

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: Government Charitable Funds and the role of Commissioner of Charities

Paper No: 227/09

Date: 26 November 2009

Report of: Senior Crown Counsel

1.0 Purpose

- 1.1** To approve the making of the Registration of Charities (Exemption) Order 2009 to allow donations made between 1 January 2009 and 31 December 2012 to nine charitable funds operated by Government officers in the course of their employment to be treated as though they were made to a registered charity, pending the drafting of the Health, Social and Education Charitable Trusts Bill.
- 1.2** To confirm the appointment as Commissioner of Charities of the person from time to time holding the office of Attorney General.

2.0 Recommendations

- 2.1** Honourable Members are invited to approve the making of the Registration of Charities (Exemption) Order 2009 exempting from the requirement to register as a charity during the period 1 January 2009 to 31 December 2012 the nine charitable funds operated by Government officers in the course of their employment and listed in the Appendix to this paper, pending the drafting of the Health, Social and Education Charitable Trusts Bill.
- 2.2** Honourable Members are invited to confirm the appointment as Commissioner of Charities of the person from time to time holding the office of Attorney General.

3.0 Summary of Financial Implications

None

4.0 Background : Government Charitable Funds

- 4.1** In February 2003 (Paper 34/03) Honourable Members approved the drafting of a Bill to establish a Government Charitable Trust on the terms set out in that

paper. The purpose of the proposed Government Charitable Trust (which is to be the subject of a future Health, Social and Educational Charitable Trusts Bill) is to regulate those charitable funds operated by Government officers in the course of their duties. The Appendix to this paper lists the nine charitable funds currently operated by officers in the course of their employment within the Medical Department, Education Department and the Royal Falkland Islands Police.

- 4.2** The Health, Social and Educational Charitable Trusts Bill has not yet been drafted, in accordance with the legislative priorities approved by Honourable Members. In August 2006 (Paper 225/06) Honourable Members reaffirmed that the preparation of the Bill fell into the lowest legislative category of ‘Desirable’, and as such no work has been carried out on the draft Bill while other Bills remain to be drafted in the ‘Essential/Urgent’ or ‘Highly Desirable’ categories.
- 4.3** Donations of £50 or more may be claimed as tax deductible by Falkland Islands resident individuals and companies only where they are made to a charity registered in the Falkland Islands (or to an overseas charity recognised in the Falkland Islands for the purpose).
- 4.4** The creation of a Falkland Islands Register of Charities, in accordance with the provisions of the Charities Act 1960 in its application to the Falkland Islands, did not take place until the Taxes Ordinance was amended in late 1998 to allow for tax deductible charitable donations. An organisation which solicits money from the public for charitable purposes must register as a charity. The registration process involves submitting a copy of the organisation’s trust deed or constitution to the Attorney General in his capacity as Commissioner of Charities.
- 4.5** Initially local groups established for charitable purposes were given temporary exemption from the requirement to register as a charity to allow time for their trust deeds or constitutions to be exhibited to the Attorney General’s Chambers, or for the Attorney General’s Chambers to assist them with the preparation of a trust deed or constitution where none already existed.
- 4.6** A series of annual Registration of Charities (Exemption) Orders were signed from 1998 to 2004, on each occasion covering a reduced number of charitable funds, as local organisations put their paperwork in order and were registered as charities, or as redundant charitable bank accounts were closed down. By 2004 only those charitable funds operated by Government officers in the course of their employment still benefited from temporary exemption from the requirement to register as a charity.
- 4.7** In January 2007 (Paper 06/07) Honourable Members granted a temporary exemption from the requirement to register as a charity to ten charitable funds operated by Government officers for a period of four years from 1 January 2005 to 31 December 2008. One of the funds (the KEMH Colonic Cancer Screening Fund) is no longer in use, and is being closed by the Hospital Administrator and the monies transferred to another registered charity.

4.8 All the remaining funds are supported by donations from taxpayers, including generous payments from local companies. To enable the individual and corporate taxpayers to claim any donations made since 1 January 2009 as tax deductible, the funds require a further temporary exemption from the requirement to register as a charity. The Attorney General's Chambers has now recruited a Legislative Drafter to deal with the legislative backlog, but the drafting of a Health, Social and Educational Charitable Trusts Bill is low priority, and so a further four year exemption is proposed.

5.0 Background : Commissioner of Charities

5.1 The Charities Act 1960 applies as law in the Falkland Islands. Later charities law enacted in England and Wales has been disappplied in the Falkland Islands. The 1960 Act replaced the Charitable Trusts Acts 1853 to 1939 and other enactments relating to charities, but specifically provided for the continuation of a body of Charity Commissioners for England and Wales, which would have such functions as were conferred on them by the Act.

5.2 Section 1(3) of the 1960 Act provides that the Charity Commissioners have the general function of promoting the effective use of charitable resources by encouraging the development of better methods of administration, by giving charity trustees information or advice on any matter affecting the charity and by investigating and checking abuses. Section 1(4) provides that the general object of the Commissioners in relation to any particular charity is to promote and make effective the work of the charity in meeting the needs designated by its trusts (ie. in fulfilling its charitable purposes); but the Commissioners shall not themselves have power to act in the administration of any charity. Section 1(5) requires the Commissioners to submit an annual report on their operations to the Secretary of State.

5.3 Matters relating to the Charity Commissioners are set out in the First Schedule to the 1960 Act. There are to be at least three and not less than five Commissioners, appointed by the Secretary of State and employed as civil servants, at least two of whom must be solicitors or barristers. The Commissioners have power to regulate their own proceedings, and to employ such officers as they think necessary for the proper discharge of their functions.

5.4 In the Falkland Islands the functions of the Charity Commissioners have been exercised by the Attorney General in his role as guardian of the public interest. The Attorney General's Chambers have compiled a Register of Charities under section 4 of the 1960 Act, drafted and updated charity constitutions as needed, encouraged better administration through the submission of annual returns and annual accounts under sections 6 and 8 of the 1960 Act, advised charities on a range of issues, and assisted with the formation of new charities.

5.5 The functions of the Charity Commissioners include investigating and checking abuses. The 1960 Act empowers the Commissioners to conduct an inquiry into the affairs of a particular charity, including taking evidence,

inspecting documents, arranging for the audit of a charity's accounts, and such give directions as they consider appropriate for securing that any default is made good.

- 5.6** The Attorney General considers that his position as de factor Commissioner of Charities should be formalised, before he takes any action under the 1960 Act to investigate any suspected abuse by a registered charity. To avoid having to re-appoint successive Attorney Generals, and to ensure that any Acting Attorney General has power to act, it is proposed that Executive Council confirm the appointment as Commissioner of Charities of the person from time to time holding the office of Attorney General.

6.0 Financial Implications

- 6.1** It is believed that the likely effect of continued temporary exemption from the requirement to register as a charity of the nine charitable funds operated by Government officers in the course of their employment from the requirement to register as a charity (which in turn allows donations to the funds to be claimed as tax deductible) will be tax neutral, since the companies which provide most of the financial support for these funds are expected to transfer their support to other registered charities if they cannot claim them as tax deductible.

- 6.2** There are no financial implications to the second recommendation.

7.0 Legal Implications

- 7.1** The making of the Registration of Charities (Exemption) Order 2009 places the funds under the scrutiny of the Commissioner of Charities, which is to be desired in the interests of good governance.

- 7.2** The formal appointment as Commissioner of Charities of the person from time to time holding the office of Attorney General will strengthen the Attorney General's Chambers in its role as Charities Commission, and enable it to take enforcement action against those charities which breach their legal obligations.

8.0 Human Resources Implications

None

GOVERNMENT CHARITABLE FUNDS

APPENDIX TO PAPER 227/09

HOSPITAL FUNDS

King Edward VII Memorial Hospital Fund	The purchase of equipment for use in the hospital, and the provision of extras to hospital patients
KEMH Day Centre Fund	Christmas Party and other extras for elderly members of the community who attend the KEMH Day Centre
KEMH Eye Care Fund	Assists with the cost of optical care in the Falkland Islands
Flying Santa Appeal	The purchase of Christmas presents (books and educational toys) for children living in Camp

EDUCATION FUNDS

FICS Donations Account	The purchase of school trophies, the provision of food and drink for the Tumbledown Run, and the purchase of equipment not funded by FIG
IJS Donations Account	The purchase of pupil prizes
Camp Education Donations Account	Assists the cost of camping trips for children living in Camp
Stanley Hostel Donations Account	The purchase of extras for Hostel boarders

POLICE FUNDS

DARE Group Fund	Purchase of materials for use in the Drug Awareness and Resistance Education programme
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