismanagement;
  - (b) it is necessary or desirable to act for the purpose of protecting the property of the institution or securing a proper application for the purposes of the institution of that property or of property coming to the institution; or
  - (c) it is in the public interest.
- (2) An order under this section may —
- (a) remove or suspend any charity trustee, officer, agent or servant of the institution;
  - (b) appoint a new charity trustee in lieu of any charity trustee removed under paragraph (a);
  - (c) require any bank or other person who holds money or securities on behalf of the institution or of any charity trustee or agent for it not to part with the money or securities without the consent of the Attorney General;
  - (d) despite anything in the governing instrument of the institution, restrict the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the institution without the approval of the Attorney General.

- (3) The references in subsection (1) to misconduct or mismanagement shall (despite anything in the governing instrument of the institution) extend to the expenditure of sums –
- (a) for the remuneration, reimbursement or reward of persons –
    - (i) raising funds for the institution; or
    - (ii) acting in the affairs of the institution; or
  - (b) for other promotional or administrative purposes, where such sums are excessive in relation to the property which is or is likely to be applied or applicable for charitable purposes.
- (4) In any proceedings under this section, the report of an inquiry under section 37 shall be admissible as evidence of the documents and facts stated in the report.
- (5) Where an order is made under this section, the Attorney General must cause a copy of the order to be sent to the FSA.

## PART 9 – FOREIGN CHARITIES

### 40 Meaning of “foreign charity”

In this Act “**foreign charity**” means a charity which is an institution which is established elsewhere than in the Island.

### 41 Responsible person

- (1) If, in the case of a foreign charity, none of the charity trustees is ordinarily resident in the Island, the charity must appoint a person resident in the Island as the “**responsible person**”.
- (2) The responsible person must retain all books, records and documents of the charity which relate to the activity of the charity in the Island.
- (3) Except in the case of a charity which is an institution registered under the *Foreign Companies Act 2014*, the responsible person is authorised to accept service of notices or other documents served on the charity.
- (4) The responsible person –
- (a) is an agent of the charity for the purposes of section 51; and
  - (b) is an officer of the charity for the purposes of section 54 of the Interpretation Act 2015 (which provides for officers of bodies corporate to be liable on the commission of an offence by the body corporate).

## PART 10 – APPEAL

### 42 The Charities Tribunal

- (1) There shall be a tribunal known as the Charities Tribunal (in this Act referred to as “the Tribunal”) for the purposes of this Act and any other enactment in which an appeal lies to the Tribunal.
- (2) The Tribunal shall consist of –
  - (a) a chairman appointed in accordance with the *Tribunals Act 2006*; and
  - (b) 2 members selected in accordance with regulations made under section 9(b) of the *Tribunals Act 2006*, from a panel appointed in accordance with that Act.

### 43 Appeals

[1989/11/13 and Drafting]

- (1) A person who is aggrieved by a decision or direction of the Attorney General under the *Charities Act 1986* or under this Act may appeal, in accordance with rules made under section 8 of the *Tribunals Act 2006*, to the Tribunal.
- (2) But subsection (1) does not apply in relation to any decision of the Attorney General in relation to the exercise of his or her functions under Part 8.
- (3) On the determination of the appeal, the Tribunal must confirm, vary or revoke the decision or direction in question.
- (4) A variation or revocation of a decision or direction does not affect the previous operation of that decision or direction or anything duly done or suffered under it.
- (5) A decision of the Tribunal on an appeal under this section is binding on the maker of the decision or direction in question and on the appellant, subject to subsection (6).
- (6) An appeal from a decision of the Tribunal lies to the Court, in accordance with rules of court, on a question of law.
- (7) In the case of an appeal against a direction under section 20, the specified period referred to in subsection (4) of that section commences on the date on which the Tribunal confirms or varies that direction.

## PART 11 – MISCELLANEOUS PROVISIONS

### 44 Requirement to give reasons

A decision or direction in respect of which an appeal may be made under section 43 must —

- (a) be given in writing; and
- (b) include a statement of reasons.

### 45 Authorised persons

(1) The Attorney General may, by notice, appoint a person employed as an officer in the Attorney General's Chambers to perform any of the following functions of the Attorney General —

- (a) under this Act —
  - (i) the approval or refusal of an application for registration under section 11;
  - (ii) the removal of a charity from the register under section 15;
  - (iii) the giving of written consent to the amendment of a governing instrument under section 17;
  - (iv) the giving of written consent to the amendment of the name of a registered charity under section 19;
  - (v) the giving of written consent to the adoption, or amendment, of a governing instrument under section 21; and
  - (vi) the refusal to accept for registration an unacceptable document under section 56.
- (b) under the *Charities Act 1986* —
  - (i) the giving of written consent under section 1 (power for small charity to spend capital); and
  - (ii) the giving of written consent under section 2 (transfer of charity endowment to another charity).

(2) For the purposes of section 43, a decision of a person appointed under subsection (1) is treated as if it were a decision of the Attorney General.

### 46 Regulations

[1989/11/11 and drafting]

The Attorney General may make such regulations as he or she considers are necessary or desirable to carry the provisions of this Act into effect and in particular may make provision —

- (a) requiring the keeping of records with respect to the transactions and financial position of registered charities for the keeping of records on the Island;
- (b) as to the form and content of the annual accounts of registered charities and of the report of the auditor or examiner on them;
- (c) prescribing the qualifications of examiners of such accounts;
- (d) defining the expressions “accounting year” and “gross income” for any purposes of this Act or any other enactment relating to charities;
- (e) as to the form and content of the annual reports of registered charities;
- (f) for any contravention of the regulations to be an offence and prescribe a penalty for commission of the offence on summary conviction of a fine not exceeding level 5 on the standard scale.

*Tynwald procedure – approval required*

#### **47 Winding up of institutions by the Court**

[1989/11/16]

Where an institution established for charitable purposes may be wound up by the Court under any enactment, an application for it to be wound up under the enactment concerned may be presented by the Attorney General as well as by any other person authorised by that enactment.

#### **48 Charitable companies – invalidity of certain transactions**

[1989/11/16B]

- (1) Section 4 of the *Companies Act 1986* (validity of acts of company) does not apply to the acts of a company which is a charity except in favour of a person who –
  - (a) gives full consideration in money or money’s worth in relation to the act in question; and
  - (b) does not know that the act is not permitted by the company’s memorandum or section 5(7) of that Act,
 or who does not know at the time the act is done that the company is a charity.
- (2) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company’s memorandum or section 5(7) of that Act, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company’s act.
- (3) In any proceedings arising out of subsection (1) the burden of proving –

- (a) that a person knew that an act was not permitted by the company's memorandum or section 5(7) of that Act; or
- (b) that a person knew that the company was a charity, lies on the person making that allegation.

#### **49 Status of registered charity to appear on correspondence, etc**

The Attorney General may, by regulations under section 46, require a registered charity to state specified information in specified descriptions of document or communication.

#### **50 False and misleading statements**

[1989/11/12]

A person ("P") commits an offence if —

- (a) for the purposes of or in connection with any application made or other document sent to the Attorney General;
- (b) in purported compliance with any requirement imposed on P by or under this Act; or
- (c) in any application or other document sent to the Attorney General under this Act,

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

*Maximum penalty —*

- (a) *(on information) — 2 years' custody, or a fine or both;*
- (b) *(summary) — 6 months' custody, or a fine of level 5 on the standard scale or both.*

#### **51 Offences – supplementary provisions**

[1989/11/14 and drafting]

- (1) Proceedings for an offence under this Act may be instituted only with the consent of the Attorney General.
- (2) Subsection (3) applies to a failure to comply with any provision of this Act by an institution which is not a body corporate.
- (3) Where a failure to comply with a provision of this Act results in the commission of an offence, that offence is committed by any person who, at the time of its commission-
  - (a) is a charity trustee, manager or other similar officer of the institution, or
  - (b) who is the agent of the institution.

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

## 52 Delegation by charity trustees

Section 11 of the *Trustee Act 2001* (delegation by charity trustees) applies to every institution which is a charity and not merely to a trust to which the provisions of that Act apply.

## 53 Approved forms

- (1) The Attorney General may publish forms or templates in any medium which are to be used when submitting information required to be submitted under this Act.
- (2) Where a form or template is required under this Act to be in an “**approved form**”, it must —
  - (a) contain the information required to be specified in it; and
  - (b) have attached to it, or logically associated with it, such documents as may be required by that form or template.

## 54 Keeping of records by the Attorney General

- (1) Information and documents submitted to the Attorney General under this Act or under regulations made under section 46 may be kept in any form that —
  - (a) is approved by the Attorney General; and
  - (b) is capable of being reproduced in legible form.
- (2) The Attorney General is to be taken as having complied with an obligation to maintain information or documents if the Attorney General complies with subsection (1).
- (3) The Attorney General may destroy information and documents maintained by the Attorney General if —
  - (a) the information or documents are original records which the Attorney General is keeping in a form described in subsection (1); or
  - (b) the information or documents relate to a charity which was removed from the register more than 25 years previously.

## 55 Power to enter into arrangements with the Registrar General

- (1) The Attorney General may enter into arrangements with the Registrar General for the provision of services in connection with the delivery of the Attorney General’s functions under this Act.

- (2) Section 4(5) of the *Central Registry Act 2018* (which requires information held by the Registrar General to be accessible at the Central Registry) does not apply to any information held by the Registrar General under subsection (1).

## 56 Power to refuse to accept documents

- (1) For the purposes of this Act, a document is “**unacceptable**” if the document—
- (a) does not comply with this Act or regulations made under section 46;
  - (b) has not been duly completed;
  - (c) contains a material error; or
  - (d) is not legible.
- (2) The Attorney General may refuse to accept for registration an unacceptable document.
- (3) If the Attorney General refuses to accept a document under subsection (2), he or she must —
- (a) return the document to the person who submitted it; and
  - (b) provide a statement of reasons for its rejection.
- (4) A rejected document is treated as having not been submitted.

## PART 12 - AMENDMENTS AND REPEALS

### 57 Charities Act 1962 s. 14 amended

In section 14 of the *Charities Act 1962* —

- (a) for the definition of “**charitable purposes**” substitute —
  - ▮ “**charitable purposes**” has the meaning given by section 5 of the *Charities Registration and Regulation Act 2018* ▮; and
- (b) for the definition of “**charity**” substitute —
  - ▮ “**charity**” has the meaning given by section 4 of the *Charities Registration and Regulation Act 2018*; ▮.

### 58 Amendment of the Charities Act 1986

- (1) The *Charities Act 1986* is amended as follows.
- (2) In section 1 (power for small charity to spend capital) and section 2 (transfer of charity endowment to another charity), for “public charity” substitute ▮ charity ▮.
- (3) In section 3 (provisions supplemental to sections 1 and 2) —



- (a) in subsection (3) for “£1000” substitute **“level 3 on the standard scale”**;
- (b) in subsection (4), for “section 5 of the *Charities Registration Act 1989*” substitute —  
**“section 26 of the Charities Registration and Regulation Act 2018”**;
- (c) in subsection (5), for “the Treasury” substitute **“the Attorney General”**; and
- (d) for subsection (6) substitute —  
**“(6) In sections 1 and 2, “charity” has the meaning given by section 5 of the *Charities Registration and Regulation Act 2018*.”**

### 59 Amendment of the Representation of the People Act 1995

- (1) The *Representation of the People Act 1995* is amended as follows.
- (2) In section 10I —
  - (a) for “Section 5 of the *Charities Registration Act 1989*” substitute **“Section 27 of the *Charities Registration and Regulation Act 2018*”**; and
  - (b) omit “and the penalty provided for in section 14(2) of that Act”.

### 60 Amendment of the Foundations Act 2011

- (1) The *Foundations Act 2011* is amended as follows.
- (2) In section 7(2), for “charitable, non-charitable or both” substitute **“charitable or non-charitable”**.
- (3) In section 64, for “section 15 of the *Charities Registration Act 1989*” substitute **“section 3 of the *Charities Registration and Regulation Act 2018*”**.

### 61 Amendment of the Tribunals Act 2006

- (1) The *Tribunals Act 2006* is amended as follows.
- (2) In Part 2 of Schedule 2, insert numerically with the next available number after this section commences —  
**“the Charities Tribunal established under section 42 of the *Charities Registration and Regulation Act 2018*.”**

### 62 Repeal of the Charities Registration Act 1989

The *Charities Registration Act 1989* is repealed.



## SCHEDULE

## OBTAINING AND EXECUTING SEARCH WARRANTS

[Section 31]

**1 Search warrant**

[P2011/25/48]

- (1) A justice of the peace may issue a warrant under this section if satisfied, on information given on oath by a person conducting an inquiry under section 37, that there are reasonable grounds for believing that each of the conditions in subsection (2) is satisfied.
- (2) The conditions are —
  - (a) that an inquiry has been instituted under section 37;
  - (b) that there is on the premises to be specified in the warrant any document or information relevant to that inquiry which the person conducting the inquiry could require to be produced or furnished under section 37(3); and
  - (c) that, if the person conducting the inquiry were to require the document or information to be so produced or furnished —
    - (i) the requirement would not be complied with; or
    - (ii) the document or information would be removed, tampered with, concealed or destroyed.
- (3) A warrant under this section is a warrant authorising the person named in it (“P”) —
  - (a) to enter and search the premises specified in it;
  - (b) to take such other persons with P as the person conducting the inquiry considers are needed to assist P in doing anything that P is authorised to do under the warrant;
  - (c) to take possession of any documents which appear to fall within subparagraph (2)(b), or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;
  - (d) to take possession of any computer disk or other electronic storage device which appears to contain information falling within subparagraph (2)(b), or information contained in a document so falling, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information;
  - (e) to take copies of, or extracts from, any documents or information falling within paragraph (c) or (d);

- (f) to require any person on the premises to provide an explanation of any such document or information or to state where any such documents or information may be found;
- (g) to require any such person to give P such assistance as P may reasonably require for the taking of copies or extracts as mentioned in paragraph (e).

## 2 Execution of search warrant

[P2011/25/49]

- (1) Entry and search under a warrant under paragraph 1 must be at a reasonable hour and within one month of the date of its issue.
- (2) The person named in the warrant (“P”) must, if required to do so, produce —
  - (a) the warrant; and
  - (b) if P is not the Attorney General, the document by which he was appointed under section 37(2),for inspection by the occupier of the premises or anyone acting on the occupier’s behalf.
- (3) P must make a written record of —
  - (a) the date and time of P’s entry on the premises;
  - (b) the number of persons (if any) who accompanied P on to the premises and the names of any such persons;
  - (c) the period for which P (and any such persons) remained on the premises;
  - (d) what P (and any such persons) did while on the premises; and
  - (e) any document or device of which P took possession while there.
- (4) If required to do so, P must give a copy of the record to the occupier of the premises or someone acting on the occupier’s behalf.
- (5) Unless it is not reasonably practicable to do so, P must before leaving the premises comply with —
  - (a) the requirements of subparagraph (3); and
  - (b) any requirement made under subsection (4) before P leaves the premises.
- (6) Where possession of any document or device is taken under paragraph 1 —
  - (a) the document may be retained for so long as the Attorney General considers that it is necessary to retain it (rather than a copy of it) for the purposes of the relevant inquiry under section 37; or

- (b) the device may be retained for so long as the Attorney General considers that it is necessary to retain it for the purposes of that inquiry,  
as the case may be.
- (7) Once it appears to the Attorney General that the retention of any document or device has ceased to be so necessary, he or she must arrange for the document or device to be returned as soon as is reasonably practicable –
- (a) to the person from whose possession it was taken; or
- (b) to any of the charity trustees of the charity to which it belonged or related.
- (8) It is an offence for a person intentionally to obstruct the exercise of any rights conferred by a warrant under paragraph 1.

*Maximum penalty – (summary) – 12 months' custody, or a fine of level 5 on the standard scale or both.*