L.N. 390 of 2020

VOLUNTARY ORGANISATIONS ACT (CAP. 492)

Voluntary Organisations (Charity Shops) Regulations, 2020

IN exercise of the powers conferred by article 41(1)(r) and (s) of the Voluntary Organisations Act, the Minister for Education and Employment, in consultation with the Minister for Finance and Financial Services has made the following regulations:-

Citation and scope.

1. (1) The title of these regulations is the Voluntary Organisations (Charity Shops) Regulations, 2020.

(2) The scope of these regulations is to regulate charity shops carrying out trading activities in order for a voluntary organisation to achieve its primary lawful and social purpose and objectives including that of public benefit and to ensure that such charity shops are administered in the interest of the voluntary organisation concerned and for public interest.

Interpretation.

2. (1) Unless otherwise provided in these regulations, the definitions prescribed in the Act shall apply.

(2) For the purpose of these regulations and unless the context otherwise requires:

"the Act" means the Voluntary Organisations Act; Cap. 492.

"administrators" shall have the meaning as assigned to it in the Act;

"annual accounts" means all accounting records of income and expenditure kept by a voluntary organisation for the respective financial year;

"charitable donation" means a donation in cash or in kind including goods and items donated or services made to a charity shop to support a voluntary organisation to obtain its primary purpose and objectives;

"charity shop" means an establishment which is open to the general public to carry out trading activities in order to raise funds for a voluntary organisation to achieve its principal purpose and objectives provided that such charity shop may only be established by a voluntary organisation;

"charity retailing" means the sale of new items or the re-sale of goods or items, including those donated by the public, to raise funds for a charity purpose;

"charity shop operator" means a person operating a charity shop and includes the management of such charity shop and the term "charity shop operators" shall be construed accordingly;

"the Commissioner" means the Commissioner for Voluntary Organisations;

"donor" means a person who gives a donation in cash or in kind, whether items or goods to charity for a charitable purpose and includes customers;

"employee" means a person not being an administrator, who has entered, or is employed by virtue of a contract of service with the charity shop, or any person who has undertaken personally to execute any work or services for, and under the immediate direction and control of a charity shop against remuneration, but excluding any work or services performed in a professional capacity or as a contractor for another person, when such work or service is not regulated by a specific contract of service. Such work or services to charity shops may include, but are not limited to fundraising activities or public events;

"respective financial year" means the financial year in respect of which annual accounts are prepared by voluntary organisations;

"trading activity" means the carrying out of activities by a charity shop in order to raise funds for a voluntary organisation;

"voluntary organisation" means an organisation established in accordance with article 3 of the Act;

"voluntary organisation number" means the number allocated to a voluntary organisation by the Commissioner upon its enrolment.

Applicability.

3. These regulations shall apply to all enrolled voluntary organisations.

(2) The objectives of these regulations include:

(a) to promote good practice and high standards in charity retailing;

(b) to ensure compliance with all the requirements established in these regulations and in the provisions of the Act;

(c) to promote public confidence and support for charity shops;

(d) to increase donations to charity shops;

(e) to generate positive publicity for charity shops;

(f) to promote awareness of legitimate charity shops;

(g) to support the work for charities.

General requirements.

4. (1) Any charity shop shall be registered with the Office of the Commissioner who shall in return grant a permit to the voluntary organisation establishing such charity shop:

Provided that the Commissioner shall have the discretion to authorize or refuse such registration:

Provided further that the Commissioner shall, in writing, give justifiable reasons for his decision to refuse such a permit, in particular in case of non-compliance with all the requirements established in these regulations and in the provisions of the Act.

(2) Administrators of a voluntary organisation shall comply with their obligations in terms of these regulations as charities, as retailers and administrators of the property or the premises concerned.

(3) Administrators shall ensure that charity shops do not perform any activity which goes beyond the purpose for which the voluntary organisation was established and that such charity shops shall adhere to the conditions stipulated in their permit or licence or authorisation issued by the Commissioner.

(4) Administrators shall ensure they have clear, transparent procedures in place to enable donors or customers to notify the charity of their complaints and such procedures should include systems to ensure that all complaints are addressed promptly and within a specified time frame.

Applications.

5. (1) Applications by voluntary organisations for the operation of such charity shops shall be received by the Commissioner.

(2) In the application to obtain a permit to open a charity shop, the voluntary organisation shall provide to the Commissioner:

(a) a contract of purchase or lease of the premises, or a document confirming a valid legal title;

(b) a valid planning permit of the premises and where such premises were built before 1967, an architect's declaration to this effect;

(c) the name of any person who is entrusted with the management of the charity shop, including but not limited to volunteers, who shall be at least sixteen (16) years of age;

(d) an updated police conduct certificate of the applicants and of the persons mentioned in paragraph (c);

(e) a resolution declaration signed by all administrators of the voluntary organisation declaring that such voluntary organisation will be opening and operating a charity shop;

(f) a valid certificate certifying that the premises are registered as compliant with the rules and regulations issued by the Health and Safety Authority in terms of the Occupational Health and Safety Authority Act;

Cap. 424.

(g) any other necessary and ancillary information which the Commissioner may from time to time require in terms of these regulations.

Charity shops operations.

6. (1) Charity operators shall treat the public, donors and customers with respect and shall provide clear information to donors and customers about their charity's objectives and activities on the request of such information.

(2) Charity operators shall provide appropriate training, information and support to all staff and volunteers.

(3) Charity operators shall take all reasonable measures to ensure the secure handling of cash, cheques and credit card payments as well as donations in kind.

(4) Charity operators should have clear, published policies and procedures for the handling of complaints received in their shops.

Cap. 552.

(5) Saving the provisions of the Development Planning Act, charity shops shall have on the façade of their premises the words "Charity Shop" both in the Maltese and the English Language, together with the voluntary organisation's name and the voluntary organisation's number.

7. A shop or stall opened for a period of less than twenty (20) days in a year shall not be considered as a charity shop for the purposes of these regulations, but shall nevertheless abide by the provisions established in the Voluntary Organisations (Public Collections) Regulations, 2020. Stalls or temporary shops. L.N. 371 of 2020.

8. (1) Annual returns shall be duly filled by administrators and submitted to the Commissioner in terms of the Annual Returns Form prescribed in Schedule 1, including the details of the selling items of the charity shop and the value added tax (VAT) registration number. Annual returns.

(2) Saving the provisions of sub-regulation (1), annual returns shall include but are not limited to:

(a) the charity registration documents including:

(i) the purpose and activities of the charity shop; and

(ii) the names, titles, designated role and addresses of charity operators;

(b) name or type of charity;

(c) salaries to directors, managers, members and, or employees (if applicable);

(d) name of donee; and

(e) receipts to donors specifying the list of goods and items being donated; and

(f) a copy of the annual accounts of the voluntary organisation attached as Annex A submitted to the Commissioner in terms of Schedule III to the Voluntary Organisations (Annual Returns and Annual Accounts) Regulations. S.L. 492.01

(3) Administrators shall include clear contact details for their charity on all requests made for donations. Details of the personnel representing the charity, whether operators, employees, member or volunteers, and where possible of their vehicles shall be clearly identifiable.

(4) For the purpose of this regulation, any information regarding the trading activities carried out by charity shops shall provide an actual and transparent analysis of the generated revenue,

income, expenditure, assets and liabilities for the respective financial year.

Remuneration to members and employees of charity shops.

9. (1) The members and employees of a charity shop may be entitled to remuneration for services rendered to such charity shop in terms of the market levels and market conditions as defined in the Act, and such services shall be published in the annual report prepared by the administrators of the related voluntary organisation.

(2) Administrators of a charity shop shall:

(a) declare the amount of remuneration received by its employees; and

(b) provide a copy of the contract of employment to the Commissioner, which shall be used by the Commissioner for internal purposes only.

(3) Saving the provisions of sub-regulation (2), in the case of charity shops receiving government funds, the employees of such charity shops shall be entitled to remuneration which shall not exceed the salary of a public officer or a civil servant, when compared to their respective designated role in such charity shop.

(4) The Commissioner shall, in all cases mentioned under sub-regulation (2), and in order to ensure that employees are not paid exorbitant rates, be entitled to obtain from the voluntary organisation or any other entity or authority concerned, the number of employees in the charity shop and their respective designated role, together with any other information which the Commissioner may require in this regard.

(5) The remuneration of persons who are employed to carry out management duties, executive functions or fundraising activities in a charity shop shall not be such as to materially prejudice the voluntary organisation from achieving its principal purpose and objectives.

Identification tags.

10. (1) Any person who operates in a charity shop, whether against remuneration or not, being a helper, member, volunteer and, or charity operator shall be in possession of a tag issued by the Commissioner.

(2) The tag shall include:

(a) the name and surname of the person;

(b) the identity card number or passport number of the

person;

(c) the voluntary organisation's number of the enrolled voluntary organisation;

(d) the name of the charity shop;

(e) the signature of the Commissioner or a representative acting on his behalf and any administrator of the voluntary organisation.

(3) Where applications for such tags are made by a voluntary organisation, such voluntary organisation shall take full responsibility on the good standing and credibility of these persons and observe the provisions of article 22B of the Act.

(4) The tag shall be made visible at all times during the time that the shop is open to the public and must be kept in a clean and legible state.

(5) The tag shall be marked with an expiry period, which period shall be at the discretion of the Commissioner.

(6) Failure to exchange a tag upon its expiry period, or to return it to the Commissioner, upon his request, or upon termination of a collection, shall be subject to a penalty of twenty euro (€20).

(7) Every person shall be responsible for the safe custody of his tag and shall return the tag to the Commissioner immediately upon ceasing to be a collector, and in case a tag is lost, the Commissioner shall issue a declaration to that effect in the Gazette and one local newspaper.

Sale items.

11. (1) Any price which is tagged to an item or good shall be made clearly visible to customers or the public in general who shall be aware of the final price.

(2) Any item which is legally prohibited for sale may not be sold from a charity shop.

Waste collections.

12. (1) If any voluntary organisation offers the service of collecting items or goods for reuse or re-sale, such collection shall not amount to waste collection and such voluntary organisation shall be exempted from applying for any licence or permit to be considered as a waste collector and, or a waste facility.

(2) The exemption mentioned in the sub-regulation (1) only applies if the item or good in question is not listed as a hazardous or

toxic item, or may otherwise cause harm to a person or to the environment.

Obligation of the charity shop operator. Cap. 378.

13. The charity shop operator shall not be obliged to provide a commercial guarantee in terms of article 82 of the Consumer Affairs Act against the items or goods being sold and such items or goods shall be bought at the buyer's risk, provided that such items or goods are being sold for fundraising purposes.

Rights of donors.

14. (1) Donors shall be aware that the items or goods being donated are being primarily used for a charitable purpose.

(2) A charity shall not enter any agreement which is intended to go beyond or which materially prejudices the charity purpose or which hinders the charity from achieving its primary purpose and objectives.

Responsibilities of administrators.

15. (1) Administrators of a voluntary organisation shall ensure that collections of donations are being carried out within the requirements of the relevant legislation and that the charity shop is appropriately licensed.

(2) Administrators shall be aware that the donation of goods for sale shall meet the charity retail objectives and requirements, to the extent that such donation shall be intended to obtain the primary purpose and objectives of the voluntary organisation and shall not be used to increase the income for the charity itself.

(3) Administrators shall also consider the reputation risks to their charity and to the voluntary sector and of being involved in activities which might be seen to undermine the purpose and objectives of the voluntary organisation, or which might substantially and materially damage the public's trust in the voluntary sector.

(4) Administrators shall be assured that any donations are received in full conformity with these regulations and the provisions of the Act.

Non-compliance.

16. (1) A licence, permit or authorisation granted to a charity shop is subject to automatic renewal, provided that the voluntary organisation is compliant and submits its annual accounts on an annual basis:

Provided that such renewal of licence, permit or authorisation is subject to the discretion of the Commissioner.

(2) A non-compliant voluntary organisation shall not operate a charity shop and such charity shop shall remain closed, unless it

becomes compliant within an interim period of one (1) year:

Provided that, if the voluntary organisation remains non-compliant after the lapse of such interim period, the licence shall be revoked immediately:

Provided further that, if the voluntary organisation becomes compliant within such interim period, it shall be issued with a compliance certificate by the Commissioner.

Review procedures by the Commissioner.

17. (1) The Commissioner or anyone on his behalf has the right of entry at any time in any charity shop to perform an inspection within the premises, at the application stage and at anytime thereafter, and may ask for any documentation or evidence as he deems fit in relation to the premises.

(2) Saving the provisions of sub-regulation (1), the annual accounts of a voluntary organisation shall be subject to such review procedures as are specified in Schedule 2.

Miscellaneous provisions.

18. The provisions in articles 7(1)(k) and (l), 8(2), 22B and 22C of the Act relating to anti-money laundering and financing of terrorism shall apply in their entirety to these regulations.

Transitory provision.

19. (1) Charity shops established and operating prior to the entry into force of these regulations, shall have a period of six (6) months, to conform with these regulations.

(2) The operations of charity shops established prior to the entry into force of these regulations, as well as any fines which may have been issued or imposed on such charity shops prior to the entry into force of these regulations, and, or any actions or proceedings which may have been instituted against such charity shops shall remain valid.

(3) Upon termination of the transitory period referred to in sub-regulation (1), where a charity shop remains non-compliant with these regulations, the Commissioner may issue an order that such premises be closed down, without the necessity of filing any further action before any court.

Offences and penalties.

20. (1) Any person that contravenes or is in breach of any of the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable:

(a) on a first conviction, to a fine (*multa*) of not less than twenty-three euro and twenty-nine cents (€23.29), but not exceeding one thousand and one hundred and sixty-four euro

and sixty-nine cents (€1,164.69);

(b) on a second or subsequent conviction, to a fine (*multa*) of not less than forty-six euro and fifty-eight cents (€46.58), but not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37);

(c) in the case of a continuing offence, to a fine (*multa*) of twenty-three euro and twenty-nine cents (€23.29) for every day during which the offence continues.

(3) The Commissioner shall have the power to impose administrative sanctions as may be prescribed in respect of an offence under these regulations by issuing a notice relating to such sanctions in writing to the offender. Any civil proceedings may be instituted by the Commissioner according to the circumstances of the case.

(4) Any criminal proceedings against any person shall be instituted by the Commissioner through the executive police, as prescribed in the Criminal Code.

Cap. 9.

(5) Where a notice under this regulation has been issued, the person against whom such notice has been served may, within twenty-one (21) days of the service of the notice, accept responsibility for the offence stipulated in such notice, and within the same period pay the penalty and, or administrative sanctions indicated in such notice, and conform with the relative provisions under these regulations, and no further proceedings may be taken under these regulations in respect of such offence.

Schedule 1

(Regulation 8)

Annual Returns Form

(for Charity Shops established by a Voluntary Organisation)

Name of Voluntary Organisation: .....

Respective Financial year for the twelve month period ending: ..

General Information of the Voluntary Organisation

Address:

Postcode:

Telephone number(s):

Fax number:

E-Mail address/es:

Website:

CHARITY INFORMATION

Name or type of charity:

VAT registration number.

Charity registration documents including:

(i) the purpose and activities of the charity shop:

(ii) the names, titles, designated role and addresses of charity operators:

Salaries to directors, managers, members, and, or employees (if applicable):

Details of the selling items:

Receipts to donors specifying the list of goods and items being donated:

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ANNUAL ACCOUNTS

Attach as Appendix A:

Attach with this annual return a signed copy of the Annual Accounts submitted by the voluntary organisation.

ANNUAL ACCOUNTS DECLARATION OF COMPLETENESS AND CORRECTNESS

I hereby confirm that the details provided, including the attached appendix, are complete and truthful to their contents.

Signature of Administrator:

Name of Administrator:

Date:

Appendix A - Annual Accounts

Schedule 2

(Regulation 17)

Review procedures by the Commissioner

1. The Commissioner has the right to appoint any qualified person to scrutinise or draw up a report on the accounts of any voluntary organisation when he deems fit and necessary to do so. This shall be done without any ulterior notice.

2. Saving the provisions mentioned in the preceding paragraph, the Commissioner shall, in order to investigate matters or the conduct of affairs of a voluntary organisation, in terms of the powers vested in him by means of article 34 of the Act, have the right to request any information, documents and, or clarifications from the administrators of any voluntary organisation, as he may deem

necessary in the circumstances.

3. The Commissioner shall also, in terms of article 34 of the Act, be entitled to request any information from any public or private entity or authority, or disclose any information to such entity or authority, for the purpose of investigating matters of a voluntary organisation, when he has a suspicion that such voluntary organisation or a member thereof is carrying out any activity relating to money laundering and financing of terrorism, or any other illicit or criminal activity as defined in terms of these regulations:

Provided that any information requested by the Commissioner in this regard shall not be divulged to third parties in terms of these regulations:

Provided further that where the Commissioner requests such information, he shall, upon a demand made by such entity or authority, provide justifiable reasons thereto, as he may deem necessary in the circumstances.

4. Saving the provisions of paragraph 3, the Commissioner is entitled to obtain any information from other entities or authorities, including but not limited to, the Registrar for Legal Persons, the Malta Security Service, Jobsplus, the Commissioner of Police, the Commissioner for Revenue, the Financial Intelligence Analysis Unit, the Asset Recovery Bureau, the Malta Financial Services Authority and the Courts of Justice and also to disclose any information to such other entities or authorities:

Provided that such information may include any other information from the Registrar of Courts and, or the Office of the Attorney General or the Office of the State Advocate respectively, relating to any pending criminal or civil proceedings, with particular reference to any information concerning the attachment, freezing, confiscation and seizure of assets:

Provided further that any privileged information obtained by the Commissioner upon such request, shall be used exclusively for the purposes of the powers vested in him in terms of article 34 of the Act and shall not be made accessible to the public.

5. The Commissioner may also request any member or administrator of the voluntary organisation, or those claiming or alleging to be members or administrators of the voluntary organisation concerned, to submit a conduct certificate issued under the Conduct Certificates Ordinance, and may refuse to issue an enrolment certificate to such member or administrator of the Cap. 77.

voluntary organisation, or withdraw any issued enrolment certificate, if such member or administrator of the voluntary organisation fails to provide such conduct certificate.

Cap. 77.

6. Subject to the provisions of article 3(3) of the Conduct Certificates Ordinance, the Commissioner may, in the course of his investigations, request a complete record of criminal convictions of any member or administrator of a voluntary organisation. The Commissioner may refuse to issue an enrolment certificate, or withdraw any issued enrolment certificate, if the person to whom the record of criminal convictions relates refuses to give his consent as required under article 3(3) of the Conduct Certificates Ordinance.

7. For the purpose of this Schedule and in the course of any investigation made under article 7(1)(g) of the Act, the Commissioner shall have the power to summon witnesses and to administer an oath to any person concerned in the investigation and require them to give evidence.

8. In the event that such person refuses to produce the requested information, the Commissioner may impose an administrative fine not exceeding five hundred euro (€500).

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€1.26