

STATES OF JERSEY

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DRAFT NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200

**Lodged au Greffe on 22nd April 2008
by the Council of Ministers**

STATES GREFFE



Jersey

DRAFT NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Deputy Chief Minister has made the following statement on behalf of the Council of Ministers –

In the view of the Deputy Chief Minister the provisions of the Draft Non-Profit Organizations (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

REPORT

This Law sets out a number of important changes to the current position regarding the oversight and monitoring of non-profit organisations (“**NPOs**”) in order to meet the international standards set by the Financial Action Task Force (“**the FATF**”) – the body charged with setting international standards for combating money laundering and the financing of terrorism (“**AML/CFT**”).

FATF sets out in Special Recommendation VIII (“**SR VIII**”), the measures that Jersey must take to minimise the risk that NPOs might be abused by those seeking to fund terrorism.

SR VIII defines an NPO as “a legal entity or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social, or fraternal purposes, or for the carrying out of other types of “good works”. The Interpretative Note to SR VIII sets out the necessary steps in order to effectively identify, prevent and combat the potential terrorist misuse of NPOs. These include outreach to the NPO sector concerning financing terrorism issues, supervising and monitoring of the NPO sector, effective information gathering and investigative powers in relation to NPOs, and the ability to respond to international requests for information about NPOs of particular concern.

Jersey’s implementation of SR VIII will be assessed in the last quarter of 2008 by the International Monetary Fund (“**the IMF**”). An Anti-Money Laundering and Countering the Financing of Terrorism Strategy Group (“**the Strategy Group**”), was set up to ensure that Jersey gets a positive assessment of its compliance with standards set by the FATF. This is chaired by the Chief Executive of the Chief Minister’s Department and includes representatives from the Law Officers’ Department, the Chief Minister’s Department, the Joint Financial Crimes Unit, the Jersey Financial Services Commission (“**the Commission**”) and other governmental departments or agencies.

The Strategy Group considered how to implement SR VIII with minimal impact on the NPO sector while meeting the required international standards. The Strategy Group was aware of the vital role that NPOs play in the economy and of the strong history of charitable giving and voluntary activity in the Island. Consequently in formulating the proposed Law, the Strategy Group intended that it should have the least possible impact so that the good work that takes place in Jersey is not discouraged.

Research demonstrated that the Island would be assessed as “non-compliant” in implementing SR VIII unless changes were enacted in time. The Strategy Group believes that the effect of a negative assessment by the IMF would be highly damaging to the Island’s reputation and to the continued success of the businesses that operate from Jersey.

As Jersey has never regulated the activities of charities, it was clear that a new Law must be drafted. Also, because there was no pre-existing organization that regulated charities, a new organization or an existing organization had to be found to perform the functions of registering and monitoring NPOs. In keeping with the presumption of the Council of Ministers against establishing a new statutory body in Jersey on economic grounds, the Commission was requested to undertake the role of registering NPOs as well as the obligation to monitor the NPO sector.

The Strategy Group did consider the possibility of implementing SR VIII in conjunction with the Jersey Law Commission’s recommendations for the establishment of a Jersey Charities Commission. However, this option was not taken forward, because:

- The Law Commission’s proposals would impose a significantly greater administrative burden on charities than is required purely for compliance with SR VIII. For instance, the Law Commission proposes requirements for charities to prepare and file annual accounts, for larger charities to undergo annual audits and for members of the public to be allowed to inspect financial statements.
- It would not have been practical to have implemented the extensive framework that would have been required by the Law Commission’s proposals in time for the visit of the IMF later this year including the identification and appointment of board members. In addition, there would necessarily be a delay between any law being passed and the new Charities Commission becoming operational.
- Although the Law Commission’s proposals are considerably more extensive than those now brought forward by the Strategy Group, they nevertheless fail to cover all organizations which are NPOs for the

purpose of SR VIII, because the definition of an NPO is not limited to charities.

For these reasons an entirely new piece of legislation was prepared that is focused on countering terrorist financing (“CFT”) in line with international standards which can be operational prior to the IMF assessment. However, the States has also agreed that the Chief Minister undertakes a feasibility study into the creation of a Charities Commission which may result in the NPO Law being incorporated into a new Law at a later date.

The draft Law has been finalised by reference to the laws in place in many other jurisdictions, including Guernsey, England and Wales, Ireland, the Isle of Man, Bahamas, Bermuda, the Cayman Islands and Singapore.

The draft Law has been subject to consultation. A key factor in the development of the Law has been the significant response to this consultation as responses were received on behalf of around 50 respondents in addition to a significant amount of informal feedback. As a result of this and ongoing dialogue with the charitable sector, significant changes have been made to the draft Law.

Certain of the key provisions are highlighted below. Central to the operation of the Law is the definition of an NPO, defined as being an organization established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes with the intention of benefiting the public or a section of the public and which raises or disburses funds in pursuance of such purposes (Article 1(1)).

The draft NPO Law provides for the Commission to register and monitor NPOs (for CFT purposes only). If a charities commission is established at some point in the future, then it is likely that the Commission’s role with regard to charities would be transferred to that body.

An NPO is obliged to register with the Commission (unless it falls within one of the exemptions set out below, if it is established or administered in Jersey (Article 4).

There are two exemptions from regulation under the Law. The draft Law does not require an NPO to register if it raises less than £1,000 per year (or such other sum as shall be prescribed) (Article 2(1)). The draft Law also does not require a NPO to register if it is a regulated NPO (Article 2(2)) because the provider of such a service is already subject to a far higher level of AML/CFT oversight under the Financial Services Law than would apply to NPOs under the draft Law. A regulated NPO is a NPO to which a prescribed service is provided in the course of trust company business under the Financial Services (Jersey) Law 1998 (“**Financial Services Law**”).

Accordingly, the Commission will rely on powers that are contained in the Financial Services Commission (Jersey) Law 1998 (“**the Commission Law**”) and Financial Services Law to obtain timely information on the activities, size, and other relevant features of this part of the NPO sector and to obtain relevant financial records. To ensure that this is possible, new paragraphs (4) and (5) will be added to Article 8 of the Commission Law requiring registered persons to provide information in relation to regulated NPOs upon request (Article 40).

To register an NPO it will be necessary to provide a signed and dated registration form as set out in the Schedule (Article 5). This requires the NPO to provide details of its name, contact details, purpose, objectives, activities structure and an estimate of the funds to raised and disbursed both within and outside Jersey.

Where it is reasonable and necessary to assess the terrorist risk, the Commission may require an applicant for registration to provide additional information (Article 7).

Once registered, the majority of NPOs in Jersey will be required only to keep the information that they have provided up to date (Article 9); and keep and maintain records that are sufficient to show that its funds have been utilised in a manner consistent with its objects (Article 11).

Some NPOs (those that are prescribed by order of the Minister) will also be required to prepare and file an annual financial statement (Article 10). They may also be required to provide the Commission with certain other information (to be prescribed) where this is necessary to assess the terrorist risk (Article 12). It is intended that this will be limited to providing details on those having responsibility for running the NPO.

The draft Law provides for NPOs that are part of a group to submit one application for registration that covers all of the NPOs in the group (Articles 3(2), 5(3) and 5(4)).

The Commission’s principal obligation under the Law will be to help to determine if an NPO is assisting or being used to assist terrorism (Article 17). This is much narrower than its functions under the regulatory legislation under which the Commission supervises financial institutions. Correspondingly, the Commission has limited powers under the draft Law.

The Commission can only refuse an application for registration if it is of the opinion that there is a terrorist risk or that the applicant is not an NPO (Article 8(1)). If the Commission does refuse an application there is a right of

appeal to the Royal Court (Article 8(4)).

The Commission may inspect the financial records of an NPO where this is necessary and reasonable to assess the terrorist risk (Article 11(2)). However, the Commission cannot gain access to any other records that will be held by the NPO, e.g. minutes of meetings, general correspondence, and records of members. This would not typically enable the Commission to request the details of anonymous donors as financial records are only defined as “records of transactions ... sufficient to show that its funds have been utilised in a manner consistent with its purpose...”.

The Commission will have no power of its own initiative to deregister an NPO. This may only be done by an Order of the Royal Court (Article 35) or an Order of the Minister (Article 36) or on request by the NPC (Article 37). Where deregistration is ordered by the Minister, this will be subject to an appeal to the Royal Court (Article 36(8)).

The Commission will maintain a register of the information that it collects under the draft Law. On request, the Commission must inform any person if the name of an NPO appears in its register or not. If the name does appear, the Commission must also supply the person with the registration number or reference given to the NPO and details of how the NPO may be contacted (Article 14).

In general, the Commission may not disclose information which it has acquired under the Law. It may supply such information to the Minister, the Attorney General or a foreign body regulating NPOs. In particular, the Commission may do so if it is satisfied that the information is required to investigate a suspected offence, to institute criminal proceedings or in respect of any proceedings under the Law (Article 19).

The draft Law also provides that an NPO, upon request, is obliged to provide any person with details of its purpose, objectives, intended activities, structure, and (in the case of prescribed NPOs only) with any other information which the Minister may prescribe (Article 13). It is intended that this will be limited to providing details on those having responsibility for running the NPO.

The draft Law establishes some new offences, in Articles 24–31. However, to safeguard individuals from inadvertently committing offences, the draft Law also contains provisions designed to ensure that an NPO receives notice from the Commission warning it that it may be committing an offence before matters are referred to the Attorney General. This applies if the Commission becomes aware of an organization which has failed to register when it is obliged to do so, in which case the Commission will give the organization at least one month to respond before referring the matter (Article 15). It also applies if the Commission believes that a registered NPC has failed to keep its registered information up to date, in which case the organization will receive 2 warnings and have at least 3 months to respond (Article 16).

An NPO commits an offence where: (i) it fails to register when required to do so, (ii) it supplies false information (iii) it fails to provide information when required, (iv) it fails to provide a financial statement (in the case of prescribed NPO), or (v) it fails to keep financial records as required. It is also an offence for an organization which is not registered as an NPO to hold itself out as being so registered and it is an offence for a person required to provide an explanation of a financial record (under Article 18(2)(b)) to fail to do so, or to do so in a false or misleading way. However, no prosecution may be instituted for any of these offences except by, or with the consent of, the Attorney General (Article 23).

In summary, the draft Law will assist in preventing the financing of terrorism through Jersey organizations. It is a central element in Jersey’s ongoing commitment to AML/CFT. In addition, it will make a significant contribution to Jersey being assessed favourably by the IMF in relation to AML/CFT during the forthcoming visit in the last quarter of 2008.

Financial/manpower implications

There are no measurable financial or manpower costs for the States. There will be a cost to the Commission. In 2008, the cost of administering the Law will be largely met from the Criminal Offences Confiscation Fund and from 2009 will be met from the Commission’s ordinary income.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 21st April 2008 the Deputy Chief Minister made the following statement on behalf of the Council of Ministers before Second Reading of this Projet in the States Assembly –

In the view of the Deputy Chief Minister the provisions of the Draft Non-Profit Organizations (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law will implement in Jersey Special Recommendation VIII of the Financial Action Task Force, which requires countries to enact legislation to combat any possible abuse of Non-Profit Organizations (in this Note and in the Law called NPOs) for terrorist purposes.

The purpose of the Law is not to regulate NPOs but to allow their activities to be monitored.

Article 1 sets out what organizations are NPOs for the purposes of the Law.

Article 2 exempts some NPOs from compliance with all or certain of the obligations imposed on NPOs by the Law.

Article 3 sets out the meaning of certain other expressions used in the Law. The Commission means the Jersey Financial Services Commission, which will be responsible for administering the Law.

Article 4 requires NPOs (other than those not required to do so) to be registered if they are established in Jersey or are administered in Jersey.

Article 5 provides how an NPO may apply to be registered.

Article 6 requires the Commission, on receipt of an application to register an NPO, to register the NPO, to seek further information or to refuse the application.

Article 7 allows the Commission to seek further information and documents in respect of an application to register an NPO.

Article 8 specifies the ground on which the Commission may refuse an application to register an NPO. It provides for an appeal to the Royal Court.

Article 9 requires a registered NPO to notify the Commission of any change in its registered details.

Article 10 requires certain NPOs to provide a financial statement to the Commission.

Article 11 requires an NPO to keep financial records. The Minister may, by Order, exempt any NPO or class of NPOs from this obligation.

Article 12 allows the Minister to require certain NPOs to provide the Commission with information in certain circumstances.

Article 13 requires an NPO to supply certain information to a member of the public if requested to do so.

Article 14 requires the Commission to keep a register of registered NPOs and to give to any person who applies the registration number or reference of any NPO on the register and details of how the NPO may be contacted.

Article 15 sets out the action the Commission is required to take if it believes that an organization that should be registered as an NPO is not registered.

Article 16 sets out the action the Commission is required to take if the Commission believes that a registered NPO has not kept the information the Commission has in respect of the NPO up-to-date.

Article 17 sets out the Commission's obligations when it comes to assessing the terrorist risk posed by each NPO and provides, in particular, what the Commission must do when it receives a financial statement from an NPO.

Article 18 sets out what is to happen to financial records supplied to the Commission by NPOs.

Article 19 provides how the Commission may make information that comes into its hands as a result of administering the Law available to certain other persons.

Article 20 sets out how the Commission may keep documents supplied to it under the Law.

Article 21 allows the Commission to destroy those documents in certain circumstances.

Article 22 allows the Commission to amend the registration or reference number of an NPO.

Article 23 provides that prosecutions under the Law may only be instituted by, or with the consent of, the Attorney General.

Article 24 makes it an offence for an NPO, without reasonable excuse, not to be registered when it should be.

Article 25 makes it an offence for an organization to claim to be a registered NPO when it is not. It is a defence to

show that this was not done knowingly.

Article 26 makes it an offence for a person to provide false information the person knows or should know is false.

Article 27 makes it an offence for a registered NPO to fail, without reasonable excuse, to give to the Commission certain information when required to do so.

Article 28 makes it an offence for an NPO to fail, without reasonable excuse, to supply to the Commission a financial statement. It is also an offence to supply false financial information.

Article 29 makes it an offence for an NPO to fail, without reasonable excuse, to keep financial records. It is also an offence to keep false financial records, not to provide financial records to the Commission when required to do so or to provide false records.

Article 30 makes it an offence for an NPO, when requested to provide certain information about itself by a member of the public, to fail to do so without reasonable excuse or to provide false information.

Article 31 makes it an offence for a person not to give an explanation about financial records supplied under the Law. It is also an offence to give a false explanation.

Article 32 provides who else is liable when an incorporated organization commits an offence under the Law.

Article 33 provides who is or is not liable when an unincorporated NPO commits an offence under the Law.

Article 34 provides that certain other persons may be liable when an offence is committed under the Law.

Article 35 requires the Commission to deregister an NPO where the Royal Court makes certain orders in respect of terrorism.

Article 36 requires the Commission to deregister an NPO in certain circumstances determined by the Minister. There is a right of appeal.

Article 37 allow for the deregistration of an NPO on the application of a person the Commission is satisfied has the authority to make the application.

Article 38 provides that a NPO ceases to be registered when its name is removed from the register.

Article 39 clarifies the position of volunteers who work for NPOs when it comes to the Terrorism Law – they are to be treated as employees.

Article 40 amends the Financial Services Commission (Jersey) Law 1998 in respect of certain NPOs.

Article 41 allows the States to amend the form set out in the Schedule to the Law by Regulations - it will need to be updated from time to time.

Article 42 allows the Minister to make Orders under the Law.

Article 43 provides for the citation of the Law.

Article 44 provides for the commencement of the Law.

It allows for a period of 14 days for any necessary Orders to be made, for example, those that will apply to regulated and more significant NPOs.

It then allows for a period of 3 months during which it will not be an offence for an NPO that is required to be registered not to be registered.

During this period the Commission can undertake the registration of existing NPOs.

If at the end of this period the Commission has not determined any application for registration made by an NPO during the period the Article provides that the NPO will not be guilty of the offence of being unregistered.



Jersey

DRAFT NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200

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Jersey

DRAFT NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200

A LAW to provide for the registration and monitoring of non-profit organizations.

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION

1 Non-profit organization defined

- (1) An organization is a non-profit organization for the purposes of this Law if –
 - (a) it is established solely or primarily for charitable, religious, cultural, educational, social, or fraternal purposes with the intention of benefiting the public or a section of the public; and
 - (b) it raises or disburses funds in pursuance of those purposes.
- (2) In paragraph (1) “organization” means a body of persons (whether incorporated or unincorporated), any legal entity and any equivalent or similar structure or arrangement and for the purpose of this Law the expression “organization” also includes persons acting as trustees of a trust.
- (3) The States may amend this Article by Regulations.

2 Exemptions

- (1) A non-profit organization need not comply with any requirement of this Law if the funds it has raised during the preceding 12 months (not including any period before the commencement of this Article) have not exceeded £1000.
- (2) A non-profit organization that is provided with a prescribed service in the course of trust company business under the Financial Services (Jersey) Law 1998^[1] need only comply with those requirements of Part 2 of this Law that are expressed to apply also to regulated NPOs.
- (3) The States may amend this Article by Regulations.

3 General interpretations and application

(1) In this Law, unless the context otherwise requires –

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998^[2];

“disbursed”, in respect of the funds of an NPO, does not include the disbursement of funds paid to the NPO by persons to become or remain members of the NPO if those funds are applied in a way that only benefits members of the NPO;

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;

“financial statement”, in respect of an NPO for a particular period, means a statement –

- (a) that contains a detailed breakdown of the NPO’s income and expenditure (in each case, with any necessary explanations) during the period; and
- (b) that sets out the state of its funds at the end of the period;

“financial records”, in respect of an NPO, means records of its transactions, both within and outwith Jersey, that are sufficient to show that its funds have been utilized in a manner consistent with its purpose, objectives and activities as shown in the register;

“funds” means –

- (a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

“Minister” means the Minister for Economic Development;

“NPO” means a non-profit organization as defined by Article 1;

“organization” has the meaning given to that expression by Article 1(2);

“prescribed” means prescribed by Order made by the Minister;

“published”, in respect of any matter, means published by the Commission in a manner that is likely to bring the matter to the attention of those affected and “publish” shall be interpreted accordingly;

“raised”, in respect of the funds of an NPO, includes funds given to the NPO but does not include –

- (a) income earned on the funds of the NPO; or
- (b) amounts paid to the NPO by persons to become or remain members of the NPO;

“register”, as a noun, means the register kept by the Commission for the purposes of this Law;

“registered” means registered under this Law;

“regulated NPO” means an NPO to which Article 2(2) applies;

“terrorism” shall be construed in accordance with Article 2 of the Terrorism Law;

“Terrorism Law” means the Terrorism (Jersey) Law 2002^[3].

(2) Where, because of the nature, relationship or structure of a group of NPOs or proposed NPOs, the Commission considers it appropriate to do so, it may, for all or any of the provisions of this Law, treat as one NPO or as one proposed NPO, as the case may be, the NPOs or proposed NPOs that make up the group although they may also be separate NPOs or proposed NPOs for the purpose of this Law.

(3) Where, for the purposes of this Law –

- (a) an NPO is constituted by persons acting as trustees of a trust; and

(b) the trust has, as its governing law, Jersey law,

the NPO shall not, solely by virtue of that fact, be taken to be established in Jersey unless it has at least one trustee who is ordinarily resident in Jersey.

(4) The States may amend this Article by Regulations.

PART 2

OBLIGATIONS OF AN NPO

4 Obligation of NPOs to register

Except as provided by Article 2, an NPO must be registered if –

(a) it is established in Jersey; or

(b) it is administered in or from Jersey,

whether or not it carries on any activity in Jersey.

5 Application for registration

(1) An application to register an NPO or a proposed NPO may be made by sending to the Commission a completed application form in respect of the NPO or proposed NPO.

(2) The application form –

(a) must substantially follow the form set out in the Schedule; and

(b) must be signed by a person acting on behalf of the NPO and dated.

(3) Where –

(a) Article 3(2) applies; and

(b) one application form is sent to the Commission under paragraph (1) covering a number of NPOs or proposed NPOs,

the form shall not be considered by the Commission to be complete unless the form specifies each of the NPOs or proposed NPOs to which it applies.

(4) Where –

(a) Article 3(2) applies; and

(b) more than one application form is sent to the Commission under paragraph (1) covering a number of NPOs or proposed NPOs that have some details in common,

the forms shall be considered by the Commission to be complete although the details that the NPOs or proposed NPOs have in common are not repeated on each form.

(5) If an application form is permitted under the Electronic Communications (Jersey) Law 2000^[4] to be sent to the Commission under paragraph (1) by way of electronic communication, any application form so sent is not required to be signed.

6 Registration

The Commission must, following the receipt of a completed application form in respect of an NPO or a proposed NPO, take one of the following actions –

(a) register the NPO or proposed NPO by entering its name in the register and by giving it a registration number or reference;

- (b) refuse the application under Article 8;
- (c) require additional information or documents under Article 7 and, following receipt of the information or documents, take the action mentioned in sub-paragraph (a) or (b).

7 Obligation of NPOs to provide further information and documents

- (1) The Commission may require an applicant for the registration of an NPO or a proposed NPO to supply additional information or documents in respect of the NPO.
- (2) However, the Commission must not do so unless it is necessary and reasonable for it to do so to enable it to assess the extent (if any) to which the NPO or proposed NPO is assisting or being used to assist terrorism or is likely to assist or be used to assist terrorism, as the case may be.

8 Refusal of application

- (1) The Commission may refuse an application to register an NPO or a proposed NPO if the Commission is of the opinion that –
 - (a) the NPO or proposed NPO is assisting or being used to assist terrorism or is likely to assist or be used to assist terrorism, as the case may be; or
 - (b) the organization specified in the application form is not or will not be an NPO.
- (2) If the Commission does refuse to accept an application, it must send notice of the refusal to the applicant.
- (3) The notice must –
 - (a) give the reason for the refusal; and
 - (b) set out the applicant's right to appeal against the refusal under paragraph (4).
- (4) A person aggrieved by the Commission's refusal of an application may appeal to the Royal Court.
- (5) The appeal may be made on the grounds that the refusal was unreasonable having regard to all the circumstances of the case.
- (6) On the appeal the Court may –
 - (a) confirm the decision of the Commission to refuse the application; or
 - (b) order the Commission to accept the application and to register the NPO or proposed NPO.
- (7) The Commission must not refuse an application under paragraph (1)(a) if to do so would be contrary to Article 35(4) of the Terrorism Law (tipping off).

9 Obligation of NPOs to give notice of change of registered information

- (1) This Article applies if there is a change in –
 - (a) the information provided to the Commission in respect of a registered NPO prior to its registration; or
 - (b) that information as subsequently amended under this Article.
- (2) The NPO must give the Commission written notice of the change.
- (3) The notice –
 - (a) must be given within 3 months of the change; and
 - (b) may be given by utilizing the whole or any part of the form set out in the Schedule.
- (4) For the purpose of this Article, a difference between an estimate of the funds to be raised or disbursed by an NPO in a financial year and the actual funds raised or disbursed by the NPO in the financial

year is not, of itself, a change that must be reported under this Article.

- (5) However, any change in the estimate of the funds to be raised or disbursed by the NPO in any subsequent financial year must be reported under this Article.

10 Obligation of prescribed NPOs to prepare and provide financial statement

- (1) A prescribed NPO or an NPO that belongs to a prescribed class of NPOs must prepare and provide to the Commission a financial statement for a period of not more than 18 months.
- (2) The period –
 - (a) must begin on or before the date the NPO became a prescribed NPO or an NPO belonging to a prescribed class of NPOs; but
 - (b) if the NPO has previously prepared and provided a financial statement under paragraph (1) must begin at the end of the period covered by its most recent financial statement.
- (3) The financial statement must –
 - (a) be in a form published or approved for the purpose by the Commission; and
 - (b) be provided to the Commission within 10 months after the end of the period covered by the statement.

11 Obligation of NPOs to keep and retain financial records

- (1) An NPO must –
 - (a) keep financial records; and
 - (b) retain them for at least 5 years.
- (2) An NPO must make its financial records available to the Commission if required to do so to enable the Commission to carry out its obligations under this Law.
- (3) However, the Commission must not require it to do so unless it is necessary and reasonable for it to do so to enable it to assess the extent (if any) to which the NPO is assisting or being used to assist terrorism or is likely to assist or be used to assist terrorism.
- (4) The Minister may by Order, exempt an NPO or any class of NPOs from the obligations imposed on an NPO by paragraph (1).
- (5) The requirements mentioned in paragraph (1) also apply to regulated NPOs.

12 Obligation of prescribed NPOs to provide information to Commission

- (1) A prescribed NPO or an NPO that belongs to a prescribed class of NPOs must provide prescribed information to the Commission if required to do so by the Commission.
- (2) However, the Commission must not require a prescribed NPO to provide the information unless it is necessary and reasonable for the Commission to do so to enable it to assess the extent (if any) to which the NPO could be, or is being, used to facilitate terrorism.

13 Obligation of NPOs to provide certain information

- (1) An NPO must, upon being requested to do so, provide a person with –
 - (a) details of its purpose, objectives and intended activities;
 - (b) details of its structure (for example, whether it is an unincorporated body of persons, a trust, or an incorporated body and, if so, what type of incorporated body); and
 - (c) if it is a prescribed NPO or an NPO that belongs to a prescribed class of NPOs, such other

information as may be prescribed.

- (2) An NPO must not charge for the provision of information under this Article.
- (3) The States may amend paragraph (1) by Regulations.

PART 3

FUNCTIONS OF THE COMMISSION

14 Commission to keep register and to provide certain information

- (1) The Commission must keep a register for the purposes of this Law that contains –
 - (a) the name of each registered NPO;
 - (b) the contact information for each registered NPO; and
 - (c) the purpose, objectives and activities of each registered NPO.
- (2) The Commission must, upon being requested to do so, inform a person if a name specified by the person appears in the register as the name of an NPO.
- (3) If it does, the Commission must give the person –
 - (a) the registration number or reference of the NPO; and
 - (b) details of how it may be contacted.
- (4) The Commission must not charge for the provision of information under this Article.

15 Registration obligations of the Commission

- (1) This Article applies where the Commission becomes aware that an organization that the Commission believes to be an NPO that is required to register under this Law is not registered.
- (2) The Commission must make reasonable efforts to ensure that the organization receives a written notice setting out –
 - (a) the provisions of this Law that may require it to register; and
 - (b) the action the Commission is required to take under this Article.
- (3) If –
 - (a) the Commission has given an organization notice under paragraph (2);
 - (b) after giving the organization at least 1 month in which to respond, the organization does not register; and
 - (c) the Commission continues to believe that the organization is an NPO that is required to register,the Commission must take the action mentioned in paragraph (4).
- (4) The Commission must –
 - (a) inform the Attorney General of its belief that the organization is an NPO that is required to register; and
 - (b) provide the Attorney General with any evidence it has to support that belief.
- (5) This Article is without prejudice to Article 17.

16 Continuing registration obligations of the Commission

- (1) This Article applies where the Commission believes that a registered NPO has failed to comply with

Article 9.

- (2) The Commission must give the NPO a written notice setting out –
 - (a) the provisions of Articles 9 and 27(1); and
 - (b) the action the Commission is required to take under this Article.
- (3) If –
 - (a) the Commission has given an NPO notice under paragraph (2) on at least 2 occasions (the second being at least 2 months after the first);
 - (b) after giving the NPO at least 3 months in which to respond the NPO has not provided information under Article 9; and
 - (c) the Commission continues to believe that the NPO has failed to comply with Article 9, the Commission must take the action mentioned in paragraph (4).
- (4) The Commission must –
 - (a) inform the Attorney General of its belief that the NPO has failed to comply with Article 9; and
 - (b) provide the Attorney General with any evidence it has to support that belief.
- (5) The Commission need not give an NPO notice under this Article of a failure to comply with Article 9 where the NPO is a prescribed NPO for the purpose of Article 10.
- (6) This Article is without prejudice to Article 17.

17 Obligation of the Commission in respect of terrorism

- (1) It is an obligation of the Commission to help to determine if an NPO is assisting or being used to assist terrorism.
- (2) Accordingly, the Commission –
 - (a) must as soon as practicable after it receives an application for the registration of an NPO or a proposed NPO consider if it raises any suspicion that the NPO or proposed NPO is assisting or being used to assist terrorism or is likely to assist or be used to assist terrorism, as the case may be;
 - (b) must as soon as practicable after it receives a financial statement from an NPO, consider if it raises any suspicion that the NPO is assisting or being used to assist terrorism; and
 - (c) may otherwise monitor the activities of each NPO.
- (3) If the Commission considers that an NPO is assisting or being used to assist terrorism, it must immediately inform the Attorney General, giving the Attorney General any evidence that the Commission has for its suspicions.

18 Financial records held by the Commission

- (1) This Article applies where –
 - (a) a person, acting on behalf of the Commission, has required an NPO to make its financial records available to the Commission under Article 11(2); and
 - (b) the NPO has complied with the requirement.
- (2) The person who required the records may –
 - (a) take copies of them or extracts from them; and
 - (b) request the person who provided them on behalf of the NPO or any other person who appears to be in possession of relevant information, to provide an explanation of them.
- (3) If original records have been provided –

- (a) they may be retained for a year; but
 - (b) if within that year proceedings to which the records are relevant are commenced against any person, they may be retained until the conclusion of the proceedings.
- (4) If records are retained under paragraph (3), the Commission must, upon being requested to do so provide a copy of them or any part of them to any person the Commission is satisfied is lawfully entitled to the records.
- (5) The Commission need not do so unless it is satisfied that the copy is reasonably required for a lawful purpose.
- (6) Any copy supplied by the Commission shall be supplied free of charge.

19 Supply of information by the Commission

- (1) This Article applies to information –
- (a) that is not already available to the public; and
 - (b) that has come into the Commission's possession as a result of the Commission carrying out its obligations under this Law.
- (2) The Commission may supply information to which this Article applies to –
- (a) the Minister;
 - (b) the Attorney General;
 - (c) bodies that outside Jersey exercise functions that are similar to the functions that the Commission may exercise under this Law.
- (3) The Commission may, in particular do so, if it is satisfied that the information is required –
- (a) to investigate a suspected offence in or outwith Jersey;
 - (b) to institute criminal proceedings in or outwith Jersey; or
 - (c) in respect of any proceeding arising under this Law.
- (4) However, the Commission must not supply information to a body mentioned in paragraph (2)(c) unless the Commission is satisfied that the information is to be used by the body solely in the exercise of its functions that are similar to the functions the Commission may exercise under this Law.
- (5) The Commission may also supply information to which this Article applies to a person acting on behalf of an international body, if –
- (a) the functions of the body include the assessment of compliance by Jersey with international standards; and
 - (b) the supply of the information is to enable the body to discharge those functions.
- (6) Nothing in this Article is to be taken as preventing the Commission from publishing information in the form of a summary or collection of information so framed that information in respect of any particular person cannot be obtained from it.
- (7) The States may amend this Article by Regulations.

20 Documents kept by the Commission

A document delivered to the Commission under this Law may be kept by the Commission in any form that is capable of being reproduced in a legible form.

21 Commission may destroy certain documents

- (1) The Commission may destroy a document delivered to it under this Law that the Commission is not required to return if the Commission has recorded and kept the information in it in accordance with Article 20.
- (2) The Commission may also destroy such a document if it relates solely to –
 - (a) an NPO that has ceased to be registered for at least 10 years; or
 - (b) an organization that has ceased to be an NPO for at least 10 years.

22 Commission may change the registration or reference number of an NPO

- (1) The Commission may, for good cause, change the registration or reference number of a registered NPO.
- (2) If it does so, the Commission must, as soon as reasonably practical, give the NPO written notice of the change.

PART 4
OFFENCES

23 Prosecutions under this Law

No prosecution of an offence under this Law may be instituted except by, or with the consent of, the Attorney General.

24 Failure of NPOs to register

An NPO that is required by this Law to be registered is guilty of an offence and is liable to a fine if, without reasonable excuse, it is not registered.

25 Passing off

- (1) An organization that is not a registered NPO is guilty of an offence and is liable to a fine if it holds itself out as being a registered NPO.
- (2) It is a defence for the organization to show that it did not know and could not reasonably have known that it was not a registered NPO.

26 Supply of false information

- (1) This Article applies where an NPO or a person supplies information or documents under –
 - (a) Article 5 (application for registration);
 - (b) Article 7 (supply of further information and documents)
 - (c) Article 9 (change of registered information); or
 - (d) Article 12 (information supplied by certain NPOs).
- (2) The NPO or person is guilty of an offence and liable to a fine if the NPO or person provides information or a document that the NPO or person knows or ought reasonably to know is false or misleading in a material way.

27 Failure to provide information

- (1) An NPO is guilty of an offence and is liable to a fine if, when required by Article 9 to give the Commission written notice of a change in the information registered in respect of the NPO, it fails, without reasonable excuse, to do so.
- (2) An NPO prescribed for the purpose of Article 12(1) is guilty of an offence and is liable to a fine if when required under that Article to give the Commission prescribed information, it fails, without reasonable excuse, to do so.

28 Offences in respect of a financial statement

- (1) An NPO or an NPO that belongs to a class of NPOs that is prescribed for the purpose of Article 10(1) is guilty of an offence and is liable to a fine if, without reasonable excuse, it fails to provide a financial statement to the Commission in accordance with that Article.
- (2) An NPO or an NPO that belongs to a class of NPOs that is prescribed for the purpose of Article 10(1) is guilty of an offence and is liable to a fine if it provides to the Commission, in purported compliance with that Article a financial statement that it knows or ought reasonably to know is false or misleading in a material way.

29 Offences in respect of financial records

- (1) An NPO is guilty of an offence and is liable to a fine if, without reasonable excuse, it fails to keep financial records as required by Article 11(1)(a).
- (2) An NPO is guilty of an offence and is liable to a fine if it keeps, for the purpose of Article 11(1)(a) financial records that it knows or ought reasonably to know are false or misleading in a material way.
- (3) An NPO is guilty of an offence and is liable to a fine if, without reasonable excuse, it fails to retain financial records for 5 years as required by Article 11(1)(b).
- (4) An NPO is guilty of an offence and is liable to a fine if, without reasonable excuse, it fails to make financial records available to the Commission when required to do so under Article 11(2).
- (5) An NPO is guilty of an offence and is liable to a fine if it makes available to the Commission, in purported compliance with Article 11(2), financial records that it knows or ought reasonably to know are false or misleading in a material way.
- (6) In this Article “financial records”, in respect of an NPO, means the financial records of the NPO created or required to be created by the NPO subsequent to the commencement of this Article.

30 Offences in respect of supply of information by an NPO

An NPO is guilty of an offence and liable to a fine of level 4 on the standard scale if, when requested under Article 13(1) to provide information, the NPO—

- (a) fails, without reasonable excuse, to provide the information; or
- (b) in purported compliance with the request, provides information that the NPO knows or ought reasonably to know is false or misleading in a material way.

31 Offences in respect of supply of an explanation by a person

A person is guilty of an offence and liable to a fine of level 4 on the standard scale if, when required under Article 18(2)(b) to provide an explanation of a financial record, the person—

- (a) fails, without reasonable excuse, to provide the explanation; or
- (b) in purported compliance with the requirement, provides an explanation that the person knows or

ought reasonably to know is false or misleading in a material way.

PART 5

CRIMINAL LIABILITY

32 Criminal liability in respect of incorporated organizations

- (1) Where an offence under this Law is committed by an incorporated organization and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of –
 - (a) a person who is a director, manager, secretary or other similar officer of the organization; or
 - (b) a person purporting to act in any such capacity,the person is also guilty of the offence and is liable in the same manner as the organization to the penalty provided for the offence.
- (2) If the affairs of an incorporated organization are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the organization.

33 Criminal liability in respect of unincorporated organizations

Where –

- (a) an offence under this Law appears to have been committed by an organization that is constituted by an unincorporated body of persons; and
- (b) the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of certain of those persons,

the persons mentioned in paragraph (b), and only those persons, are guilty of the offence and are liable to the penalty provided for the offence.

34 Other criminal liability

A person who aids, abets, counsels or procures the commission of an offence under this Law is also guilty of an offence and liable in the same manner as a principal offender to the penalty provided for that offence.

PART 6

DEREGISTRATION OF AN NPO

35 Deregistration of NPOs on order of the Royal Court

- (1) The Commission must remove the name of an NPO from the register if the Royal Court orders the Commission to do so after the Court has –
 - (a) made a forfeiture order in respect of the funds of the NPO; or
 - (b) convicted the NPO of an offence under this Law, the Terrorism Orders or the Terrorism Law.
- (2) In this Article –

“forfeiture order” has the same meaning as in Schedule 3 to the Terrorism Law;

“Terrorism Orders” means –

- (a) the Terrorism (United Nations Measures) (Channel Islands) Order 2001^[5]; and
- (b) the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002^[6],
of the United Kingdom.

36 Deregistration of NPOs on other grounds

- (1) Except as otherwise provided by this Article, the Commission must remove the name of an NPO from the register if the Minister –
 - (a) orders the Commission to do so; and
 - (b) provides the Commission with his or her reasons for doing so.
- (2) The Minister must not order the Commission to do so unless the Minister is satisfied that the NPO –
 - (a) has persistently failed to comply with any of its obligations under this Law; or
 - (b) no longer exists or is not carrying out and is not likely to carry out the activity specified in the register in respect of the NPO.
- (3) Before acting under paragraph (1), the Commission, if it is reasonably practical for it to do so, must serve notice of its intention to remove the name of the NPO from the register.
- (4) The notice may be served on –
 - (a) the NPO;
 - (b) any person who constitutes or constituted the NPO; or
 - (c) if a body of persons constitutes or constituted the NPO, any person the Commission is satisfied represents that body of persons.
- (5) A notice under paragraph (3) must–
 - (a) give the reason why it is intended to remove the name of the NPO from the register;
 - (b) give the proposed date of its removal; and
 - (c) give details of the right of appeal provided by paragraph (8).
- (6) The Commission shall remove the name of the NPO from the register 28 days after the service of the notice unless, on appeal the Royal Court orders otherwise, whether before or after the determination of the appeal.
- (7) If the Commission finds that it is not reasonably practical to serve a notice under paragraph (4), the Commission may remove the name of the NPO from the register at any time.
- (8) Any person aggrieved by the removal or intended removal of the name of an NPO from the register under this Article may appeal to the Royal Court.
- (9) The appeal may be made on the grounds that the removal of the name of the NPO from the register was not or would not be reasonable in all the circumstances.
- (10) On the appeal, the Royal Court may –
 - (a) confirm the decision of the Minister to order the Commission to remove the name of the NPO from the register;
 - (b) order the Commission not to remove the name of the NPO from the register or, as the case may be, to restore the name of the NPO to the register; or
 - (c) order the Commission to take such other action as the Court considers appropriate in the circumstances.

37 Deregistration of NPOs on request

The Commission must remove from the register the name of an NPO if requested to do so by a person whom the Commission is satisfied has the authority to do so.

38 Deregistration

An NPO ceases to be registered for the purpose of this Law when its name is removed from the register by the Commission in accordance with this Part.

PART 7

MISCELLANEOUS

39 Application of this Law to the Terrorism Law

In its application to NPOs, Article 20 of the Terrorism Law shall have effect as if in Article 20(1)(b) “employment” included work undertaken on behalf of an NPO on a voluntary or an unpaid basis.

40 Amendment of Article 8 of the Financial Services Commission (Jersey) Law 1998

The Financial Services Commission (Jersey) Law 1998^[7] is amended by adding the following paragraphs at the end of Article 8–

- “(5) The Commission may require registered persons who provide services to regulated NPOs in the course of trust company business, to provide information in respect of those regulated NPOs to the Commission.
- (6) In paragraph (5) –
 - ‘registered person’ and ‘trust company business’ have the same meanings as in the Financial Services (Jersey) Law 1998;
 - ‘regulated NPO’ has the same meaning as in the Non-Profit Organizations (Jersey) Law 200.”.

41 Amendment of Schedule

The States may, by Regulations, amend the form set out in the Schedule.

42 Orders

The Minister may prescribe by Order any matter that shall or may be prescribed under this Law

43 Citation

This Law may be cited as the Non-Profit Organizations (Jersey) Law 200.

44 Commencement and transitional arrangements

- (1) This Law, other than Article 24, shall come into force 14 days after it is registered.
- (2) Article 24 shall come in force 3 months after the rest of the Law has come into force.
- (3) It shall be a defence for an NPO charged with an offence under Article 24 for the NPO to show–

- (a) that it had made an application to the Commission for registration under Article 5 prior to Article 24 coming into force; and
- (b) that at the time of the alleged offence the application had not been determined or withdrawn.

SCHEDULE

(Articles 5(2)(a) and 9(3)(b))

APPLICATION FOR REGISTRATION

Part 1		
1. Name (or proposed name) of NPO:		
2. Contact details:	Address:	
	Telephone number:	
	Email (if any):	
3. Purpose (or intended purpose) of the NPO:		
4. Objectives (or intended objectives) of the NPO:		
5. Activities (or intended activities) of the NPO:		
6. Structure (or intended structure) of the NPO: <i>(Tick relevant box)</i>	Trust	<input type="checkbox"/>
	Limited company	<input type="checkbox"/>
	Unlimited company	<input type="checkbox"/>
	Fidéicommis or incorporated association	<input type="checkbox"/>
	Foundation	<input type="checkbox"/>
	Unincorporated association	<input type="checkbox"/>
	Other (please describe)	<input type="checkbox"/>

Part 2

Part 2			
7. Estimate of the funds to be raised and disbursed in each financial year of the NPO within Jersey: <i>(Tick relevant boxes)</i>		Raised within Jersey	Disbursed within Jersey
	£0 - £1000		
	£1001 - £19,999		
	£20,000 - £99,999		
	£100,000 - £499,999		
	£500,000 - £999,999		
	£1,000,000+		
8. Estimate of the funds to be raised and disbursed in each financial year of the NPO outside Jersey: <i>(Tick relevant boxes)</i>		Raised outside Jersey	Disbursed outside Jersey
	£0 - £1000		
	£1001 - £19,999		
	£20,000 - £99,999		
	£100,000 - £499,999		
	£500,000 - £999,999		
	£1,000,000+		
NOTES			
<p>“Raised”, in respect of the funds of an NPO, includes funds given to the NPO but does not include –</p> <p>(a) income earned on the funds of the NPO; or</p> <p>(b) amounts paid to the NPO by persons to become or remain members of the NPO.</p> <p>“Disbursed”, in respect of the funds of an NPO, does not include the disbursement of funds paid to the NPO by persons to become or remain members of the NPO if those funds are applied in a way that only benefits members of the NPO.</p> <p>“Funds” means assets of every kind, whether tangible or intangible, movable or immovable.</p>			
<p>Please use this area to provide any additional information you think might help the Commission, e.g. whether the NPO is registered as a charity elsewhere in the British Isles, or whether funds will be disbursed to an affiliated NPO in another part of the British Isles.</p>			
<p>Signature: Name: Position held in NPO: Date:</p>			

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- [\[1\]](#) *chapter 13.225*
 - [\[2\]](#) *chapter 13.250*
 - [\[3\]](#) *chapter 17.860*
 - [\[4\]](#) *chapter 04.280*
 - [\[5\]](#) *chapter 17.910.72*
 - [\[6\]](#) *chapter 17.910.16*
 - [\[7\]](#) *chapter 13.250*