

STATES OF JERSEY



DRAFT CHARITIES (JERSEY) LAW 201-

Lodged au Greffe on 3rd June 2014
by the Chief Minister

STATES GREFFE



Jersey

DRAFT CHARITIES (JERSEY) LAW 201-

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 –

In the view of the Deputy Chief Minister, the provisions of the Draft Charities (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator B.I. Le Marquand**

Deputy Chief Minister

Dated: 30th May 2014

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A. INTRODUCTION

The framework within which charities currently operate in Jersey is outdated, insufficient in parts, and in need of improvement. The current definition of “charity” as set out in the Income Tax (Jersey) Law 1961¹ is drawn from the 1601 Statute of Elizabeth, and is interpreted to exclude major areas of *bona fide* charitable activity, for example, community sporting activity.

That definition also fails to make the delivery of public benefit, to any reasonable degree, an explicit requirement for charities. Thus a “charity” can operate in a field which is considered charitable, but potentially does not benefit the wider public, or provides only minimal benefit to a very limited number of people.

In addition, there is currently no single body specifically established to oversee the establishment and activities of charities, which by the nature of their work and the positions they hold in the community, receive significant amounts of public trust, in addition to other benefits such as charitable tax reliefs.

The Draft Charities (Jersey) Law 201- (the “draft Law”) aims, therefore, to put in place a modern legal framework that will support Jersey charities to flourish, in order that they are better placed to deliver their own aims and objectives and meet community need.

Alongside that, the draft Law will help support the growth of the charitable trusts and foundations market in Jersey, enabling the Island to position itself as a centre of excellence for philanthropic wealth management.

Trust and confidence

Research undertaken by the UK Charity Commission highlights the important role that registration and regulation plays in maintaining public trust and confidence in charities. It shows that the public want charities to be held to account for how they spend their money, and also want information about individual charities to be in the public domain.

It is widely perceived that charities have a “covenant of trust” with the public which requires protection. If that trust is damaged, charities lose their ability to influence public opinion, to raise funds and encourage participation in their activities and service provision. They would be unable to create positive social and behavioural change, which is ultimately the very reason why charities exist.

Perhaps most importantly, concerns have been raised by voluntary and community sector organisations and others operating in Jersey, who have identified –

- the need for an up-to-date modern definition of charity that enables charities to more readily identify themselves and their intents and purposes to the public
- the need to consider regulation which protects and builds public trust, in order to support the sector to flourish and to be better placed to meet community need
- the positive impact that registration, regulation and the associated independent official recognition could have on fund-raising and volunteering
- the need to safeguard against potential abuses of charitable status, if any such abuses exist, and to ensure there is an effective mechanism for identification and management.

¹ Referred to as the Income Tax Law throughout the document.

Aims and principles

As set out above, the key aim of the draft Law is to put in place a modern legal framework that will support Jersey charities to flourish and, in so doing, to support growth of the philanthropic wealth management market in Jersey.

The draft Law is intended to help protect public trust and confidence *without* placing an unnecessary financial or bureaucratic burden on charities or on the public purse. Indeed, Article 4 of the draft Law places a requirement on the Charity Commissioner to act proportionately with regard to any burden placed on registered charities.

The principles that have underpinned the development of the draft Law are that it must –

- be proportionate
- avoid doubt and uncertainty wherever possible, although it is recognised that some uncertainty is inevitable given that a degree of subjectivity is an inherent characteristic of judgements made in relation to public benefit
- avoid costs to charities and the public, including high-cost court action
- reflect the capabilities of both large and small charitable entities
- recognise, and allow for the differences, between charities that raise funds from the public and those that are established using private monies (commonly referred to as “public charities” and “private charities”).

Key to all those principles is the concept of voluntary registration. The draft Law does not require non-profit or charitable entities to become registered charities. An entity can legitimately choose not to register if it considers that the benefits gained by registration are not sufficient to warrant registration.

Phased approach

Development of a Charities Law has been conceived as a bi-phase project. In Phase 1, a new Law will be introduced, putting in place a charity test, a Commissioner, a register and also defining the duties of charity governors². This is as per the attached draft Law.

In Phase 2, which has yet to be developed, the Law will be amended to allow for the introduction of regulatory standards (including standards in relation to annual accounts) plus the introduction of re-organisation schemes, allowing charities that cannot change their constitutions to do so with approval from the Commissioner, as opposed to having to revert to the Court.

A phased approach allows information about the size, scale and scope of the charity sector in Jersey to be captured in Phase 1. This information, which is not currently available via the Jersey Financial Services Commission (JFSC), the Comptroller of Taxes or the Association of Jersey Charities (AJC) is critical to supporting the development of regulatory standards in Phase 2. Importantly, it also allows sufficient time for charities, particularly small charities, to adjust to the changes.

² The term “governors” refers to those people who form the governing body of the charity and are responsible for its control. Depending on the legal structure and constitution, they are often commonly referred to as trustees or board members, committee members or council members.

Background

The draft Law has a long genesis.

In 2004, and again in 2009, the Jersey Law Commission recommended the establishment of a charities regulator and the development of a charities law, to include a public benefit test, stating that –

“Current provisions are seen as insufficient and outdated... it is crucial that effective provisions are in place to adequately regulate, monitor and protect those bodies plus the public that supports them”.

In 2008, the States Assembly voted overwhelmingly in favour of a proposition ([P.28/2008](#)) calling for an investigation into the feasibility of establishing a Jersey Charities Commission and associated regulation.

In September 2012, the Economic Development Department developed initial proposals for a Charitable Purposes Law, focussed on a new legal definition of charity. They did so in response to the financial services sector’s concerns that the lack of a modern legal framework for charities potentially hampered growth of the Island’s philanthropic wealth management market. In considering these proposals, the Council of Ministers instructed that consultation should be undertaken with the voluntary and community sector, to explore the need for a broader Charities Law that dealt with issues relating to registration and regulation.

In July and August 2013, a public consultation exercise was undertaken, asking about the principles of developing a Charities Law and testing response to the proposed key features of that Law. The response was extremely positive, with the voluntary and community sector and the financial services sector providing a strong mandate for development (*see* Section C).

In March and April 2014, a second public consultation was undertaken, again showing significant support for the draft Law, and also raising queries and comments about specific aspects of the draft Law. These have been addressed and are summarised in Section C, with a full copy of the 2nd Stage Consultation Feedback Report attached at **Appendix 1**.

B. SUMMARY OF THE CONTENTS AND EFFECT OF THE DRAFT LAW

Overview

The draft Law establishes 5 key elements –

1. a charity test: The test sets out that a charity can only have charitable purposes and must provide public benefit.
2. a charity register: Registered charities will be able to access charitable tax reliefs and will be entitled to call themselves a charity.
3. a charity Commissioner and Tribunal: The Commissioner will be responsible for determining if an entity passes the charity test and, if so, will place it on the register. The Commissioner will issue guidance setting out how it should be determined whether an entity passes the charity test. The Tribunal will hear appeals against the decision of the Commissioner and will have the power to overturn those decisions.
4. the duties of governors: Governors are required to ensure that the charity acts in accordance with its charitable purposes and delivers public benefit. In addition, they must comply with the requirements of the Law, including in relation to registration and annual returns.

5. restrictions on use of the terms “charity” and “charitable”: Only registered charities will be able to call themselves “charities”, and Regulations will be developed restricting use of the term “charitable”, by non-registered entities, when undertaking public fund-raising activities.

Contents and effect

The information below summarises the contents of, and effects of, the draft Law. It follows the structure of the draft Law, which is divided into 9 Parts and includes 2 Schedules: one related to the Charity Commissioner; the other to the Charity Tribunal. For ease of reading, information about these Schedules has been described alongside the relevant Article.

The draft Law –

- incorporates the changes, as set out in Section C, which have been made in response to the comments raised during the consultation
- will affect different types of entities in different ways. Information about the effects on key types of charities and charitable entities is described in **Appendix 2**.

PART 1: INTERPRETATION (ARTICLES 1–2)

Articles 1 and 2 interpret the words, expressions and terms used in the draft Law.

PART 2: JERSEY CHARITY COMMISSIONER (ARTICLES 3–4 AND SCHEDULE 1)

It is proposed that an independent Charity Commissioner is appointed. The Commissioner will be a corporation sole and will be remunerated by the States. It is anticipated that they will be contracted to work approximately 75 days per year, although in the first year after the Law comes into effect, additional days may be required.

Consideration was given the establishment of a Commission, with a number of Commissioners, to provide a “multi-eyed” decision-making process. This option was rejected on the basis that the costs associated with a Commission would be much greater, and potentially disproportionate to the size of the charitable sector in Jersey. In addition, the draft Law allows for a Tribunal, of 4 to 8 members, to provide “multi-eyed” review of the Commissioner’s decisions, where those decisions are called into question.

Schedule 1 sets out details relating to the appointment and status of the Commissioner. It places a responsibility on the Commissioner to provide an annual report to the Minister. This report, which will be laid before the States, will provide an overview of the Commissioner’s work, helping ensure transparency.

The draft Law sets out that the general functions of the Commissioner are to –

- determine if an entity passes the charity test
- set up and manage the charity register
- supervise compliance of governors with the Law
- seek to ensure that the terms “charity”, “Jersey charity” and “charitable” are only used in accordance with the Law
- develop guidance on key issues, such as the charity test and the duties and remuneration of governors

- work with others (for example: JFSC and Comptroller of Taxes) to help ensure registered charities operate in accordance with the Law.

In addition, the Commissioner is required to protect public trust and confidence in registered charities, support charitable giving and volunteering and act in a way which is proportionate with regard to the burden placed on charities. These functions are essential to helping ensure the draft Law helps meet the stated aim of supporting charities to flourish.

Note on guidance:

The draft Law allows for the Commissioner to be appointed prior to the commencement of registration. This will allow the Commissioner to develop and publish the guidance related to the charity test significantly in advance of entities having to register.

In developing that guidance, the Commissioner is required to consult with the voluntary and community sector and the Minister. The Minister is then required to place that guidance before the States as a Report.

The draft Law also requires others including, for example, the Court, to have consideration of that guidance.

PART 3: CHARITY TEST (ARTICLES 5–7)

The draft Law sets out a 2-part “charity test”. An entity can only be a charity if it passes both parts of that charity test, including that –

1. it only has charitable purposes, and
2. it provides public benefit, in Jersey or elsewhere, to a reasonable degree.

The draft Law sets out 16 different charitable purposes, which are based on those set out in the Charities and Trustee Investment (Scotland) Act 2005. During 2nd stage consultation, some respondents requested that additional purposes were included; for example, specific reference to conservation and mental health. These additions have not been made, because all are considered analogous to the purposes already detailed in the draft Law. In order to allow flexibility however, the States may, by Regulations, make additions to the list of charitable purposes.

This power does not, however, include removal or deletion of an existing charitable purpose, as such powers would create uncertainty and could potentially result in valid causes being “delisted” simply because they are perceived as being of minority interest.

To pass the charity test, an entity must provide public benefit to “a reasonable degree”. The Commissioner will issue detailed guidance³ on how public benefit is to be determined. This will include giving consideration to a number of factors, including –

- how the benefit, or dis-benefit, gained by the public compares to the benefit gained by other people (for example; members or governors of the charity)
- whether there are conditions associated with gaining that benefit which are unduly restrictive (e.g. fees or charges)

³ Examples of the types of factor the Commissioner will consider with regard to public benefit are set out in Appendix 3.

In addition, the draft Law sets out that –

- advancing a political party or promoting a candidate for election is not a charitable purpose
- it cannot presume that an entity is delivering public benefit simply because it has charitable purposes
- an appeal for a named individual cannot pass the charity test, although this does not preclude individual people directly benefitting from the work of charities
- an entity cannot be a charity if its constitution expressly permits a States Member (or an equivalent in another jurisdiction) to act as a governor of the charity or to direct or control its activities, unless the Minister has made an Order permitting it; for example, where it is a condition of States funding. This does not, however, preclude States Members from acting as governors in their own private capacity.

PART 4: THE CHARITY REGISTER

Articles 8–10

The draft Law requires the Commissioner to set up and maintain a register of charities. The register will have 3 different sections containing different information (general, restricted and historic). Public access to the information included on the register will vary between the different sections, as set out in Table 1:

Table 1

Section	Entities included in this section	Information included on the register⁴	Information in the public domain
General	<p>A charity which does not meet the criteria to be on the restricted section.</p> <div style="border: 1px solid black; padding: 5px; width: fit-content;"> <p><u>For example:</u> Public charities such as Jersey Hospice Care</p> </div>	<ul style="list-style-type: none"> • charity registration number • name of charity • names of governors • address • registered charitable purpose statement and registered public benefit statement (see below) • if a States Member is a governor • if the charity pays, or intends to pay, its governors (see Section C(d)) • if the charity has submitted its annual return (see Article 13) • if a required steps notice has been issued (See Article 27) 	All information included on the register ⁵

⁴ Please note, this is not an exhaustive list. It illustrates key information only.

⁵ All information will be put in the public domain, except where the Commissioner considers that doing so could present a risk to people or property (for example; if the charity worked in a contentious area such as rehabilitation of sex offenders).

Section	Entities included in this section	Information included on the register ⁴	Information in the public domain
Restricted	<p>A charity which does not solicit donations from the general public</p> <p><u>For example:</u> A “private” charity⁶ set up by a family using just that family’s money.</p>	<ul style="list-style-type: none"> • as above • explanation of why charity is on the restricted section of the register 	<ul style="list-style-type: none"> • registration number • registered charitable purpose statement and registered public benefit statement • explanation of why charity is on the restricted section of the register
Historic	Entities that were previously registered charities but have been deregistered.	<ul style="list-style-type: none"> • registration number • name (unless previously on the restricted section of the register) • reasons why it was deregistered 	All information included on the register

The draft Law recognises that it is reasonable for the public to access information about entities that receive charitable tax reliefs and solicit donations from the public and, at the same time, it is also reasonable for those who set up charities using private monies or assets – as opposed to monies which are solicited from the general public – to maintain their confidentiality where they wish to do so.

The restricted section of the register does not allow the public full access to information about these “private” charities, but it does allow access to the charity’s charitable purpose and public benefit statements. These statements are key to the Commissioner’s decision to register, and hence form the grounds on which a “private” charity may be entitled to access full charitable tax reliefs.

⁶ “private” charity arrangements vary enormously but, for illustrative purposes, could include a charity set up by a private individual using their own money to support local children in need. This individual might not want people to know that they have the wealth to set up that charity or they might not want people contacting them and asking for help.

Where the charity solicits donations directly from the public however, it is deemed right that the public should be able to access much more information, in order that they can determine for themselves whether they wish to donate. (Please note: the draft Law requires the Minister to bring forward an Order setting out what is meant by soliciting donations.⁷)

Charitable purpose and public benefit statements

On registration, an entity will need to provide a charitable purpose statement and a public benefit statement. These will be included on the register, and cannot be varied without the Commissioner's permission. A charity must apply its property in accordance with those statements.

After deregistration, a charity will also need to continue to apply any remaining property in accordance with these statements, helping ensure public donations are not used for alternative purposes after deregistration, except with permission.

Article 11

Charity registration is a one-step process, designed to reduce the administrative burden on charities. An entity that is applying for registration as a charity will –

- automatically be applying for registration as a non-profit organisation (NPO) under the Non-Profit Organisations (Jersey) Law 2008 (NPO Law)
- be entitled to charitable tax reliefs, if their registration is successful, without having to separately apply to the Comptroller of Taxes, as is currently the case.

The draft Law does not require any entity to register, although it must register if it wants to call itself a charity and receive full charitable tax reliefs. An entity may apply if it –

- has a written constitution (the Commissioner will provide template constitutions to help support small unincorporated associations that do not currently have a written constitution)
- it is a Jersey entity, or it carries out substantial activity in Jersey⁸ (the Commissioner will bring forward guidance on what is meant by substantial activity, but it will generally involve delivery of services in Jersey, as opposed to just fund-raising activity)
- it has a principal address in Jersey
- the charity's name is not deemed undesirable (see Article 12).

When applying to the register, the entity must provide sufficient information for the Commissioner to determine if the entity passes the charity test, including information related to the remuneration of governors. In addition to the information set out above, the entity will need to provide –

⁷ It is envisaged that soliciting donations from the general public will include marketing, fund-raising or promotional activity in the public domain, that result in the raising of funds (whether through donations, fees or sales), as distinct from raising funds in a private manner which could include, for example, soliciting activity that only takes place in a private domain, for example through investor club arrangements.

⁸ See Appendix 2 for information about UK and foreign charities.

- a copy of financial accounts, if any
- financial information as required under the NPO Law if being entered onto the restricted section of the register; OR financial information as required by the Minister if being entered onto the general section of the register
- any other information required by Regulations or by the Commissioner in order to determine the application.

As set out in Section A, the draft Law does not place a requirement on charities to produce financial accounts, although it is envisaged that this will be a requirement of Phase 2, subject to appropriate financial thresholds being established for small charities. The baseline financial information to be provided under this draft Law will include: income and source of income, expenditure and type of expenditure.

Article 11 provides the States with the power to make Regulations, setting out that some entities may be refused registration if they only have one governor (unless that governor conducts a regulated financial services business) or, if a proportion of the governors are related to each other. This is to help ensure public confidence in the management of registered charities. Such confidence can be difficult to achieve where there is only one governor or a group of family-only governors.

Article 12

The Commissioner can refuse to enter an entity onto the register, or instruct it to change its name, if that name is: offensive; too similar to another organisation's name or likely to mislead people.

A registered charity can ask to change its registered name/s but cannot use any other name, except for a related/abbreviated name.

Registered charities and applicants have the right to appeal to the Tribunal if the Commissioner requires them to change their name.

Article 13

When a charity is on the register –

- it cannot change to a non-charitable purpose at all, and it can only change from one charitable purpose to another with the Commissioner's permission, even if its constitution permits it to do so
- it can only use its property in accordance with its registered charitable purpose and public benefit statements, which it cannot change without the Commissioner's permission
- it cannot solicit donations from the public if it is on the restricted section of the register.

Once it is on the register, a charity must fulfil certain functions, for example, it must –

- submit an annual return
- tell the Commissioner about any of the following –
 - changes to information on the register
 - proposals to change its constitution
 - any reportable matters (see Article 19)
 - if it is likely to become bankrupt or cease to exist for any reason.

The draft Law provides the Minister with powers to bring forward Orders –

- setting out what information must be provided, with regard to remuneration of governors, in the annual return and in a statement of future intentions
- lessening the information required from small charities, if it should be deemed appropriate to do so.

Article 14

The Commissioner or Attorney General can request the Court to intervene where there is misconduct in the administration of the charity, or where a charity's property needs to be secured to ensure that it is used in accordance with its registered charitable purpose and public benefit statements. The Court's powers include –

- stopping the charity from using the terms “charity” or “charitable” or from soliciting donations
- appointing a person to take over the management of the charity
- suspending or removing a governor
- requiring anyone holding the charity's property not to part with that property or limiting the payments made
- making a governor who has committed misconduct take steps to remedy that misconduct.

Articles 15–17

Articles 15 – 17 set out the proposed deregistration process and what will happen on deregistration. The Commissioner can deregister a charity either –

- on the charity's request, if the Commissioner is satisfied that the charity's property will continue to be used appropriately, or
- if the charity no longer meets the charity test or no longer exists, or
- if the charity has failed to comply with a required steps notice (Article 27).

If any property remains on deregistration, it must continue to be used in accordance with the registered charitable purpose and public benefit statements. The charity cannot change these statements and use the property for any other purpose, despite anything in its constitution, unless the Court gives it permission.

PART 5: GOVERNORS OF REGISTERED CHARITIES (ARTICLES 18–20)

The draft Law sets out that a governor must seek, in good faith, to ensure that the charity delivers its charitable purposes and public benefits, and complies with the Law.

For unincorporated bodies or associations, the draft Law also imposes other duties because, unlike trustees of a trust or directors of a company, etc., there is no other constitutional law in which duties are established. These duties – which reflect those of trustees under the Trusts Law – include acting with due diligence to the best of their ability and skill.

The draft Law sets out that a governor must not engage in, or conceal, misconduct. Misconduct being a contravention of the Law, the charity's constitution or constitutional law, or a required steps notice.

It also sets out “reportable matters” that a governor must report to the Commissioner. These include if a governor –

- has engaged in misconduct
- is disqualified from acting as a governor or a company director
- is bankrupt or insolvent
- has a conviction under the Charities Law, or an unspent conviction relating to deception and/or other pertinent matters.

Where a matter is reported, the Commissioner will determine whether that governor is a fit and proper person to act as a governor (or the Commissioner may ask the Court to determine the matter). The action that the Commissioner could take includes –

- refusing registration or, if the charity is already registered, issuing a notice requiring removal of the governor
- permitting the governor to continue to act as a governor.

As part of their application and their annual return, governors need to sign a declaration stating that there are no reportable matters pertaining to them.

If the Commissioner asks the Court to determine whether a governor is a fit and proper person, the Court can issue an Order either –

- permitting the person to act as a governor
- stating that the entity cannot become a registered charity
- stating that the charity must remove or suspend the governor.

The Court can also issue an Order disqualifying a person from any involvement, directly or indirectly, in the management of any registered charity for up to 15 years.

Note: Restrictions on who can be a governor

People aged under 16 years: The draft Law does not place an age limit on who can act as a governor, but the Commissioner will provide guidance in this area. The key issue that will need to be considered is whether the individual has the capacity to undertake the duties of a governor in accordance with the Law.

Single governors or family only governors: The draft Law allows for Regulations to be brought forward with regard to single governors and family-only governors.

PART 6: USES OF EXPRESSIONS “CHARITY”, “CHARITABLE” AND RELATED TERMS (ARTICLES 21–25)

The draft Law protects the use of the expressions “charity”, “Jersey charity” and “charitable” in order to help prevent the public being misled by entities claiming they are charities when they are not, or claiming they are Jersey charities when they are not.

The proposed effect is to prohibit –

- any entity, regardless of whether it is based in Jersey or elsewhere, from claiming to be “registered” in Jersey, unless it is actually registered in Jersey
- any Jersey-based entity calling itself a “charity” unless it is registered as a charity in Jersey, regardless of where in the world it is making this claim
- a foreign-based entity calling itself a “charity” in Jersey, unless it is either registered in Jersey or is an excepted foreign charity (see below)

- any entity that is not a registered Jersey charity from calling itself a “Jersey charity”.

In addition, the draft Law provides for Regulations to protect the term “charitable”, so it cannot be used by an entity which is not a registered charity, if that entity is engaged in soliciting public donations, although it can be used in other circumstances.

The draft Law recognises that charities based in other jurisdictions legitimately operate in Jersey and should be allowed to call themselves a charity. The draft Law therefore provides for “excepted foreign charities”. These can be UK charities or charities established under the law of another country which the Minister recognises by Order (see **Appendix 2** for more information about foreign charities).

PART 7: INFORMATION AND ENFORCEMENT (ARTICLES 26–31)

Under the draft Law, the Commissioner has the power to demand information from a charity, a deregistered charity or a governor, if the Commissioner needs that information in order to determine whether to serve a “required steps notice”.

A required steps notice will be served if the Commission believes the charity is engaged in misconduct, it no longer passes the charity test, or if one of its governors is unfit to manage. The notice will require action to be taken in a specified timeframe. This action could include suspension, removal or replacement of a governor. If the charity fails to comply, the Commissioner can deregister the charity.

The Commissioner will not be able to issue a notice requiring a religious organisation to remove its governors if the Minister has, by Order, exempted that religious organisation on the basis that adequate supervision of governors is already in place. This is in recognition of the highly structured governance arrangements already in place in many religious institutions.

The Commissioner, and others working to support the Commissioner will, in the course of their work, have access to information about individual charities and their governors. The draft Law sets out the circumstances in which this information can be shared (for example, concerns about money laundering), and when it cannot be shared (for example, a member of the Commissioner’s staff disclosing information about an individual governor).

PART 8: APPEALS TO THE CHARITY TRIBUNAL (ARTICLES 32–36 AND SCHEDULE 2)

A Tribunal will be established to hear appeals against the decisions of the Commissioner. It will include between 4 and 8 members, who will be appointed by the Jersey Appointments Commission. Those members will have the appropriate experience to safeguard the interests of the public and the charitable sector in Jersey.

An appeal⁹ can be made by –

- an applicant who has been refused registration or refused entry onto the restricted section of the register
- a registered charity, if the Commissioner has deregistered that charity, required the charity to change its name, refused changes to the registered charitable purpose or public benefit statements, or issued a required steps notice

⁹ In addition, the Attorney General can appeal any decision made by the Commissioner.

- a third party, if they believe the Commissioner has registered a charity which does not meet the charity test, or if they have an interest in the registered name (for example, they have a longstanding company that trades under the same name).

An appeal can be made if the appellant believes the Commissioner's decision was wrong or unreasonable. The Tribunal may allow the appellant to submit new evidence which was not previously submitted to the Commissioner, in support of their appeal.

The Tribunal can overturn the Commissioner's decision if it chooses to. It can also award costs if it believes the appeal is vexatious or grossly unreasonable.

An appellant who is not satisfied with the Tribunal's decision can then appeal to the Court if they believe the Tribunal's decision was unreasonable. The Court can overturn either the Commissioner's or the Tribunal's decision if it chooses to.

Note: Commissioner's complaints process

The Commissioner will also set up a complaints process allowing entities or third parties to complain to the Commissioner in the first instance, before making an appeal to the Tribunal. Complaints could be about the decision of the Commissioner or about how the Commissioner works. If the complaint is about a decision of the Commissioner, the complainant can go straight to the Tribunal if they want to.

The complaints process is not set out in the draft Law because it is an internal procedural matter for the Commissioner.

PART 9: MISCELLANEOUS AND FINAL PROVISIONS (ARTICLES 37–44)

Article 37 sets out that if an offence is committed under this draft Law by a corporate or other body, the officers of that body are guilty of the offence, if it is committed with their consent or attributable to their negligence.

Articles 38–39 are standard Articles which appear in many Laws. They relate to practical matters such as how notices are served (e.g. by post or by hand), and to the fact that the States may include any transitional, consequential, incidental, supplementary or savings provisions as they think are necessary when making Regulations and Orders under the draft Law.

Article 40 sets out that nothing in the draft Law derogates from the powers that H.M. Attorney General, the Bailiff or the Court have in respect of charities or acts for charitable purpose. It also establishes that the States may bring forward saving provisions and make any transitional arrangements they think necessary to bring this draft Law into force.

Article 41 sets out proposed changes to the Income Tax Law¹⁰. These changes, and the transitional arrangement for entities currently in receipt of charitable tax reliefs, are explained in **Appendix 4**. In summary they include the following.

¹⁰ All charitable tax reliefs will be subject to review by Treasury and Resources.

Exemption from income tax will be available to¹¹ –

- (1) registered charities (an entity must apply to be a registered charity regardless of whether or not it was previously eligible for charitable tax relief).
- (2) charitable trusts and foundations that are not registered charities but which –
 - only have charitable purposes (as defined in the Charities Law) and;
 - do not solicit voluntary donations and;
 - notify the Comptroller of Taxes that they intend to make use of the exemption before any income is received.

insofar as their income is applied to the making of donations to registered Jersey charities or excepted foreign charities.

- (3) charitable trusts and foundations, that do not fall into (1) or (2) above, but were previously eligible for exemption from income tax under the Income Tax Law, if that trust or foundation was established before Article 41 of the Charities Law comes into effect, for any of the following purposes –
 - the advancement of education
 - the relief of poverty
 - the furtherance of religion
 - a purpose beneficial to the whole community, or
 - the service of any church or chapel or any building used solely for the purpose of divine worship.

And providing they do not solicit voluntary donations once Article 41 comes into effect and that their income is used for the purposes detailed above.

Relief from GST, stamp duty and Land Transaction Tax and repayment of income tax on donations made under both the lump sum donation and the deed of covenant schemes will only be available to registered charities (i.e. an entity must apply to be a registered charity regardless of whether or not it was previously eligible for charitable tax reliefs).

Article 42 makes provision for the States, by Regulation, to enable other relevant bodies (for example: JFSC and the Comptroller of Taxes) to provide information to the Commissioner.

Article 43 allows the States to bring forward Regulations, as part of this draft Law, which will amend those other Laws, where necessary. This includes the Trusts (Jersey) Law 1984 and the Foundations (Jersey) Law 2009.

Article 44 allows for different parts of this draft Law to come into force on different days. This is to enable work to commence on some areas of the draft Law, prior to all of the draft Law coming into force. Most importantly, it enables the Commissioner to be appointed and to produce guidance prior to the commencement of registration.

¹¹ In addition to these entities, the States, Parishes and ecclesiastical bodies will continue to be exempt from income tax.

C. CONSULTATION AND RESPONSE TO CONCERNS ARISING

The draft Law, as detailed in Section B, has been the subject of two stages of public consultation.

1st stage consultation:

Between July and August 2013, an 8-week public consultation was held looking at the principles of a new Law. The consultation provided a significant mandate for the development of a Law and the key proposals. 240 people attended public meetings and 130 submitted written responses. Of those written submissions –

- 96% agreed an updated definition of charity was required
- 89% agreed that the charity test should include charitable purpose and public benefit requirements
- 95% agreed that an entity must be registered to make appeals for money
- 94% agreed that an entity must be registered to call itself a charity
- 98% agreed that entity must be registered to receive full charitable tax reliefs (falling to 67% of respondents representing financial services organisations).

2nd stage consultation:

The second stage consultation, which focused on a first draft of the Law, ran from 20th March to 1st May 2014. During that period, 181 people attended consultation meetings and 27 provided written submissions.

This consultation process included working in partnership with the Jersey Voluntary and Community Sector Partnership, who attended all public meetings, plus working with a dedicated financial services sector group set up by JFL.

A number of key issues and concerns were identified during that consultation process. These are set out in full in the 2nd Stage Consultation Feedback Report (attached at **Appendix 1**) and are summarised below.

(a) Impact on small organisations, including all-volunteer run organisations

A number of respondents raised concerns about the potential impact of a Law on small charitable entities. These concerns focus on whether the draft Law potentially places an overly onerous burden on governors running small entities and hence, whether the draft Law fails to deliver its core aim which is to support charities to flourish.

It was suggested by some respondents that entities under a certain size should be exempt registration.

Response

Under the English Charities Law, entities under a certain size are exempt registration, although under the Scottish Charities Law all entities, regardless of size, must register. Consideration was given to following the English model, but rejected, for the following reasons:

Tax reliefs: If small charities were not required to register, they could not access charitable tax reliefs unless a dual system was established, allowing unregistered charitable entities to apply separately to the Comptroller of Taxes. This would –

- create confusion, making it harder for small entities to navigate through the requirements
- result in the public not being provided assurance that an appropriately qualified Commissioner, as opposed to the Comptroller of Taxes, had verified charitable status
- be inefficient in terms of the public administration costs.

Non-Profit Organisations registration under NPO Law: any entity with an income over £1,000 per year is currently required to register under the NPO Law and apply separately to the Comptroller of Taxes, if they wish to receive charitable tax reliefs. The draft Charities Law requires only one registration process, not two, thus reducing administration.

Burden to provide information: The information required on application to the charity register, or as part of the annual return, will be very similar to the information that small entities currently provide for the NPO register, for AJC membership or as part of funding applications. For most small entities this will not be onerous requirement, or one with which they are unfamiliar. (Note: all AJC members currently also provide annual returns.)

Right to call yourself a charity: If small entities are exempt registration, they would not be able to call themselves a charity unless the draft Law was amended to allow them to do so by exemption. Such an exemption would result in the public having no assurance as to whether an entity calling itself a charity was, in fact, a charity.

Under the draft Law, small charitable organisations that are not registered charities, can describe themselves as a “community” or “voluntary” organisations.

Knowledge of sector: It is a key objective of the draft Law to develop a knowledge base about the size, scale and scope of charities in Jersey, in order to look at how the sector can best be supported to flourish, for example through potential changes to tax reliefs. If small entities are exempt registration, it would not be possible to develop knowledge about how they operate and how they can best be supported.

Amendments to the draft Law:

Whilst it is not agreed that the draft Law will place an onerous burden on small entities, the legitimacy of these concerns are recognised. The draft Law has therefore been amended in order to –

- give the Minister the power to lessening the information required from small entities, on registration or in their annual return, if it is deemed necessary to do so at some point in the future, and
- to make it clear that the Commissioner’s duties include a responsibility to support the sector and ensure that any burdens placed on it are proportionate.

(b) Determination of whether non-registered charitable entities meet the charity test

The draft Law, as released for consultation, set out that it was for the Commissioner to determine whether or not public benefit was delivered to a degree that justified registration. This, however, created difficulties for financial services organisations who need to advise clients establishing charitable entities that are not registered charities, as to whether those entities meet the charities test.

Response

The draft Law was amended. The effect of these changes is to allow the charity test to be applied/determined by others. Where an entity is applying to the register however, it can still only be entered on the register if the Commissioner is satisfied that the entity meets the charity test.

(c) Provision of Annual Accounts

During the consultation, issues relating to the provision of annual accounts were raised by a variety of respondents. The greater majority supported the position set out in the draft Law (i.e. annual accounts are not required), accepting however that it should be considered in Phase 2 of the Charities Law project, once more information is known about the scale, size and scope of Jersey charities¹².

A very small number of respondents did not agree with this position and felt that a requirement for annual accounts, for charities over a certain income level, should be introduced in this draft of the Law.

Response

Having reflected on the feedback received, particularly the concerns expressed by the voluntary and community sector about the need to avoid too much change in Phase 1, it is not considered appropriate to amend the draft Law. Accounts are not required in the draft Law, but will most likely be introduced in Phase 2.

(d) Remuneration of Governors

The consultation highlighted significant divergences of view on whether the remuneration of governors, as governors, should be permitted in law. These varying views included –

- the voluntary principle for governors is a key defining characteristic of “charity” and should be protected in law
- legitimate reasons exist for paying governors and, restricting such payments in law, limits the ability of some charities to grow because they cannot attract governors with the right expertise
- preventing remuneration in law, except for with the permission of the Commissioner, would place an unnecessary administrative burden on charities and the Commissioner
- restrictions in law are not necessary, given that most charities do not and will not pay their governors but, those who feel there are legitimate reasons to do so, should be trusted to make that decision.

In addition, representatives of the Financial Services Industry were very clear that imposing such restrictions would place Jersey at odds with other offshore jurisdictions and potentially limit the growth of Jersey’s philanthropic wealth management market.

Note: the draft Law does not prevent reimbursing expenses, paying governors for other services or paying staff.

¹² This does not preclude funders, including the States of Jersey, from putting in place their own requirements with regard to accounts for the charities they fund.

Response

The draft Law has been amended so that remuneration of governors, as governors, is no longer prohibited. Requirements are however placed on charities that make those payments, this includes –

- Charities on the general and restricted section of the register: on application to the charity register, the charity must declare to the Commissioner that they pay their governors, plus the amount paid. This allows the Commissioner to determine whether the “private benefit” to the charity governor/s outweighs the “public benefit” delivered by the charity and, in the event it does, for the Commissioner to refuse registration (they will also need to declare such payments on an annual basis).
- General register charities only: information about payments must be put in the public domain, via the register, in order to ensure public transparency. If the charity chooses to pay governors, it will need a clear and publically justifiable rationale for so doing, otherwise people will not donate. This will not apply to restricted registration charities, which only use private monies, and can therefore make private decisions about how those monies are used.

D. FINANCIAL AND MANPOWER IMPLICATIONS

The draft Charities Law has 2 key financial implications:

1. Potential tax cost offset by potential increased tax revenue

Charities are entitled to recover income tax on lump sum donations of more than £50 or made by way of deed of covenant. They may reclaim any GST they pay. They are also exempt from income tax on their incomes, excused from the requirement to register for GST and entitled to reduced rates of stamp duty and Land Transaction Tax.

Of these reliefs, the largest are the repayment of GST and the repayment of income tax on donations. The Taxes Office¹³ estimates that the increased numbers of bodies claiming charitable status, and therefore entitled to full tax reliefs, could result in a tax cost of £500,000 to £600,000 per year, with potential spikes of up to £1 million per year in the event of large lump sum donations or GST reclaims on capital projects.

Industry analysis suggests that 2 charitable trusts will relocate to Jersey each year as a result of the proposed changes to the definition of charity and charitable purposes. The administration services provided to each of these charitable trusts is estimated to generate approximately £63,000 in additional tax revenue per year.¹⁴

¹³ Estimates of tax loss are based on the assumption that 200 Island sporting clubs, who currently are not entitled to charitable tax reliefs, could potentially be entitled after the Law is introduced. This figure is, however, subject to a range of other factors, including –

- some sports clubs, particularly elite and elitist clubs, may not be deemed to be charities by the Charity Commissioner
- entities currently in receipt of charitable tax reliefs may not be deemed to be charities by the Commissioner
- registration may see an increase in individual charity donations, resulting in more charities claiming back income tax on these increased donations.

¹⁴ These estimates were prior to the Financial Services Strategic Jurisdiction Review and the focus on developing and promoting Jersey as a centre for philanthropic wealth management.

Potential cumulative benefits and cost (£m)

Analysis of <u>cumulative</u> benefits and cost (£m)	Based on tax cost of <u>£0.5m</u> per annum			Based on tax cost of <u>£1m</u> per annum		
	Year 1	Year 5	Year 10	Year 1	Year 5	Year 10
Tax cost (estimate)	(0.5)	(2.5)	(5.0)	(1.0)	(5.0)	(10.0)
Increased tax revenue from new charitable trust business (estimate)	0.1	1.9	6.9	0.1	1.9	6.9
Net cost/benefit	(0.4)	(0.6)	1.9	(0.9)	(3.1)	(3.1)

If the assumptions around the growth in the administration of charitable trusts are correct, then –

- cumulative tax gains will outstrip cumulative tax losses after **eight** years, if the tax cost is £500,000 per year
- cumulative tax gains will outstrip cumulative tax losses after **fifteen** years, if tax cost is £1 million per year.

(b) Management costs (Phase 1 of the Charities Law)¹⁵

The management costs for the Charities Law are set out below. The costs for 2014 and 2015 will be met from contingency provisions (£307,000 for 2014 and £222,000 for 2015¹⁶). Management costs for 2016 onwards will need to be included in the next MFTP planning process.

It is proposed that registration should be free to all charities and, therefore, no income is expected.

Revenue	Recurring Annual Cost (£'000)						
	2014	2015	2016	2017	2018	2019	2020
Charities Law							
Commissioner	–	40	60	60	60	60	60
Staffing	70	107	88	88	108	108	108
Register cost	50	50	10	10	10	10	10
Overheads	20	20	65	65	75	65	65
Total	140	217	213	213	243	243	243

¹⁵ If Phase 2 of the Charities Law should be progressed, some additional capital costs will be required in 2017 to support development of the register, plus additional FTE may be required to support review of accounts and compliance with regulatory standards. This will be scoped as part of Phase 2.

¹⁶ Includes up to £70kpa for the Jersey Voluntary and Community Sector Partnership.

Description of new posts	No. of FTEs				
	2014	2015	2016	2017	2018
Phase 1					
Grade 12 officer to support the Commissioner	1	1	1	1	1
Grade 6: Administration officer (FTE in 2015 and 2016 to support initial registration period)	–	1	1	0.5	0.5
Total	1	2	2	1.5	1.5

E. HUMAN RIGHTS

The notes on the human rights aspects of the draft Law in **Appendix 5** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

Draft Charities Law

2nd stage consultation feedback report



May 2014

1. Introduction

In March 2014 the Chief Minister's Department released a draft of the Charities (Jersey) Law for consultation. The draft Law was published alongside a supporting paper which explained the details of that draft Law.

This consultation process was the second consultation undertaken in relation to the Charities Law. An initial public consultation took place during July and August 2013, focusing on the principles of developing a Charities Law.

This report summarises the feedback received in response to the March/April 2014 consultation. This feedback has helped inform and shape changes to the proposed law which will be lodged in June 2014 for debate in July 2014.

It is intended that the draft Law to be lodged will form Phase 1 of the Charities Law project. It provides for a new definition of registered charity, a charities registration scheme and establishes the role of the Charity Commissioner. It is envisaged that, in Phase 2 of the project (2016–2017), the Law will be amended to allow for –

- the regulation of charities (including production of annual accounts)
- the development of charity re-organisation schemes
- the potential introduction of a new legal structure for small charity groups.

Phase 2, which is subject to discussion and agreement, cannot be developed in any meaningful manner until information about the size, scale and scope of the charitable sector in Jersey is gathered via the charities registration system introduced in Phase 1.

Note:

This paper refers to the version of the draft Law, and the Articles contained within it, as issued for consultation in March 2014. A copy of the consultation version of the draft Law, which has now been superseded by an updated version, and the updated version, will be available on www.gov.je from 3rd June 2014.

The Article numbers in this paper reflect the draft version of the Law and, due to the changes made, do not, in all places, correspond with the Article numbers used in the updated version of the Law.

2. Consultation process

The draft Charities (Jersey) Law was released for consultation on 12th March 2014. The consultation period ended on 1st May 2014. The consultation process included:

- **Online:** The draft Law, and supporting paper, were made available online with an online comments facility.
- **Consultation meetings:** The following consultation meetings were also undertaken:

Date	Attendees ¹⁷	Stakeholders groups in attendance
Mon 17 March	23	Sport club/organisations consultation
Wed 2 April	11	Voluntary and Community sector reps/members of the public
Wed 2 April	11	States members' briefing
Thu 3 April	37	Finance industry consultation
Thu 3 April	9	Voluntary and Community sector reps/members of the public
Fri 4 April	12	Voluntary and Community sector reps/members of the public
Mon 7 April	32	Voluntary and Community sector reps/members of the public
Tue 8 April	16	Voluntary and Community sector reps/members of the public
Thurs 10 April	30	Voluntary and Community sector reps/members of the public
Total	181	

- **Jersey Finance Working group:** On 1st April 2014 a meeting took place with a Charities Law working group set up by Jersey Finance Limited with the specific aim of reviewing and commenting on the Law. That meeting was attended by 10 representatives of the Financial Services Industry.

3. Feedback received

Feedback was received via the consultation meetings, through our online comments facility and through written correspondence (either in writing or by e-mail), as set out below.

A number of respondents stated that they were happy for the content of their feedback to be made public; but that they did not wish it to be attributed to them (i.e. they should be anonymous).

- online comments facility: 6 respondents

Number of respondents	Responding in capacity as:	Permission to make comments public?
3	Members of the public	Yes, but not attributable to the respondent
2	representatives of a voluntary or community sector organisation	Yes, but not attributable to the respondent
1	Representative of other type of organisation (Jon Hackwood, ICSA)	Yes, can be attributed to the respondent

¹⁷ Shown as an approximate due to some people only attending for part of the meetings

- other written feedback (e-mail, letter): 21 respondents.

	Name of respondent	Can comments public and/or attributable?
1.	Anthony Nolan Trust	Attributable
2.	–	No
3.	–	Yes, but not attributable to the respondent
4.	Harris, Richard	Attributable
5.	Howard, Zillah	Attributable
6.	–	No
7.	Jersey Voluntary and Community Sector Partnership	Attributable
8.	Ogiers	Attributable
9.	–	Yes, but not attributable to the respondent
10.	Syvret, Richard	Attributable
11.	–	Yes, but not attributable to the respondent
12.	–	Yes, but not attributable to the respondent
13.	Howard Consulting	Attributable
14.	–	Yes, but not attributable to the respondent
15.	Durrell	Attributable
16.	–	Yes, but not attributable to the respondent
17.	Association of Jersey Charities	Attributable
18.	ICSA (Institute Chartered Secretaries and Administrators)	Attributable
19.	–	Yes, but not attributable to the respondent
20.	–	No
21.	–	Yes, but not attributable to the respondent

Please note, a number of respondents stated that their comments should not made public, or that their comments could be made public but not attributed to them. The table above, therefore, only includes the respondent's name if they have given permission for their comments to be attributed to them.

4. **Summary of key themes and response**

A number of different issues and points for consideration emerged during the consultation meetings and in the written feedback. These included overarching themes, plus detailed responses and comments to particular Articles within the draft Law. These are summarised below.

It is important to note that there was a divergence of views over many issues, for example –

- some people expressed concern about the Law potentially placing too onerous a burden on small, community-based charities, whilst others felt that the Law did not go far enough in placing regulatory controls on all charities, including small charities;
- some raised concerns about the Commissioner providing guidance on matters such as public benefit, stating this should be a role for the States Assembly, whereas others felt it was critical that such guidance should be a matter for an independent Commissioner and not within the political domain;
- some felt that the Law should not impose requirements on the “private” charities that fall into the *restricted registration* category, whereas others

believe the requirements placed on *restricted registration* charities are not sufficient to ensure transparency.

A divergence of views was also encountered in July and August 2013, during the first public consultation on the draft charities Law. It is a reflection of the diversity of organisations participating in the consultation process and affected by the Law; from financial services companies to small all-volunteer community groups, to household name charities.

Section 4.1 below summarises the overarching themes that emerged, whilst Section 4.2 sets out issues relating to particular Articles. The response of the Chief Minister's Department is also detailed.

Please note: this is not an exhaustive list of every comment received. There were additional comments made by single respondents, or by a very small number of respondents, which are not included.

In addition, a number of respondents raised queries, rather than comments, as they were seeking clarification about the details provided. These queries are being responded to on an individual basis.

4.1 Overarching/key themes

Key overarching themes arising from the consultation, as detailed below, include:

- (a) Use of the term “charity managers”;
- (b) Impact on small organisations, including all-volunteer run organisations;
- (c) Clarity about the tax treatment of charitable entities that are not registered charities;
- (d) Re-organisation schemes;
- (e) Determination of when non-registered charitable entities meet the charity test;
- (f) Provision of Annual Accounts;
- (g) Remuneration of charity managers;
- (h) Issues relating to the appointment of the Commissioner as Corporation Sole;
- (i) Powers of the Commissioner to prevent organisations which falsely purport to be charities, from operating in Jersey.

- (a) **Use of the term “charity managers”:** Multiple respondents reported that use of the term “managers” caused significant confusion between paid staff members and trustees/council members/board members, etc.

Response

The draft Law has been amended to use the term “governors”, as opposed to “managers”, and the definition of governor has also been updated to help distinguish between “governors” and staff, whether they are paid staff or unpaid staff.

Note: throughout this document the term “managers”, as opposed to “governors”, continues to be used as this was the term used in the draft version of the Law to which this report relates.

(b) Impact on small organisations, including all-volunteer run organisations

A number of respondents have raised concerns about the potential impact of the Law on small organisations. These include –

- the administrative burden imposed by the Law potentially being overly onerous for the individuals who volunteer their time to run small organisations
- the responsibilities imposed by the Law on charity managers being a source of concern and potentially resulting in people choosing not to volunteer
- small organisations, that choose not to become registered charities, no longer being eligible for States or Parish funding.

It has been suggested that organisations under a certain size should be exempt from registration.

Response

The Chief Minister's Department is acutely aware of the value of the work undertaken by small community-based organisations and does not, in any way, wish to disproportionately increase the administrative burden on these organisations. We would not want to deter people from volunteering or from providing valuable services in our community.

It is noted that, under the English Charities Law, organisations under a certain size are exempt from registration (albeit under the Scottish Charities Law all organisations, regardless of size, must register), and consideration has been given to following the English model. This option has been rejected, however, for the following reasons –

1. Tax reliefs: Registered charities will be entitled to charitable tax reliefs. If small charities were not required to register, they could not access tax relief unless a dual system was established which allowed unregistered charities to apply separately to the Comptroller of Taxes.

The disadvantages of a dual system include –

- it creates confusion amongst the sector as to which processes apply to which organisations; making it hard for small organisations to navigate through the requirements
- the public are not provided with the assurance that an appropriately qualified Charity Commissioner, as opposed to the Comptroller of Taxes, has verified charitable status
- it is inefficient in terms of the public administration costs
- the Comptroller of Taxes is not set up to provide support and advice to small organisations, whereas the Charity Commissioner will be able to provide support.

2. Non-Profit Organisations' registration: at the moment, small organisations are required to register under the Non-Profit Organisations Law (NPO) *and* apply separately to the Comptroller of Taxes for charitable tax reliefs. Charities Registration will require only one registration process, not two, thus reducing administration.

3. Burden to provide information: The information required on application to the Charity Register will be very similar to the information that small organisations are currently providing on application to the NPO register and for membership of the Association of Jersey Charities (AJC).

Baseline financial information will be required in relation to annual income and expenditure, including source of income. This information is very similar to that provided on NPO registration, to the AJC and to most funders when submitting a funding application. For many small organisations this will not, therefore, be an onerous requirement, or one with which they are unfamiliar.

The draft Law does require charities to provide an annual return with baseline financial information, but once again this information is not onerous, and most small organisations will have easy and ready access to it. (Note: all AJC members currently also provide annual returns.)

4. Right to call yourself a charity: Charity registration will provide organisations with the right to call themselves a charity. If small organisations are exempt from registration, they will either not be able to call themselves a charity, or the draft Law would need to have been amended to allow them, by exemption, to call themselves a charity. Such an exemption would, however, result in the public having no assurance as to whether an organisation that called itself a charity was, in fact, a charity.

Under the Law, small charitable organisations that are not registered charities can describe themselves as a “community” or “voluntary” organisation.

5. Knowledge of sector: It is a key objective of the Charities Law to develop a knowledge base about the size, scale and scope of charities in Jersey. This is in order to look at how those organisations can best be supported to flourish, for example through potential changes to tax reliefs and application processes to States funding. If small organisations were exempt registration, it would not be possible to develop any knowledge about how they operate and hence, how they can best be supported.

6. Support: The Charity Commissioner will provide support and guidance to small organisations on how to register and how to complete annual returns. This will include working with both the Association of Jersey Charities and the Jersey Voluntary and Community Sector Partnership to help ensure the provision of training and other support.

7. Amendments to the draft Law: Articles 11 and 13 have been amended to give the Minister the power to make an Order lessening the information required from small organisation, on registration or in their Annual Return, if it is deemed necessary or desirable to do so at some point in the future.

(c) Clarity about the tax treatment for charitable entities that are not registered charities

A number of financial services respondents have stated that they require clarity about the tax treatment of charitable entities that are not registered charities.

Response

It is recognised that further clarity is required on the treatment of charitable trusts that choose not to register with the Jersey Charities Commission because they have no connection with the Island, other than being administered from here.

The treatment of these trusts should be no different from that of other trusts whose beneficiaries are all outside the Island, i.e. their income should be outside the scope of Jersey tax except to the extent that it derives from land and buildings on the Island.

This issue falls outside the remit of the draft Charities Law. The Tax Policy Unit and Comptroller of Taxes will therefore liaise with interested parties to consider amending the wording of the concessional tax treatment applied by the Comptroller of Taxes and known as Concessions M1 and M2, to better reflect this position. This should be in place by the end of 2014, well before the coming into force of the draft Charities Law.

(d) Re-organisation scheme

A number of individuals attending the consultation meetings stated that there was a real need for the Charity Commissioner to be able to approve charity re-organisation schemes (i.e. allowing charities that are prevented by their governing documents from changing their charitable objectives, or prevented from winding up and donating their property to another appropriate body, to do so without having to seek Court approval).

Response

It is recognised that, as per the Scottish Charities Law, it would be desirable to provide the Commissioner with powers to approval charity re-organisations schemes. This will be considered in Phase 2 of the Charities Law¹⁸.

(e) Determination of whether non-registered charitable entities meet the charity test

As drafted, Article 5 of the Charities Law set out that it was for the Commissioner to determine whether or not public benefit was delivered to a degree that justified registration. This, however, created a potential problem for financial services organisations that need to be able to advice clients, who wish to establish charitable entities that are not registered charities, as to

¹⁸ As set out in both consultation processes, it has always been envisaged that the Charities Law will be developed in 2 distinct phases. Phase 1, which relates to the current draft of the Law, will allow for a new definition of charity and the establishment of a Charity Register and Charity Commissioner. Phase 2, to be scoped after the Register has been established and more detailed information is known about the size and scope of the charitable sector in Jersey will include regulation of charities and re-organisation of charities.

whether those structures meet the charities test. This conundrum also related to Article 6(1)(p), which set out that it was for the Commissioner to determine whether a purpose can be regarded as analogous to other charitable purposes

Response

Amendments have been made to Articles 5 and 6 to remove references to the Commissioner's opinion. Under Article 11, however, the Commissioner may still only register an entity if the Commissioner is satisfied that the entity meets the charity test.

(f) Provision of Annual Accounts

During the consultation, the issue of the provision of annual accounts was raised by a variety of respondents. The greater majority were concerned that in Phase 1 of the Law, a requirement would be imposed on charities to produce annual accounts. The Law does not however make this requirement; it only requires a charity to provide baseline financial information on application and its annual return. This position was widely supported as it provides –

- an opportunity to gather baseline information, via registration, about the scale, scope and size of charities in Jersey. This will enable informed decisions to be made in Phase 2 with regard to accounting standards and requirements, plus exemptions to such standards
- charities that do not currently produce accounts, time to adjust to the registration and annual reporting process, ahead of the possible introduction of regulatory and accounting standards.

This does not preclude funders, including the States of Jersey, from putting in place their own requirements with regard to accounts for the charities they fund.

A very small number of respondents did not agree with this position however, and felt that a requirement for annual accounts, for charities over a certain income level, should be introduced in Phase 1 of the Law.

Response

Having reflected on the feedback received, particularly the concerns expressed by the voluntary and community sector about the need to avoid too much change in Phase 1, it has been decided that the draft Law should not be amended. Accounts will not be required in Phase 1 of the Law, but could potentially be introduced in Phase 2.

(g) Remuneration of Charity Managers

Issues relating to the remuneration of charity managers were raised on numerous occasions during the consultation meetings and in the written responses. These included –

- queries as to whether payment of legitimate expenses was allowed under the Law
- whether charity managers could be remunerated for services provided, other than as charity managers
- confusion as to whether the proposed restrictions related to paid members of staff

- significant divergence of views as to whether remuneration should or should not be permitted in law. Various respondents felt that –
 - the voluntary principle for charity managers is a key defining characteristic of charities and should be protected in law
 - there are legitimate circumstances in which a charity should be able to pay its managers. Indeed, some respondents stated they believed any restrictions would limit their ability to grow, as they would not be able to attract charity managers with the right expertise
 - the Law should recognise that remuneration was an area in which a charity should be able to make its own decisions, and that preventing remuneration in law, except for by exemption, was placing an unnecessary administrative burden on charities
 - the inclusion of restrictions in the Law is not necessary, given that most charities do not and will not pay, but those who feel there are legitimate reasons for it do so, should be trusted to make that decision.

In addition, representatives of the Financial Services Industry were very clear that imposing such restrictions would place Jersey at odds with other offshore jurisdictions and potentially limit the growth of Jersey’s philanthropic wealth management market.

It is important to recognise that this debate is also raging in both Scotland and England, with both sides of the argument find favour with different groups of people.

Response

Reimbursement of expenses and payment for other services: The Law does not in any way prevent reimbursement of legitimate expenses, or payment for other services. Charity managers would, however, as part of their duties need to ensure the legitimacy and appropriateness of such payments.

The Commissioner will bring out guidance to help managers with regard to this.

Remuneration of staff: The draft Law does not prevent a charity from paying staff. The charity would however need to be clear about the difference between staff members and charity managers (it is usually the case that a paid staff member will have a contract of employment).

Remuneration of charity manager as charity managers

Having reflected on the feedback received, the Law has been amended so that there are no restrictions placed on the ability of charities to pay managers, but requirements are placed on those that do. Those requirements include –

- Charities on the general and restricted section of the register: on application to the charity register, the charity will have to declare to the Commissioner that they pay their managers, plus the amount paid. This allows the Commissioner to determine whether the “private benefit” to the charity manager/s outweighs the “public benefit” delivered by the charity and, in the event it does, allows for the Commissioner to refuse registration (they will also need to declare such payments on an annual basis).
- General register charities only: information about payments will be put in the public domain, via the register, in order to ensure public transparency. If the Charity chooses to pay managers, it will need a clear and publically justifiable rationale for so doing, otherwise people will not donate. This will not apply to

restricted registration charities, which only use private monies, and can therefore make private decisions about how those monies are used.

Consideration was given to allowing payment only with the prior approval of the Commissioner. Experience in England, however, suggests that the Charity Commissioner will be inundated with requests thus creating an administrative burden for both the charities and the Commissioner.

The following amendments have therefore been made to the Law –

- Article 19 has been deleted, removing restrictions place on remuneration.
- Article 13 has been amended to enable the Minister to bring forward an Order setting out what information that must be provided with regard to remuneration in the Annual Return and in a statement of future intentions.
- Article 8 has been amended to state what information, as set out in the Order under Article 13, should be entered onto the Charities Register.
- Article 11 has been amended so that the relevant information must be provided when applying to register, if the Minister has made an Order.

(h) Issue relating to the appointment of the Commissioner as Corporation Sole

Corporation sole: In the first round of consultation (summer 2013) a number of respondents raised concerns about there being a single Commissioner, as opposed to a Commission, with a number of Commissioners. The concern being that there was potentially too much investment of power and responsibility in one individual. The reasons for this decision – as set out below – were discussed in some depth at the consultation meetings. As a result, this issue was not raised as being of any substantial concern in the second round of consultation.

Appointment timetable: Questions were also raised about the timeframe for appointing the Commissioner, as it is deemed desirable that they are appointed and in post, in order to issue guidance, prior to the all other parts of the Law coming into force.

Experience: A few respondents also commented that they believed that the Commissioner should have previous experience of regulating charities and should, therefore, be a UK appointment, until a Jersey Commissioner could be trained up.

Response

Corporation sole: Consideration was given to the appointment of a number of Commissioners, who would form a Commission, as opposed to a single Commissioner. It was decided however to progress with a Commissioner on the grounds that –

- the costs of a Commission would be much greater than those of a Commissioner, and potentially disproportionate to the size of the charitable sector in Jersey
- a Tribunal would be set up to provide review, by a least 4 people, of the decisions of the Commissioner when they were called into question.

Appointment timetable: It is intended that the Commissioner will be appointed in advance of the registration scheme coming into force. This is allowed for under the

Law, which will be brought into force in stages.

Experience: It is not envisaged that a UK appointment is required. The individual appointed can legitimately have acquired knowledge and experience of regulatory roles within another sector; plus it is felt that knowledge of Jersey, and our voluntary and community sector, would be highly desirable.

(i) **Powers of the Commissioner to prevent organisations falsely purporting to be charities, from operating in Jersey**

Questions have been raised about whether the Commissioner has sufficient power to prevent organisations, which purport to be charities, from operating in Jersey when they are not charities.

Response

The Law places restrictions on entities that are not charities, from calling themselves a charity, when operating in Jersey. Such restrictions are limited however if, for example, an entity from outside Jersey was to distribute promotional information in Jersey (either in printed form or electronically).

In Phase 2 of the Law, consideration will be given as to whether the Commissioner should be given the powers to make public statements setting out, in the public arena, concerns about specific organisations.

4.2 Issues relating to specific Articles

Article 1: Respondents reported that use of term “managers” caused significant confusion.

Response

The Law has been amended to use the term “governors”, as opposed to “managers”.

Article 2 has also been amended to provide more clarity. A person is not a manager if they only exercise control on behalf of others (paid staff and others act on behalf of managers). These paragraphs also make reference to “general” control and management, which is in accordance with the definitions of charity trustees in the Scottish and English Charities Laws. “General” control and management is not “day to day” control and management and thus points to charity managers and away from paid staff.

Article 1: In the draft Law the definition of “regulated financial services business” included a business for which a person must be registered. Queries were raised however about other examples of exemptions from registration (e.g. a private trust company can operate as a trustee pursuant to an exemption from registration).

Response

The definition in the Law has been subject to minor changes. Those changes do not, however, resolve the issue of financial services businesses that operate pursuant to an exemption under the Laws detailed in the definition. This will be addressed as part of the Regulations to be developed under Article 11.

Article 2(1)(a): Queries were raised with regard to the definition of an “entity” as including people who are trustees of a trust.

Response:

It is not felt that including individuals who are trustees of a trust as entities is problematic.

Article 2(3): This Article was queried because it states that everything in (a) to (h) in paragraph 1, is a Jersey entity (including trusts and companies listed in paragraph (1)) but does not require everything in (a) to (h) in paragraph (1) to be an entity which is established in Jersey – therefore making it a Jersey entity.

Response

No change is required because the definitions, as set out in Article 1, relate back to Jersey entities.

Article 2(8): Queries were raised about whether this Article should include criminal offences.

Response

Article 2 has been amended to include other relevant laws and criminal offences. The Article relating to “reportable matters” has also been updated to make it a requirement for a charity manager to report all these matters.

Article 4: Concern was raised by a number of respondents about the failure to include in the Commissioner’s duties an explicit responsibility to support registered charities in Jersey.

Response

The responsibilities have now been included.

Article 4(1): Some concern has been raised about how the Commissioner would be held to account.

Response

Article 4 has been amended so that the Commissioner will be required, in law, to produce an annual report to be laid before the States.

Part 8 of the Law will also include a requirement on the Tribunal to produce an annual report to be laid before the States.

In addition, it is proposed that the Commissioner will work with the Association of Jersey Charities and the Jersey Voluntary and Community Sector to set up a Charities Reference Group with whom to discuss, on a regular basis, the work of the Commissioner.

Article 4(1)(e): Queries were raised about whether the powers provided in this Article were sufficient in relation to Commissioner assisting others to fulfil their functions under other Laws (e.g. investigation under fraud law).

Response

Article 4 has been amended to clarify that it applies to all relevant Laws, where the function under that Law is to be discharged in relation to charities.

Article 4(1): Queries have been raised about whether the Commissioner’s duties should include approval of *ex gratia* payments.

The Law requires charities to apply their property in accordance with their charitable purpose and public benefit statements. There may, however, be some circumstances in which a charity wishes to make a payment that falls outside these statements (known as an *ex gratia* payment). For example –

A person leaves money in their will, to be divided between their grandchild and a charity. Another grandchild is born, and it is the intention of that person to update their will but they pass away before this change is made. The charity may therefore feel a moral obligation to make an ex-gratia payment to the 2nd grandchild. This payment falls outside the charity’s registered statements, which the charity is required, by law, to uphold.

Response

Consideration has been given to including powers to approve *ex gratia* payments in Phase 1 of the Law. It has been decided, however, that should be deferred to Phase 2 on the grounds that –

- this situation is unlikely to occur on many occasions, and
- the development of such powers requires very careful consideration in relation to existing Laws that deal with inheritance and associated matters.

Article 5(1): Concern has been raised about –

- determination of whether a non-registered charitable entity meets the charity test
- inclusion of the words “in the case of the applicant”.

Response

Determination of whether an entity meets the charity test: see Section 4.1(e) above.

Inclusion of “in the case of the applicant”: The Law has not been amended because it is considered that it is clear that reference is being made to an “applicant” as opposed to any other charitable entity.

Article 5(2): Feedback has suggested that there is a lack of understanding about States members being able to act as “managers” in their own capacity, but not as a States member (exempt for by exemption).

Response

The Law clearly states that restrictions only relate to States members acting in their capacity as a States members, which does not include them acting as an individual in their own right.

Article 5(4) and (5): Questions have been raised about whether the States, as opposed to the Commissioner, should issue the guidance on how it is determined whether an entity meets the charity test (in particular in relation to public benefits). There has been concern that the guidance, if issued by the Commissioner, is more likely to be subject to challenge, than if issued by the States.

This concern is based, in part, on the premise that the Commissioner will not be appointed prior to the Law coming into force, and therefore the guidance will not be in place prior to the Law coming into force.

Response

Article 5 has been amended. Whilst it is still the Commissioner who issues the guidance, there is now a requirement for –

- the Commissioner to consult the Minister about the content of the guidance prior to publication
- the Minister to lay the guidance before the States as a Report.

The Law also requires others to have consideration of that guidance.

Different Articles will be brought into effect at different times. This will allow for the Commissioner to be appointed and for the guidance to be published prior to registration – thus allowing all organisations time to consider the guidance prior to progressing with an application for registration.

Article 6(1): A number of respondents suggested that changes should be made to the charitable purposes listed in Article 6 of the Law, to include, for example: mental health; non-physical sporting/games activities (e.g. chess); handicrafts; alleviation of the States’ burden; homelessness; and conservation.

Response

Most of the suggested requirements were implicate in the purposes listed, or would fall into Article 6(1)(p) and be considered analogous to the purposes listed. The listed purposes have not, therefore, been changed.

In order to provide future flexibility however, Article 6 has been amended to allow the States, by Regulations, to make additions to the list of charitable purposes. These powers will not include removal or deletion of an existing charitable purpose, as such powers would create uncertainty amongst charities and the community, and could potentially result in valid causes being “delisted” simply because they are perceived as being of minority interest or concern.

Article 6(1)(p): Concerns were raised about how charitable bodies, that are not charities, determine whether their purposes may be reasonably regarded as analogous to the other purposes, if that determination relies on the Commissioner’s opinion.

Response

The Article has been amended to refer to purposes being reasonably regarded as analogous, instead of regarded as analogous “by the Commissioner”.

Article 7(3)(a): Queries have been raised about whether it is right that a person must not “presume” any particular charitable purpose to be for public benefit. It has been suggested that the implication is, therefore, that it is acceptable to presume any other matter, but not this matter.

Response

The Law has not been amended. The Law should make it clear that there should be no presumption that any charitable purpose is for public benefit. It is not agreed that the provision will cause undue problems with regard to other matters.

Article 7(3)(b): The Law precludes appeals set to benefit an individual person, or a group of individual people, from being charities. This has generated some queries about the ability of charities to provide benefit to individual people.

Response

Whilst the Law precludes appeals that only provide private benefit from being registered charities, it does not preclude registered charities from benefitting individuals as part of process of seeking to deliver their charitable purposes. For example, charities can, and do, run schemes such as “sponsorship” schemes for named individuals. The charity must, however, be clear that such schemes are part of the way in which they met their charitable objectives, and must also be clear that the overarching purpose of the charity is not be benefit that named individual.

The Commissioner will provide guidance.

In addition, it has been asked whether, in order to help prevent fraud and abuse, the Charity Commissioner should have the power to investigate and prohibit such appeals.

Response

Whilst these powers currently fall outside the proposed Charity Law, it is recognised that there are potential benefits to be derived from the Charity Commissioner having such powers.

This will be considered in Phase 2 of the Law, as it requires careful consideration around other existing Laws (for example those dealing with fraud).

Article 8(3)(b) Concern has been raised about the requirement to provide the names of all charity managers on application to the register, as some entities have a complicated sub-group structures.

Response

Many charities have sub-group structures. Sub-groups invariably have a reporting line to another board or group, and therefore the members of those sub-groups are not necessarily “charity managers”, unless they are also on the main board.

If the charity was to be structured in such a way as to have a number of sub-groups, and all those sub-groups were of equal authority with no reporting lines to a main board or group, then all the members of the sub-groups would most likely be charity managers. This would, however, be a very unusual structure for a charity.

Article 8(3)(e) and (f): It has been suggested that in Article 8 there should only be reference to the production of registered charitable purpose and public benefits statements, and that approval of such statements by the Commissioner should instead form part of Article 11.

Response

Article 8 relates to information that the Commissioner must enter onto the register. It is right that these statements, which will continue to be valid after deregistration, should be entered on the register. Article 11 only deals with applications to the register, as opposed to all aspects of the information contained on that register.

The Law has therefore not been amended.

Article 9: Whilst there is support for the concept of restricted registration – which protects the privacy of charities funded solely with private monies whilst still allowing them access to charitable tax reliefs – concern has been raised about whether the restricted part of the register is –

- Financial Action Task Force (FATF)¹⁹ compliant; and
- whether there is sufficient information about these charities in the public domain for the public to know how effective they are.

Response

The restricted part of the register does not present any difficulties in relation to FATF compliance. Full and complete information (to the same requirements as the open part of the register) will still be obtained and held by the Commissioner, and will be made available to competent authorities and law enforcement officials where appropriate in the global fight against money laundering, tax evasion and corruption.

Whilst information about individual restricted registration charities will not be put into the public domain, Article 4 has been amended to include placing a responsibility on the Commissioner to provide an annual report to the States. This report, which will be publically available, will include headline information about the numbers of restricted registration charities and about any issues or trends relating to this category of charities.

¹⁹ FATF is an international body that sets standards and promotes measures to combat money laundering, terrorist financing and other related threats.

Article 11(1) Concern has been raised that this Article implies an entity must know it is an “entity” before it applies, and that any such requirement would potentially deter smaller charities who are not clear as to their legal status.

Response

There was no requirement on an entity to know, with certainty, its status prior to application. The Law has however been amended and, in doing so, this point has been clarified.

Article 11(2): Questions have been raised about the meaning of “*carries out, or intends to carry out relevant activity in or from within Jersey*”, both in regard to Article 11 and Article 23(3), which defines excepted foreign charities.

Response

Article 11 has been amended. A non-Jersey entity may apply for registration if that charity carries out substantial activity in Jersey. It is for the Commissioner to determine if the activity is substantial enough to warrant registration (and hence access use of the term “charity” and receive charitable tax reliefs).

The Commissioner will provide guidance related to what constitutes substantial activity.

Under Article 23(3), which has also been amended, a charity which is not registered can call itself a charity in Jersey, providing it is registered and managed in the UK or a jurisdiction recognised by the Minister. It cannot however access charitable tax reliefs in Jersey.

Article 11(4): This Article provides the States with the power to bring forward Regulations to amend the information required on registration. Given the concerns about the impact on small organisations, this Article should be amended to make clear that these amendments could potentially lessen the information requirements on small organisations if it is deemed necessary or desirable at some point in the future (*see* Section 4.1(b) above).

Response

The Article has been amended so that the Minister can make an Order lessening the requirements on smaller entities.

Article 11(7)(a): Queries have been raised about regulated financial services business and whether this definition does, or does not, include “corporate trustee”, and therefore the family relationships of these trustees.

Response

Question of definition will be dealt with in the Regulations to be brought forward under Article 11.

Article 11(7): It has been questioned as to whether it is fair and proportionate to prevent family-linked members from setting up and running a charity in Jersey.

Response

Article 11(7) does not prevent family-linked members from setting up and running charities in Jersey. It provides the States with the ability to bring forward Regulations, if deemed relevant, that prescribe circumstances in which family-only charities are acceptable. If these Regulations should be brought forward, it is not envisaged that they would apply to restricted registration charities, only the general registration charities that solicit public donations. It is also not envisaged that any such Regulations would prevent family members from acting as managers of the same charity, but would prescribe circumstances where additional non-family members should also form part of the charity management in order to ensure transparency and good governance.

Article 12: It has been suggested that Article 12 should include a provision similar to Article 14 of the Non-Profit Organisations Law requiring the Commission, on request, to inform a person if an organisation name specified by the person appears in the restricted section of the charity register. This would include providing contact details. The aim would be to help applicants identify whether the proposed charity name was already in use.

Response

Consideration has been given to this suggestion, but it is not proposed that the Law is amended, as this would impact on the confidentiality of the charities on the restricted part of the register. The Commissioner will instead, on request, check the restricted register and advise applicants individually as to whether the proposed name was already in use by a restricted registration charity.

Article 12(5): It has been suggested that the Law should allow charities to register and operate under an operating name/s as well as their full registered name.

Response

The Law already permits this as a charity can already add an alternative registered name, which in practice allows for the addition of more than one alternative names.

Article 12(7) Concern has been raised about charities only being able to use registered names. It is queried as to whether this is reasonable (for example: if a charity called “The Jersey Cat and Dog Care Charity” will refer to itself as “Cat and Dog Care”, and not have registered this as an alternative name, would it fall foul of the Law?)

Response

The Law has been amended so that a charity can use its registered name/s or a related name, providing that related name is not undesirable.

Article 12(1)(a): This Article precludes a charity using a name that is too similar to the name of another charity, but queries have been raised about what happens in the event that it is too similar to another non-charitable organisation.

Response

This is already covered under 12(1), but minor amendments have been made for clarification. On a practical level the Commissioner will check the business names register.

Article 13(2): This Article prevents a charity from changing its purposes to non-charitable purposes. It has been questioned whether this should apply after deregistration.

Response

It is intended that the charity should only have charitable purposes whilst it is on the register. After deregistration the entity, which is no longer a charity, can change its purposes if its governing documents allow, BUT any remaining property must continue to be applied in accordance with the public benefit and charitable purpose statements that were in place at the point of deregistration (*see also* Article 17(6) below).

Article 13(2): This Article sets out that the Commissioner may approve changes to a charity's charitable purposes. Queries have, however, been raised about what happens in relation to a *fidéicommis* established under the *1862 Loi*, whose constitution has been approved by the Court.

Response

The Law has been amended to clarify that if an entity is already governed by the Court under the *1862 Loi*, then the Court retains its powers, and changes cannot be approved by the Commissioner alone.

Article 13(8): This Article provides the Minister with the powers to prescribe by Order the information required on the Annual return. Concern has been raised about the potential impact of the Annual return requirement on small organisations (*see* Section 4.1(b) above).

Response

Article 13 has been amended to allow for the Minister to potentially lessen the information requirements on small organisations, if it should be deemed necessary or desirable at some point in the future.

Article 14(5)(a): Concern has been raised that this Article does not make reference to customary law.

Response:

The Article relating to savings and transitional provisions preserves the Court's power under customary law. This Article has been amended to ensure that is clear.

Article 17(6): An entity must continue, after deregistration, to use its property in accordance with charitable purpose and public statements. It has been questioned as to whether this should apply to restricted registration charities or just general registration charities.

Response

Restricted registration charities do not solicit voluntary donations. They use private funds to deliver their charitable purposes and public benefit. As such, there is an argument that on deregistration they should be able to apply their property as they see fit. The counter-argument is that, whilst they are on the register they are entitled to tax reliefs provided on the basis that they are charities, and that the public should, therefore, have certainty that the reliefs provided continue to support charitable purposes and public benefit.

The Law does, however, have the flexibility to accommodate these changes. A charity must simply apply to the Commissioner, immediately before deregistration, to change its charitable purposes. The Commissioner can give approval, providing the Commissioner is satisfied that the remaining property will be used for charitable purposes after deregistration. Any new property can, however, be used for any other purpose.

Article 18(2): Concerns have been raised about additional duties being placed on charity managers over and above trusts, foundations and companies laws and the potential to create uncertainty about which law “trumps” other laws.

Response

Article 18 has been amended so that 18(2) only relates to managers of incorporated associations. Duties of managers of other types of entity (e.g. trusts, etc.) are established in their relevant governing Law.

Article 18(3): Concerns have been raised with regard to 18(3) stating that the duties set out in 18(2) apply except where they impose a more onerous duty than other governing Laws. The concern is how is it known which is the more onerous duty as there is no case law to test.

Response

Given changes to Article 18(2) above, it is not considered that this will cause a problem.

Article 18(4)(d): Concerns have been raised about whether it is too onerous for this Article to state that a manager has engaged in misconduct if they fail to take action in a situation where they “ought to have become aware of misconduct”, as opposed just when they were aware of misconduct.

Response

Consideration has been given to this matter. The Article has not been amended however, because, on balance, it is considered right that a manager “ought to” be aware of misconduct in some circumstances. This does not however mean that a manager has themselves committed misconduct, if they were not aware of the actions

of another manager, where it is not reasonable for them to have been aware of those actions.

This requirement reflects that placed on trustees within the Trusts Law.

Article 22(9) and (10): Concern has been raised about whether the potential for imprisonment is too steep a penalty

Response

The Law has not been amended because the penalty is not considered too steep.

Article 23(2)(i): It has been suggested the exemptions for excepted foreign charities should apply to OECD countries, where there is charity registration scheme in that jurisdiction, as opposed to UK and others by Order.

Response

Consideration will be given to this as part of the Order to be developed under Article 23.

Article 23(3)(b): It has been questioned whether the condition stating that an excepted foreign charity cannot carry out relevant/substantial activities in Jersey is proportionate, as it potentially creates the situation whereby a UK charity which carries out relevant activity must apply to be on the Jersey register, if it wants to call itself a charity in Jersey (*see* Article 11(2) above).

Response

Article 23 has been amended so that a charity which is not registered in Jersey can call itself a charity in Jersey, even if it does carry on substantial activity in Jersey, providing it is registered and managed in the UK or a jurisdiction recognised by the Minister. It cannot, however, access charitable tax reliefs in Jersey.

Article 25(4): Concern has been raised that potential imprisonment is too steep a penalty.

Response

The Law has been amended, and reference to imprisonment has been removed.

Article 28: Concern has been raised about the meaning of the term “externally organised religious charities”. In addition, concern has been raised about supporting churches in Jersey to navigate the Law in relation to their different and various structures.

Response

Article 28 has been amended to help clarify its meanings.

It is recognised that different churches have quite unique structures. Support will be provided to help ensure that churches can navigate the requirements of registration, in the same way as has occurred in England and Scotland.

Article 30: Queries have been raised about which organisations and individuals this Article applies to.

Response

This Article applies to anyone who receives information under this Law, but not people who more generally receive or hold information about a charity or charities.

This will most usually include the staff and officials that form part of the Commissioner's or Tribunal's support staff, plus staff and officials in any supervisory organisation to whom information is released.

Article 32: It has been suggested that the Commissioner should have the right to disclose information to any supervisory body, to allow that body to discharge its duties.

Response

These powers can already be provided for in Regulations made under Article 32.

Article 33–37: Questions have been raised about how the Tribunal and Commissioner are to be held to account.

Response

The draft Law has been amended to include a requirement for the Tribunal to produce an annual report to be laid before the States (*see* Article 4.1 above).

Article 34(5): Concern has been raised about what happens if a third party makes a complaint to the Commissioner about a charity, but the Commissioner refuses to take action.

Response

Consideration has been given to this issue. There is a very real concern, however, about allowing complaints on these grounds, as it could result in vexatious and unsubstantiated Third Party complaints. If a Third Party was dissatisfied with the Commissioner's decision not to take action against a charity, that Third Party can raise the matter with H.M. Attorney General. The Article has therefore not been amended.

Article 38(1)(a): It has been suggested that the word "secretary" should be deleted, as it is unusual for a secretary to have equal responsibility.

Response

The reference to "secretary" has not been deleted. It is included in similar provisions in other Jersey Laws. Prosecutors and the Court would take account of degrees of responsibility.

Article 42(1)(b): Queries have been raised by financial services representatives as to –

- the possibility of modifying the requirement that trusts and foundations who wish to avail of the exemption from income tax under Article 115(ac) of the Income Tax Law, should only apply their income to making donations to registered Jersey charities. This would be in order to allow monies to be applied to charities outside Jersey and/or to allow income to be used for charitable purposes more generally;
- whether the proposed changes to Articles 115 (ac) and (ad) of the Income Tax Law should be extended to include corporations as well as foundations and trusts;
- whether entities wishing to benefit from the grandfathered exemption from income tax only under Article 115(ad) of the Income Tax Law should be excluded from ever having solicited donations, given that Regulations defining precisely what is meant by “soliciting donations” have yet to be developed;
- whether the proposed cut-off date of 1st January 2015 in Article 115(ad) was potentially too early, given the inherent risk of delay that accompanies the introduction of any new major piece of legislation;
- whether Article 87A(3) and Article 87B(4) of the existing Income Tax Law needed changing to reflect changes to Article 115 of the Income Tax Law, as set out in Article 42 of the draft Charities Law. In particular, whether the changes would affect the position of UK and Guernsey charities which currently benefit from many Jersey tax reliefs.

Response

Requirement to make donations: Consideration was given to amending the Law to allow monies to be used for any charitable purpose, as opposed to just for donations. This was considered too broad however, as it would potentially allow bodies to avail themselves of the exemption, where it is not intended they can do so. However, the Law has been amended to allow charitable trusts and foundations availing of the exemption from income tax under Article 115(ac) of the Income Tax Law to make donations to Jersey-registered charities or to excepted foreign charities (i.e. charities established in countries which are considered to have an equivalent level of regulation and oversight of the charitable sector as Jersey).

Extension to include corporations: Specific provision is made for certain types of charitable trusts and foundations to continue to avail themselves of the exemption from income tax, but no other tax relief. The provisions have deliberately been tightly framed, in order to prevent other bodies from availing themselves of the exemption, limited though it is. It is therefore not considered appropriate to include corporations within the scope of these provisions.

Soliciting of donations: The draft Law has been amended so that it only prohibits the soliciting of donations from the date on which the relevant Article in the Charities Law comes into force.

Date: This has been amended. The relevant date is now the date on which the relevant Article in the Charities Law comes into force. Adequate notice will be provided.

The treatment of UK and Guernsey charities: The current arrangements will be maintained for the time being, although this will be reviewed, in due course, alongside other charitable tax reliefs.

Changes to Article 87B(4) of the Income Tax Law: Article 87B provides for repayment of income tax on lump sum donations to Jersey charities only. It is considered appropriate that this position should continue and so no amendment is proposed.

Article 44: Concern has been raised about how the Charities Test can be applied under the Trusts and Foundations Law.

Response

This Article has been amended to include direct reference to powers to bring forward amendments to the Trust and Foundations Law. (Note: this does not preclude amendments being made to other Laws.)

Article 45: Some concern has been raised about the need for the Commissioner to be in place, in order to develop and issue guidance, prior to the Law coming into force.

Response

This is already allowed, as mentioned above.

Schedule 1, paragraph 3(2)(c):

Concern has been raised about the use of the term “mental illness”.

Response

The terms “mental and physical” illness has been removed. The Article now simply makes reference to “illness”.

Schedule 2, paragraph 1(1)

Concern has been expressed about the Tribunal having “at least 4 members” as this provides no upper limit, and there is some concern that if there are too many members we might not build appropriate expertise. On the other hand, concern has also been expressed about not having sufficient members to ensure a suitable “many eyed process”.

Response

The Article has been amended to say at least 4 members but not more than 8 members.

Schedule 2, paragraph 4(3):

Concern has been expressed about restricted registration charities having appeals heard in private as opposed to in public. The issue as expressed is: “restricted registration charities will demand to have appeals in private citing confidentially of the private settlor. This means the public will have no opportunity to scrutinise the decision of the Commissioner and/or the Tribunal because whilst their decision may be public, the reasons for the decision will not”.

Response

This Article provides for the States to deal with this in Regulations. These concerns will be considered at the point at which these Regulations are developed.

APPENDIX 2 TO REPORT

EFFECTS OF THE DRAFT LAW ON DIFFERENT TYPES OF ENTITY

1. General

It is proposed that the draft Law applies to both incorporated and unincorporated entities (full details in Article 2 of the draft Law). Any entity may apply to be a registered charity if they have a written constitution and they are either a Jersey entity or carry out substantial activity in Jersey.

As set out in Appendix 4, the draft Law will bring forward changes to the availability of charitable tax reliefs, which may affect some entities currently in receipt of those reliefs.

The impact on some of the key groups of charitable entities is explained below.

2. UK and foreign charities

A foreign charity can apply to become a Jersey-registered charity if it carries out substantial activity in Jersey and it has a principal address in Jersey.

A foreign charity, which is not registered in Jersey, can call itself a charity if it is classed as an “excepted foreign charity”. To be an “excepted foreign charity” it must be established under the laws of the UK, or in a jurisdiction recognised by the Minister, and entitled to call itself a charity under the laws applicable in that jurisdiction.

A foreign charity which is not an “excepted foreign charity” cannot call itself a charity whilst operating in Jersey.

A foreign charity, which is not registered in Jersey, cannot receive any form of charitable tax reliefs, unless it falls within the current Income Tax Law arrangements for UK and Guernsey charities. It is envisaged that these arrangements will be maintained for the time being, although this will be reviewed, in due course, alongside the other charitable tax reliefs.

3. Appeals for named individuals or groups of individuals

Under the draft Law, fund-raising appeals for named individuals, or groups of named individuals, will not be able to become registered charities.

Appeals that only benefit a specific person, or a very limited number of people, do not provide sufficient public benefit to warrant being a charity. They provide “private” benefit to the named individual/s.

For example, an appeal that is set up to help support a particular person, or a particular group of people, who have been injured in a road accident, only benefits them. A charity that supports people generally who are injured in road accidents, benefits the section of the public who are injured in road accidents, thereby providing public benefit.

There is concern that fund-raising appeals can be open to abuse, with the monies raised being used for different purposes; however, other Laws, including those relating to fraud, are in place to deal with such eventualities.

4. Charity Shops

Charity shops will need to register as charities in Jersey. This includes charity shops run and managed by UK charities.

5. Cultural NPOs

The draft Law brings forward changes to the Income Tax Law. Once these changes come into effect, the non-profit cultural organisations that currently receive charitable tax reliefs will no longer automatically continue to do so. They will need to apply to be registered charities.

6. Dons and charitable funds

Dons and Charitable Funds are set up in a myriad of different ways. Some have trustees and others do not. In addition, depending on the form of investments (guilts, cash, etc.) and the place of investment (Jersey, UK, etc.) some may be liable to tax on their income.

It is for the governors of the Don or charitable fund to consider whether they should or should not apply to be a registered charity. A key factor for consideration will be whether they solicit public donations. Advice will be given by the Commissioner.

7. Parent Teacher Associations (PTAs)

If PTAs wish to receive charitable tax reliefs, or refer to themselves as a charity, they will need to register. This will require them to demonstrate that they pass the charity test.

8. Schools

States schools will not be charities and will not be able to register to be a charity because they fall under the control of a Minister.

Non-States schools will not be charities unless they are on the register. In order to be a registered charity, they will need to demonstrate that they pass the charity test.

9. Social enterprises

Social enterprises are businesses that trade for a social and/or environmental purpose. They bring in most or all of their income through selling goods or services, and have clear rules about using those profits to further a clearly set out social mission.

Social enterprises are very often not charities, although where the social enterprise believes it is, it can apply to the Commissioner.

APPENDIX 3 TO REPORT

PUBLIC BENEFIT EXAMPLES

Public benefit comes in many different forms. It can be –

- tangible (e.g. relief of sickness) or intangible (e.g. appreciation of historical buildings)
- direct (e.g. to the individual who receives care) or indirect (e.g. to the general public beyond the immediate beneficiaries through, for example, improved social solidarity).

It can also benefit, or potentially benefit all the public, or a particular section of the public. Some charities, for example –

- indirectly benefit the whole of the general public (e.g. a charity that funds research into bowel cancer; everyone has the potential to get bowel cancer or know someone who does)
- directly benefit a section of the public (e.g. providing advice and support to those with bowel cancer)
- directly benefit a limited or specific section of the public (e.g. contribution towards costs for low-income families with children under 5 years who fly to Southampton for bowel cancer treatment). In this case, the “public” is restricted to low income families with children under 5 needing treatment in Southampton but all or most of the restricted group has the potential to benefit (as opposed to the benefit only being available to named individuals, in which case the public benefit test would not be met).

The Commissioner will need to take this complexity into consideration when assessing public benefit. In addition, for illustrative purposes pending development of guidance, the Commissioner will need to consider a range of other factors which could include –

- Public benefit v public disbenefit, for example:

A charity that lobbies for wind-energy proposes to build wind-farms in Jersey. The benefit to the wider public is wind-energy; the dis-benefit to residents in the vicinity is that the value of their properties may decline.

A charity promotes the right of women to choose to take one year’s maternity leave. This is a benefit for all women who may wish to take one year’s maternity leave. A charity campaigns for a policy change demanding that all women must take one year’s maternity leave. This is a dis-benefit to those who do not want to.

In both these cases the Commissioner would weigh up the benefits and the dis-benefits.

- Restrictive conditions, for example:

A charity can have members and charge a membership fee (for example: girl guides pay a £40 annual subscription. £40 is not an unreasonable amount of money and anyone who can pay can join).

A golf club, which wishes to apply for charitable status, charges members £8,000 a year. This amount is comparable with non-charitable golf clubs and therefore would not be deemed as reasonable.

A tennis club only charges £1,000 a year – which is a reasonable amount – but membership is restricted to those who are nominated by 5 existing members. This would be unduly restrictive.

APPENDIX 4 TO REPORT

TAX POSITION OF CHARITIES FOLLOWING CHARITIES LAW COMING INTO FORCE AND TRANSITIONAL ARRANGEMENTS FOR ENTITIES CURRENTLY IN RECEIPT OF CHARITABLE TAX RELIEFS

A. Charitable tax reliefs

As set out in Article 41, the draft Law includes changes to some tax Laws and Regulations. Once those provisions come into effect, these changes, taken together, will mean that some entities previously entitled to charitable tax reliefs may no longer be entitled to the reliefs, whilst other entities may be entitled to some, but not all, charitable tax reliefs²⁰. Entitlement will largely be dependent on whether entities do, or do not, become registered charities.

The basic rules are –

Exemption from income tax will be available to²¹ –

- (1) registered charities (an entity must apply to be a registered charity regardless of whether or not it was previously eligible for charitable tax relief).
- (2) charitable trusts and foundations that are not registered charities but which –
 - only have charitable purposes (as defined in the Charities Law) and;
 - do not solicit voluntary donations and;
 - notify the Comptroller of Taxes that they intend to make use of the exemption before any income is received.insofar as their income is applied to the making of donations to registered Jersey charities or excepted foreign charities.
- (3) charitable trusts and foundations that do not fall into (1) or (2) above, but were previously eligible for exemption from income tax under the Income Tax Law, if that trust or foundation was established before Article 41 of the Charities Law comes into effect, for any of the following purposes –
 - the advancement of education
 - the relief of poverty
 - the furtherance of religion
 - a purpose beneficial to the whole community, or
 - the service of any church or chapel or any building used solely for the purpose of divine worship.

And providing they do not solicit voluntary donations once Article 41 comes into effect, and that their income is used for the purposes detailed above.

²⁰ The availability of charitable tax reliefs will be subject to a review by Treasury and Resources.

²¹ In addition to these entities, the States, Parishes and ecclesiastical bodies will continue to be exempt from income tax.

Relief from GST, stamp duty and Land Transaction Tax and repayment of income tax on donations made under both the lump sum donation and the deed of covenant schemes will only be available to registered charities (i.e. an entity must apply to be a registered charity regardless of whether or not it was previously eligible for charitable tax reliefs).

B. Transitional arrangements

The proposed transitional arrangements below, which are subject to confirmation and consultation, apply to entities that are currently in receipt of charitable tax reliefs by virtue of meeting the definition of a charity under Article 115(a) of the Income Tax Law –

Arrangements for charities entities currently in receipt of charitable tax exemptions

In order to receive all charitable tax reliefs, and have the right to call itself a charity, an entity must apply to be put on the charity register.

The proposed process, subject to consultation is –

Entities must apply to be on the register within the *Registration Period*. If an entity has not applied within the *Registration Period*, regardless of the reason why it has not applied –

- entitlement to charitable tax reliefs will stop
- it can no longer call itself as charity, or use the term charity or charitable when soliciting donations²².

There will then be a period, known as the *Post-Registration Period*, during which the Commissioner will determine the application. During the *Post-Registration Period* entities, which have made an application, can continue to receive the charitable tax reliefs they were already entitled to (see note below on anti-avoidance) and present themselves as a charity.

The Commissioner will work to determine applications during the *Registration* and *Post-Registration Period*. If –

- the Commissioner puts an entity on the register, it will continue to receive charitable tax reliefs
- the Commissioner has not determined whether to put an entity on the register by the end of the *Post-Registration Period*, it will lose its charitable tax reliefs and the right to present itself as a charity from the end of the *Post-Registration Period*.

If the Commissioner determines that an entity should not be put on the register it may either –

- appeal to the Charity Tribunal to review the decision of the Commissioner OR
- re-apply to the Commissioner, but only if it is prepared to make the changes necessary to pass the charity test (this will usually involve changes to the constitution and/or charitable purposes and/or public benefit).

²² An entity can continue to call itself a charity/charitable through the *Registration Period* but only if was so doing, on the day before the Law came into force.

Appealing to the Tribunal –

- If the appeal is determined in favour of the entity before the end of the *Post-Registration Period* entitlement to charitable tax reliefs will continue
- If the appeal is determined in favour of the entity after the end of *Post-Registration Period*, and hence charitable tax reliefs have already stopped, the entitlement will be re-instated from a date specified by the Tribunal.

Re-applying after making changes to pass the charity test:

- If the new application is determined in the favour of the entity before the end of the *Post-Registration Period*, it will be placed on the register and entitlement to tax relief will continue.
- If the new application is determined outside the *Post-Registration Period*, entitlement to tax relief will recommence from the date on which the Commissioner enters the entity on the register but the entity will not be able to claim any backdated tax relief for the intervening period.

Subject to consultation, it is envisaged that the *Registration Period* will be 3 months and the *Post-Registration Period* will be 21 months, i.e. 24 months in total.

Note: Anti-avoidance

It is proposed that that *Registration* and *Post-Registration Periods* will provide a long lead-in time for entities already in receipt of charitable tax reliefs. This is considered desirable in order to give existing charities the best possible chance to ensure they comply with the Charities Law in good time.

However, we recognise that this long lead-in time could also potentially allow for abuse of these tax reliefs, and in particular of the GST system, by entities which currently receive charitable tax reliefs but which may not be found to be charities by the Commissioner (if indeed there should be any such entities). Therefore, before the draft Charities Law comes into force, consideration will be given as to what measures should be taken to guard against potential abuse.

Arrangements for new entities claiming charitable tax relief

Registered charities

If an entity is newly formed and the Commissioner determines it is a registered charity, the start date for charitable tax reliefs will be the date on which the Commissioner determines the application and places the entity on the register, as opposed to the date on which the application was made.

Entities that are not registered

If the entity is a newly-formed charitable trust or foundation that falls under part A(2) above, it will be entitled to exemption from income tax, insofar as its income is applied to donations to Jersey-registered charities or excepted foreign charities, but to no other charitable tax reliefs.

These entities do not need to apply to the Commissioner, but will need to notify the Comptroller of Taxes that they are eligible for this exemption and intend for it to apply to them. This must be done before any income is received.

Arrangements for deregistered charities

Optional deregistration

If a charity chooses to deregister, it will lose entitlement to charitable tax reliefs from the date specified by the Commissioner on the deregistration notice. This will usually be the date on which the Commissioner removes the charity from the register.

A deregistered charity can claim backdated charitable tax reliefs that it was entitled to prior to the date on the deregistration notice.

Deregistration for failing to meet the charity test, or because the charity no longer exists

If the Commissioner deregisters a charity because it no longer meets the charity test, or because it no longer exists, the *Stop Date* for charitable tax relief will be the date specified by the Commissioner on the deregistration notice. This could be either –

- the date on which the Commissioner removes the charity from the register; or
- an earlier date, if the Commissioner's investigation finds that the charity stopped being a charity at an earlier date.

A charity will only be entitled to claim charitable tax reliefs up to the *Stop Date*. It will be liable to repay any charitable tax reliefs that relate to the period after the *Stop Date*.

Deregistered for misconduct

If the Commissioner deregisters a charity because of misconduct, the *Stop Date* for charitable tax reliefs will be determined as part of the misconduct investigation either by the Commissioner or the Royal Court.

The charity will only be entitled to claim charitable tax reliefs up to the *Stop Date*. It will be liable to repay any charitable tax relief that relates to the period after the *Stop Date*.

Guernsey and UK charities

Currently most charitable tax reliefs are available to UK and Guernsey charities. The position of these charities will be reviewed alongside other charitable tax reliefs. It is intended that, in due course, that charitable tax reliefs will only be available to charities that are registered in Jersey.

APPENDIX 5 TO REPORT

HUMAN RIGHTS NOTE ON THE DRAFT CHARITIES (JERSEY) LAW 201-

These Notes have been prepared in respect of the Draft Charities (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law will introduce a system of registration for charities. The main elements of the draft Law are the establishment of a register of charities, the definition of charitable purposes and a charity test, and provisions giving wide-ranging powers to the Royal Court to ensure that registered charities remain charitable. The draft Law also establishes a Charity Commissioner (the “**Commissioner**”), to administer the charity test and maintain the register, and a Charity Tribunal (the “**Tribunal**”) to hear appeals from decisions of the Commissioner.

Article 6 ECHR – The right to a fair trial

Appeals to the Tribunal and the Royal Court – Part 8

Article 6(1) ECHR is engaged by Part 8 of the draft Law, which provides for a right of appeal to the Tribunal for those aggrieved by a decision of the Commissioner (Articles 33 and 34), and for an appeal from the decision of the Tribunal to the Royal Court (Article 35).

Article 6(1) ECHR requires that those who face a determination of their ‘*civil rights and obligations*’ must be entitled to a ‘*fair and public hearing ... by an independent and impartial tribunal*’. The guarantees afforded by Article 6 ECHR will only be relevant to the extent that an act or a decision is determinative of a ‘*civil right*’ or ‘*obligation*’.

The draft Law engages civil rights in the context of Article 6(1) ECHR primarily through Part 4, which concerns the registration of entities as Jersey charities by the Commissioner. Part 4 provides the Commissioner with a power to administer the charity test (Article 4(1)(a)) and to determine applications for registration as a charity (Article 11). The draft Law also provides the Commissioner with enforcement powers associated with this role, such as making required steps notices on registered charities (Articles 27 and 28) and enables the Commissioner to make applications to the Court for a disqualification order against a person on the basis of that person being unfit to be concerned in the management of a registered charity (Articles 19(9)(b) and 20(4)).

The Commissioner’s determination of applications for registration and the exercise of enforcement powers will amount to a determination of ‘*civil rights and obligations*’. The obvious impact of a refusal of registration is that entities will be prevented from referring to themselves as “charities”, which may have an adverse effect on their operations. The right to engage in a business is a civil right for the purposes of Article 6(1) ECHR and, while engaging in charitable work may not be akin to carrying on financial services business for example, it is likely that the nature of the right to engage in charitable work would be recognised as a ‘*civil right*’. As a result, the power

for the Commissioner to determine applications for registration as a charity will attract Article 6 ECHR protection.

Article 6 ECHR requires that the determination of civil rights must be so determined by an '*independent and impartial tribunal*'. Appeals against a determination made by the Commissioner may be appealed before the Tribunal, so the immediate question to be considered here is whether that Tribunal qualifies as being '*independent and impartial*' for Article 6 ECHR purposes.

In order to meet the requirements of Article 6 ECHR, a '*tribunal*' must have jurisdiction to examine all questions of fact and law relevant to the dispute before it and its decisions must be legally binding. Article 34(1) of the draft Law provides that the Tribunal may hear cases concerning the merits, legal or factual aspects of a decision of the Commissioner. Article 34(2)(b) goes on to provide that the Tribunal may consider the evidence put to the Commissioner or accept further evidence and then, on determining the appeal, Article 34(3)(a) provides that the Tribunal may, amongst other things, substitute its decision for that of the Commissioner. Together, these aspects enable the Tribunal to consider appeals on a wide range of grounds, hear additional evidence if necessary and, ultimately, to impose its own decision in place of the Commissioner's. Such features are sufficient for the purposes of classifying the Tribunal as a '*tribunal*' for Article 6 ECHR purposes.

A tribunal must be independent of the executive, of the parties, and of the legislature. The independence of a tribunal is assessed with regard to the manner of appointment of a tribunal's members, their term of office, the existence of guarantees against outside pressures, and the question of whether the body presents an appearance of independence.

Appointment of tribunal members by the executive is permissible, provided the appointees are free from influence or pressure when carrying out their adjudicatory role. To establish a lack of independence in the manner of appointment, it is necessary to show that the practice of appointment as a whole was unsatisfactory, or the appointment of a particular adjudicator gave rise to a risk of undue influence. In the case of the Tribunal, it must be expected that members appointed to the Tribunal will be free from outside influence. Indeed, the requirement on the Minister to consult the Appointments Commission in the appointment process will contribute towards the integrity of that process.

A tribunal with members having no specified term of office and who can be removed at the whim of the executive will not meet the requirements of independence. It is necessary to have a sufficiently long term of office and, if the members of a tribunal are appointed for fixed terms, this is seen as a guarantee of independence. In the case of the Tribunal, whose members may be appointed for up to 6 years, the possibility of fixed-term appointments of such duration will satisfy this particular element of the independence test. It has been held that a relatively short term of office (3 years) was acceptable where the appointees to an administrative tribunal were unpaid. In the case of the Tribunal, whose members' appointments may be honorary, a shorter term of office, if that happened to be the case, would still be sufficient for Article 6 ECHR purposes.

While the termination of Tribunal members' appointments will be determined by the Minister, that determination must be in accordance with specified grounds which relate to absence, bankruptcy, incapacity and fitness to discharge the functions of a member of the Tribunal. In this way, the discretion of the Minister is tempered by statutory criteria. An appearance of independence and impartiality is also important for Article 6 ECHR purposes. The test in this context is whether the public is

'reasonably entitled' to entertain doubts as to the independence or impartiality of the tribunal. It can only be assumed at this juncture that the Tribunal will in practice attain this public perception once in operation.

To conclude at this stage, the features of the Tribunal noted above would make that Tribunal suitable to fulfil the role of the *'independent and impartial tribunal'* required by Article 6 ECHR, with a sufficient scope of review for the proper determination of civil rights engaged by the draft Law. Based on that conclusion, the higher appeal role played by the Royal Court pursuant to Article 35 of the draft Law is of less importance for Article 6 ECHR purposes, because the necessary fair trial guarantees will have been provided at the Tribunal stage. That said, the Royal Court's role is still significant, as it provides a further fair trial guarantee, i.e. where a decision of the Tribunal is unreasonable having regard to all the circumstances of the case, the Royal Court may, ultimately, substitute the Court's decision for that of the Tribunal and, if necessary, the Commissioner. The appeal provisions in the draft Law are comprehensive in nature, and sufficient from an Article 6 ECHR perspective.

Finally here, it is worth mentioning that Article 36(2)(a) provides the Minister with a power to prescribe time limits within which appeals to the Tribunal or Court are to be brought. Limits on the period within which a complaint can be brought are, in principle, compatible with Article 6 ECHR, as long as any limitation period pursues a legitimate aim and meets the test of proportionality. The rationale for time limits in the current context is to ensure that complaints are introduced within a reasonable time and to protect against long periods of uncertainty. That practice is a common one in legislative terms, and any proportionate limitation period implemented by the Minister would be considered compatible with Article 6 ECHR principles.

Schedules 1 and 2 – Judicial review of Minister's decisions concerning appointments/termination

Protections afforded by Article 6 ECHR may apply to decisions concerning the appointment and termination of appointment of the Commissioner (Schedule 1, paragraphs 1 and 3) and of members of the Tribunal (Schedule 2, paragraphs 1 and 2). The draft Law does not provide for an express means of appealing a decision of the Minister in this regard, so it appears that the only means of challenging such decisions would be by way of judicial review. In this context, the availability of judicial review as a means of challenging a decision is sufficient to ensure compliance with Article 6 ECHR. Such decisions are, on balance, properly characterised as matters of administrative discretion (as opposed to adjudicatory decisions) and the application of judicial review ensures the determination of any relevant civil rights is achieved in a manner compatible with Article 6(1) ECHR.

Article 1 of the First Protocol of the ECHR ("A1P1") – Right to Property

A1P1 is relevant to Articles 14 and 17 of the draft Law, which provide the Court with the power to make orders restricting the property of the charity and ensuring its proper application in accordance with the charity's registered charitable purposes and registered public benefit statement. That power applies both in the case of a registered charity (Article 14) and a deregistered charity (Article 17), where specific grounds exist: for example, misconduct in the administration of the charity.

The property of a charity in this context will be a *'possession'* for the purposes of A1P1. In terms of the categorisation of interference encapsulated by A1P1, the statutory powers bestowed on the Court to make orders as to the application of the

property, or the placing of restrictions on such property, will likely amount to a '*control of use*'.

For a measure constituting a control of use to be justified, it must be in accordance with law and for '*the general interest*'. The measure must also be proportionate to the aim pursued.

In the context of A1P1, a general interest has been found in measures taken for legality purposes, such that compliance by an entity with certain laws has been held to constitute a legitimate general interest objective, and in measures taken for moral reasons. In the context of the administration of charities, there should be no doubt that there is a strong moral interest in ensuring that the property of a charity is applied in accordance with its stated purposes, particularly given the reliance of that the public place on such purposes in making donations. Moreover, there is a more general interest in ensuring that entities, whether charitable or not, comply with legal and administrative requirements. Accordingly, the powers of the Court in the case of Articles 14 and 17 are required in order to ensure that where misconduct prevents a charity from complying with its registered charitable purposes or public benefit statement, there are measures to ensure the property is applied in a manner consistent with those purposes and statement. In any event, it should be appreciated that, where property rights are concerned, states have a considerable margin of appreciation in determining the existence of a general public concern and in implementing measures designed to meet it. So, in bestowing such powers on the Court, albeit that their exercise would constitute an interference with property, the States would be afforded a substantial degree of deference here.

A further strand of justification for a '*control of use*' under A1P1 is the need for measures to be in '*accordance with the law*'. This requires the law to be sufficiently precise and foreseeable, and it is fair to conclude that the draft Law would satisfy this requirement.

Proportionality requires a fair balance to be struck between the means employed in furtherance of the general interest identified, and the protection of fundamental rights. The requisite balance will not be struck if the person concerned has had to bear an individual and excessive burden. In the present context, providing the Court with the supervisory powers featuring in Articles 14 and 17 is entirely proportionate to the general interest of maintaining confidence in the charitable sector and ensuring that charities are properly administered. Even if the Court's powers were challenged, it would be difficult to maintain that any aspect of such powers is '*excessive*' or without due cause. In conclusion, the powers in Articles 14 and 17 are considered compatible with A1P1.

Explanatory Note

This Law introduces a system of registration for charities. Registration is not compulsory, but entities that do not register will not be able to refer to themselves as “charities” and may not be able to obtain exemptions from taxation (subject in both cases to exceptions, and to transitional provisions to be made by Regulations under the Law). Some elements of the scheme are similar to those in the Charities and Trustee Investment (Scotland) Act 2005. The main elements of the Law are as follows.

- (a) The Law sets up the register of charities. The register will have a general section, a restricted section and a historic section. Certain elements of the register will not be public.
- (b) It defines charitable purposes and sets out other elements of a charity test, including public benefit. It requires the Minister to make an Order setting conditions for a charity to be entered in the restricted section. At least one of the conditions must apply to charities that do not solicit donations from the general public.
- (c) It establishes a Charity Commissioner to administer the test and maintain the register (and a tribunal to hear appeals against the Commissioner’s decisions).
- (d) It imposes obligations on registered charities and their governors, including obligations to maintain the registered charitable purposes and public benefit. It gives the Commissioner power to issue required steps notices and deregister charities, and it gives the Royal Court wide-ranging powers to ensure registered charities remain charitable (these are not intended to limit the powers of the Attorney General and the court under customary law in relation to charities).
- (e) It imposes restrictions on the use of the terms “charity” and “Jersey charity” by entities that are not registered (or excepted as foreign charities). It also allows the States by Regulations to restrict the use of the term “charitable” by other entities in connection with soliciting donations from the public.
- (f) It amends Article 115 of the Income Tax (Jersey) Law 1961 (which affects other taxes that refer back to that Article), so that income tax exemption for charities primarily depends on registration. However, it also allows exemption from income tax (but not from other taxes) for unregistered charitable entities that apply their income to the making of donations to registered charities. It preserves some exemptions and allows for transitional provision to be made for others.

Article 1 provides definitions of terms used, or references to where they are defined in later Articles. The definitions include “register”, “general section” and “restricted section”; “registered charity”, “registered charitable purposes” and “registered public benefit statement”; “solicit” and “donation”; “publish”; and “regulated financial services business”.

Article 2 defines the underlying concepts of “entity”, “Jersey entity”, “constitution”, “constitutional Law”, “purpose”, “governor” and “misconduct”. Each definition specifies how those concepts work with the various different types of entity that can be a charity. *Article 11* sets out which entities are eligible to apply to be registered as

charities, but “charity” as such is not defined, as the concept is only used in relation to a registered charity (and *Part 6* restricts use of the term “charity” by other entities).

A trust and an unincorporated association do not have legal personality, so the trustees or members together are taken as forming the entity. There is overlap between trusts and other categories of entity.

- (a) If a company (or other body corporate) is one of several trustees of a trust, then the trust will be the entity that is registered. The trust consists for these purposes of the company and all the other trustees, who are also the governors.
- (b) If a company holds all its property on trust as a sole trustee, then the company and the trust are the same entity for registration purposes, and the company’s directors are the governors (but eligibility to register may be restricted by Regulations under *Article 11(7)(a)*).
- (c) If a company is not a trustee, but has been set up with charitable purposes in its constitution, then the company itself is the entity for registration purposes, and its directors are the governors.

The definition “purpose” includes (where the entity is of a type that does not have to include specific objects in its constitution) any purpose to which the entity may lawfully apply its property under its constitution. That also includes any purposes to which the entity’s property can be lawfully applied on its winding up or other termination (but does not cover the application of the property under a court order). References to charitable purposes are therefore to be read in this broad sense (see in particular *Articles 13(2)–(3)* and *18(1)(a)* on the powers of registered charities and the duties of their governors).

The definition “governor” applies, in the appropriate cases, to a trustee, fidéicommissaire, a council member of a foundation, or a company director. The Commissioner may publish a model constitution for unincorporated bodies or associations that wish to have a management committee as well as a broader membership. If the model constitution is used, the members of the management committee are the governors. In any other case the governors are whoever has the general control and management of the administration of the entity under its constitution, provided they have that control and management in their own right, rather than merely on behalf of other governors. So, for example, an employed chief executive will not be treated as a governor, and nor will a person brought onto a sub-committee of the committee governors, if that person is not made a member of the main committee, and the sub-committee only acts on behalf of the main committee.

Article 3 establishes the Jersey Charity Commissioner as a corporation sole, and gives effect to Schedule 1 which makes further provision as to the Commissioner.

Article 4 sets out the Commissioner’s general functions of administering the charity test, operating the register, seeking to enforce the restrictions on use of “charity” and other terms, supervising duties of charity governors, publishing guidance on the charity test and other aspects of the Law, assisting other persons with functions in relation to charities, and monitoring compliance with the Law. The Commissioner may also provide information, advise the Minister on proposals for further regulation, and assist overseas bodies. The Commissioner must, to a reasonably practicable extent, seek to perform his or her functions in a way that promotes public confidence in charities, is compatible with encouragement of charitable giving and voluntary work, and supports the development of (and only imposes proportionate burdens on) registered charities.

Part 3 provides a new charity test, for determining whether an entity can register.

Article 5 sets out the charity test, under which all the purposes of the entity must be charitable (or purely ancillary or incidental to its charitable purposes). The entity must also provide public benefit (in Jersey or elsewhere) to a reasonable degree. A Minister or member of the Assembly (or overseas equivalent) cannot be a governor in that capacity, unless an Order provides otherwise. The Commissioner must publish guidance on the charity test, and the Commissioner and others must have regard to the guidance in performing their functions. The Commissioner must consult appropriate persons (including the Minister) before issuing or amending the guidance, and must provide a copy of the issued or amended guidance to the Minister who must then lay it before the States.

Article 6 sets out the charitable purposes, in broader and more specific terms than under the current law (closely following section 7(2) and (3) of the Charities and Trustee Investment (Scotland) Act 2005); for example, making express provision for culture, sport, environmental protection, animal welfare and philosophical beliefs. Advancing a political party or promoting a candidate for election to any office (in Jersey or elsewhere) cannot be a charitable purpose. The list of charitable purposes applies for the purposes of this Law, but *Article 41* amends references to charitable purposes in tax legislation and *Article 43* enables the States to make Regulations amending references to charitable purposes in other enactments (see below). The States may make Regulations to add charitable purposes, but may not amend or limit the effect of existing charitable purposes.

Article 7 provides more detail on public benefit. No particular charitable purpose is presumed to be for the public benefit. Comparison must be made between benefits and disbenefits, in relation to the members of the entity and to the public. Fees and other conditions must not be unduly restrictive. Benefitting only a particular individual, or a group of identified individuals, cannot be treated as public benefit. The Commissioner's guidance must cover the assessment of public benefit.

Part 4 provides for the charity register.

Article 8 requires the Commissioner to establish and maintain the register. The register will be composed of 3 sections – general, restricted and historic. A set of details must be entered on the register for entities in the general and restricted sections (although entries on the register are normally accessible to the public, there will not be public access to some of the entries about an entity that is in the restricted section, or where there is a safety risk – see *Articles 9* and *10*). The registered details will include the entity's name, registered number and constitutional form, the names of governors, the addresses (other than private dwelling houses) where activities are undertaken in Jersey (with the principal address as the entity's registered office, the main premises for activities or a governor's address), and the date of registration. In addition the entity must provide statements, to be approved by the Commissioner, setting out the entity's charitable purposes and the public benefit to be provided by the entity (the entity is then held to those statements during and after registration – see *Articles 13(2)–(4)*, *14(1)(b)*, and *17(6)–(9)*). Other registered details include whether the charity is an organized religious charity, is permitted to have a States member or Minister as a governor in that capacity, has sent its most recent annual return, has been served with a required steps notice, or has changed its name. The Minister can provide by Order for other information to be registered. If the Minister makes an Order under *Article 13(9)(c)*, and the charity is required to include details of payments to governors in its annual returns, or to provide the Commissioner with a statement of its future intentions as to such payments, then that Order may provide for the details or statement to be entered on the register.

The historic section will contain details of deregistered charities, comprising the former registered number, the name (but not if formerly in the restricted section), reasons for deregistration, and dates of registration and deregistration. The Minister is given power to add further details by Order. The Commissioner must also retain for 10 years copies of documents that were not themselves on the register, including the constitution, annual returns, and notices (with a power for the Minister to add others by Order).

Article 9 provides for the restricted section of the register. The result of entry in the restricted section is that only limited elements of the register are accessible to the public in respect of that charity – its registered number (but not its name, which will however appear on the registration certificate issued under *Article 11(9)*), its constitutional form, its statement of registered charitable purposes, its registered public benefit statement, whether it has sent its most recent annual return (but not the contents of the return or any information as to payments to governors), whether it has been served with a required steps notice, summary reasons for entry in the restricted section, and any other elements that might be prescribed by the Minister by Order. An entity that wishes to be in the restricted section must apply in the form published by the Commissioner, with evidence to his or her satisfaction in support, and must indicate whether in the event of refusal it wishes to be in the general section or to withdraw its registration application (or apply for deregistration). The Minister must make an Order setting conditions that must be met to apply for entry in the restricted section. There must be a condition as to as to refraining from soliciting donations from the general public or from any prescribed description of persons. The Order must specify what constitutes soliciting a donation (but can allow the Commissioner discretion in deciding that issue), and must prescribe what constitutes the general public or what other description of persons are covered. The Order may additionally prescribe alternative conditions, related to the source of funds or otherwise. The Order must also prescribe grounds on which the Commissioner may accept or refuse a request.

Article 10 provides for public inspection, through a website and without charge, of the public parts of the register (and by other means, which may be subject to a charge, if the Minister so provides by Order). For a charity in the general section, or a deregistered entity in the historic section, all of the registered elements are normally public. If the charity is in the restricted section, only the registered elements described above (in the note on *Article 9*) are public. However, the Commissioner can also designate particular matters in relation to a charity's register entry as not being public, if otherwise the safety or security of any person, property or premises would be significantly put at risk.

Article 11 provides for applications to register. An entity only needs to apply to register if it wishes to obtain the advantages of registration (primarily the ability to refer to itself as a charity, and certain tax advantages). The Commissioner can publish application forms, which can be different for different types of applicant. The applicant must provide information and evidence as to its eligibility to register, including its constitution, draft statement of registered charitable purposes and registered public benefit statement, and certain financial information (the States may by Regulations prescribe other evidence to be provided). The entity's constitution must be a written document and it must meet the charity test. It must also have an appropriate connection with Jersey, either by being a "Jersey entity" (primarily by being established under Jersey law) or by carrying out substantial activities in Jersey (the Commissioner must publish guidance on what he or she will see as a substantial activity), and in either case it must have a principal address in Jersey. The

Commissioner must register the applicant if satisfied that it meets those requirements, that its name is not undesirable and that there are no other grounds for refusal, as prescribed by the States by Regulations (the grounds can include that the governors are too closely related to each other, or that there is only one governor, where that governor is not carrying on regulated financial services business, or any other grounds). The Minister can, by Order, provide for time limits on decisions and for notification of decisions and reasons. The Minister can also, by Order, remove or reduce any of the requirements to provide information, in relation to prescribed descriptions of applicant that are small in size or lack resources or expertise. The Commissioner must issue a registration certificate, giving the name, number and date of registration. If an applicant is not already registered with the Jersey Financial Services Commission (“JFSC”) under the Non-Profit Organizations (Jersey) Law 2008, but should be, then the application for charity registration must include the information necessary for registration under the Non-Profit Organizations (Jersey) Law 2008, and the Commissioner will pass that information on to the JFSC to carry out registration under that Law. No power is given to charge any fee for registration.

Article 12 provides for the names of charities. The name must not be too similar to other charities, misleading as to purposes, activities, identity or connections, or offensive. If the name is approved and the registration application granted, the name will be registered along with a registration number. Once the charity is registered it must only use its current registered name (or any one of its registered names), or another related name that is not undesirable (in context). After registration the charity can apply for permission to change its name. If information subsequently comes to light that could have prevented approval of the name, the charity must report it to the Commissioner who may require the charity to apply to change its name.

Article 13 provides for the effects of registration. While the charity is registered it cannot change its purposes to non-charitable purposes (subject to any powers of the court under the Loi of 1862). It can change to other charitable purposes, but only with the Commissioner’s prior approval (again subject to the court’s powers under that Loi). It must also provide public benefit in accordance with its most recent registered public benefit statement. It can apply to the Commissioner for approval of a proposed amendment to that statement. If it is in the restricted section it must ensure it continues to meet the relevant condition in the Order under *Article 9*, but may apply to the Commissioner for approval to meet a different condition under that Order. The charity must promptly report changes in registered matters, new information casting doubt on previous decisions, proposals to change the constitution, proposals to cease having an appropriate Jersey connection, reportable matters about its governors, matters likely to lead to bankruptcy or to the charity ceasing to exist, proposals to change the condition under which it is entered in the restricted section and any other matter prescribed by the Minister by Order. The charity must send the Commissioner an annual return containing that information as well as any other information prescribed by the Minister by Order (the Order can also provide for format, timing, consequences of lateness and entries in the register in respect of annual returns). The Minister can also, by Order, prescribe descriptions of payments to governors or connected persons. The Order can require the charity to detail those payments in annual returns and to provide a statement of intentions as to making those payments in future, and the Order can require the details and statement to be registered (but they will not be public if the charity is registered in the restricted section). As with the requirements to provide information in support of applications for registration, the Minister may by Order remove or reduce any of the reporting and information requirements under this Article, in relation to prescribed descriptions of applicant that are small in size or lack resources or expertise. If a charity does have to provide a statement of intentions as to

prescribed payments to governors, then it must not make payments that are inconsistent with that statement, but it can apply to the Commissioner for permission to amend the statement. Any Regulations made under *Article 11(7)* can require a registered charity (and its governors) to report (and remedy) or avoid a situation in which an application for registration would have been refused under those Regulations. In particular this enables the Regulations to provide for a situation where governors leave without being replaced, with the result that the remaining governors are all related in a prohibited manner or that there is only one remaining governor (other than one who is entitled under the Regulations to be a sole governor, such as a person carrying on regulated financial services business).

Article 14 gives the Royal Court powers over a registered charity (without derogating from those it has under any enactment or customary law – see *paragraph (5)(a)* and *Article 40(1)*). The Commissioner, or the Attorney General (whose customary law powers are also preserved by *Article 40(1)*), can apply to the court to make any order the court sees fit to remedy misconduct, or to protect the charity’s property and secure its proper application in accordance with the charity’s registered charitable purposes and registered public benefit statement. There is a non-exhaustive list of orders the court may make, including temporary or permanent prohibition on using terms like “charity” or soliciting donations from the public; suspending, removing, adding or substituting governors; freezing accounts held by regulated financial services businesses on behalf of charities or governors; requiring the court’s consent for transactions; imposing supervision, restraint or conditions on the administration of the charity; and requiring governors (or others) who have engaged in misconduct to take steps to remedy its effects. The court can make an order despite anything in the constitution of the charity. The fact that the court can make orders about misconduct does not limit the Commissioner’s powers to act over misconduct.

Article 15 provides for deregistration on the application of an entity that is a registered charity. The entity must give the Commissioner its proposals for the continuation or winding up of the entity and for the application of any of its property remaining after deregistration, and the Commissioner may refuse if not satisfied with those proposals.

Article 16 provides for deregistration at the initiative of the Commissioner, where the entity no longer exists or no longer meets the charity test, the Commissioner was misled into registering the entity, or the entity failed to comply with a required steps notice (the Minister may by Order prescribe other grounds).

Article 17 provides for the effects of deregistration. The Commissioner must retain the registered information for 10 years after deregistration, and must not re-use the registration number for another charity. If the Commissioner deregisters under *Article 16*, he or she can do so retrospectively to the date when the grounds first existed (but not so as to render any act an offence). The deregistered entity is free to use newly acquired property for any purpose under its constitution (and variation of the purposes no longer requires the Commissioner’s consent) and without providing public benefit (subject to its constitution and to any other powers of the court under the entity’s constitutional Law). But if and as long as there is any remaining property, acquired before the entity was deregistered, the last versions of the registered charitable purposes and registered public benefit statement continue to bind the entity in respect of that property. The entity cannot vary the purposes or public benefit statement in respect of that remaining property, but can apply to the court to do so. The court also retains the power, on the application of the Attorney General (rather than the Commissioner), to make orders to remedy misconduct or secure proper application of property, as if the entity were still registered (see *Article 14*), but only in

respect of the remaining property acquired before deregistration. A governor can also apply for such an Order, but must first give notice to the Attorney General, who can take over such an application.

Part 5 deals with governors of registered charities.

Article 18 provides for the general duties of governors of registered charities. The governors must seek, in good faith, to ensure that the charity acts consistently with its current registered charitable purposes and registered public benefit statement, and that it complies with this Law (and with requirements imposed under this Law). In the case of unincorporated associations, the governors are given duties, similar to those of trustees, to observe the utmost good faith and act with due diligence, as would a prudent person and to the best of their ability and skill. These duties are in addition to any more onerous duties imposed by the constitution or the constitutional Law of the charity. This Article also provides that a governor will count as engaging in misconduct, not only if it is the governor's own misconduct, but also if the governor concurs in the charity's misconduct, assists or encourages another governor's misconduct, or conceals or fails to remedy another's misconduct.

Article 19 provides for reportable matters in relation to those acting as governors of registered charities. The governor must promptly report the matter to the charity and the Commissioner. Applications for registration, and annual reports from registered charities, must include a statement that the charity has declarations from each governor (who has not reported any matter) that there is no reportable matter in relation to that governor. A person who fails to report a reportable matter, or to provide a declaration when required, must not act as a governor of the registered charity for as long as the breach of that requirement continues (but does not commit any criminal offence merely by doing so). If a governor does report a matter to the Commissioner, the Commissioner must make inquiries to determine whether the governor is a fit and proper person to be a governor. The Commissioner can refer the question to the court, or determine it himself or herself and then require the removal or suspension of the governor or give written permission for the person to act as a governor. After reporting the matter, the person must not act as a governor until permitted by the Commissioner or the court to do so (and then only in accordance with any condition on that permission). Breach of that prohibition, without reasonable excuse, is an offence carrying imprisonment for up to one year, an unlimited fine, or both, but does not render the governor's acts void or invalid. If the Commissioner suspects a governor has failed to report a reportable matter, the Commissioner may apply to the court to determine whether the governor is a fit and proper person (and may take any other available action).

Article 20 provides powers for the court to make orders as to the fitness of a governor (again these powers are not in derogation of the court's customary law powers in relation to charities). If the Commissioner applies under *Article 19* the court can make any order it sees fit (including permitting the governor to act, or requiring the governor's suspension or removal). The Commissioner (and the Attorney General) are given powers to apply to court for a disqualification order (and the court can make such an order on an application under *Article 19*). A disqualification order can last up to 15 years, and prevents the person from being concerned in the management of a registered charity without the leave of the court. Contravention of a disqualification order is an offence carrying imprisonment for a term of up to 2 years, an unlimited fine, or both.

Part 6 restricts the use of the expressions "charity" and "charitable".

Article 21 prohibits unregistered entities being referred to as registered or as “charities”. The entity must not refer to itself as being registered by the Commissioner, or cause or permit another person to do so. A person must not knowingly (or with reasonable grounds for suspicion) incorrectly refer to the entity as being registered by the Commissioner, with intent to mislead or to obtain any property or financial or other advantage for the entity. If the unregistered entity is a “Jersey entity”, it must not anywhere refer to itself or allow itself to be referred to (and another person must not, with the intention and grounds for suspicion mentioned above, refer to it) as a “charity”. Similar prohibitions apply with respect to an unregistered entity that is not a “Jersey entity” or an “excepted foreign charity”, but only in connection with any of its activities in Jersey. It is an offence, carrying imprisonment for a term of up to 2 years, an unlimited fine, or both, to contravene a prohibition involving the intention and grounds for suspicion mentioned above. Contravention of the other prohibitions is an offence carrying a fine of up to level 3 on the standard scale under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, currently £2,000.

Article 22 defines an excepted foreign charity for the purpose of *Article 21*. An excepted foreign charity can refer to itself as a “charity” in Jersey, despite not being registered in Jersey. The foreign charity must be established under the law of any of the jurisdictions in the United Kingdom, be managed from that jurisdiction, and be entitled there to refer to itself as a charity under that law. The Minister can by Order add other jurisdictions (or apply the provisions to specified entities from other jurisdictions). The States can by Regulations amend the conditions under which this Article applies.

Article 23 provides similar prohibitions (with offences carrying the same penalties) on unauthorized use of the expression “Jersey charity”. The term is only permitted when the entity is a registered charity that is a “Jersey entity” and is managed or controlled in or from within Jersey.

Article 24 enables the States, by Regulations, to restrict the use by unregistered entities of the term “charitable” (or “public benefit” or related terms other than “charity”) in relation to the soliciting of donations from the general public (or from any prescribed description of persons). The meaning of “soliciting” and “donations” must be fixed by the Order under *Article 9(3)(b)*. The Regulations can make it an offence to contravene the restrictions, carrying a penalty no greater than imprisonment for a term of up to 2 years, an unlimited fine, or both.

Article 25 enables the Minister by Order to require registered charities to identify themselves as such in prescribed documents or publicity.

Part 7 deals with information and enforcement.

Article 26 provides a power for the Commissioner to demand information (for determining whether to serve a required steps notice) from a registered charity or deregistered entity or from a governor or former governor of such a charity or entity. The Commissioner must serve a notice, and there is a right of appeal. Failure to comply, without reasonable excuse, is an offence carrying imprisonment for a term of up to 3 months, a fine of up to level 3 on the standard scale (£2,000), or both. There is a separate offence, carrying imprisonment for a term of up to 2 years, an unlimited fine, or both, of knowingly providing false information to the Commissioner on a registration application or where the Commissioner is determining whether to serve a required steps notice.

Article 27 provides for the Commissioner to serve required steps notices on registered charities or their governors. The notice can be served if the Commissioner believes

there has been misconduct, or the charity no longer passes the charity test or no longer has an appropriate Jersey connection, or a governor is unfit. The notice can require steps to be taken that the Commissioner believes are appropriate to remedy the matter prompting service of the notice, which can include suspension, removal or replacement of a governor. The Minister may make an Order as to the procedure for, and restrictions on, serving a notice.

Article 28 limits the Commissioner's power to use a required steps notice to require the suspension, removal or replacement of a governor of a registered charity, if the Minister makes an Order categorizing the charity as an organized religious charity. The Minister can make an Order if he or she believes that the governors of a religious charity are adequately supervised and disciplined (in relation to its activities in Jersey) so that the Commissioner does not need to have the power in relation to governors. The Order can rely on designation under Scottish, or English and Welsh equivalent legislation, or on equivalent categories in Jersey, or any other test, and may give discretion to the Commissioner.

Article 29 restricts disclosure, without consent (and subject to *Articles 29* and *30*), of information (not entered in the public parts of the register) received under or for the purposes of the Law. Contravention is an offence, carrying imprisonment for a term of up to 2 years, an unlimited fine, or both.

Article 30 requires the Commissioner to disclose information to the Comptroller of Taxes (in relation to tax) and to the JFSC (in relation to registration of non-profit organizations).

Article 31 permits disclosure of information to various bodies carrying out functions under relevant laws, and allows the States by Regulations to prescribe other circumstances in which disclosure is permitted.

Part 8 provides for appeals to a Charity Tribunal.

Article 32 establishes the tribunal and gives effect to *Schedule 2* which provides more detail as to the tribunal.

Article 33 sets out the rights of appeal against decisions of the Commissioner. An applicant may appeal against refusal to register (or to register in the restricted section). A registered charity may appeal against deregistration, refusal of permission for a change of name (or a requirement to change the name), or refusal of approval of variation of purposes or of the registered public benefit statement. A person can appeal against a notice demanding information or requiring steps to be taken by that person. The Attorney General may appeal against any decision of the Commissioner. A third party may appeal against registration of an applicant, either over whether the charity test is met or over whether the name is undesirable.

Article 34 provides that the appeal can be on the ground that the decision was wrong or unreasonable on its merits, the facts or the law. The tribunal can make interim orders, consider fresh evidence, substitute its decision for the Commissioner's, award costs for vexatious or grossly unreasonable appeals, and make recommendations to the Commissioner.

Article 35 provides for an appeal to the Royal Court on the ground that the decision of the tribunal was unreasonable having regard to all the circumstances of the case (the Attorney General may also appeal, even if not a party to the tribunal appeal). The court can substitute its decision for the tribunal's or remit the decision to the tribunal. The tribunal can itself refer a point of law to the court. The court can make interim orders on an appeal or referral.

Article 36 makes further provision as to the effects of an appeal to the tribunal or court. The tribunal or court can make its substituted decision effective retrospectively, or can delay the effect of the decision to a later date, depending on what appears appropriate to the tribunal or court in the particular case. Any retrospective effect cannot render an act an offence, but could for example support a backdated claim for tax relief or provide a defence against an accusation of referring to an entity as a charity while it was not registered. The availability of appeals does not prevent the Commissioner from reconsidering his or her own decisions or the decisions of his or her staff. The Minister may by Order prescribe time limits for bringing appeals to the tribunal or court, and may also require notice to be given of decisions or reasons, to enable appeals to be brought within time limits.

Part 9 contains miscellaneous and final provisions.

Article 37 provides that offences by corporate and other bodies can be attributed to their directors or similar officers or managing members.

Article 38 allows the Minister to make Orders as to service of notices.

Article 39 allows Regulations and Orders under other Articles to include transitional, consequential, incidental, supplementary and savings provisions (including where the Regulations are amending this Law).

Article 40 preserves the pre-existing functions of the Attorney General, the Bailiff, and the Royal Court in relation to charities and charitable purposes. It also allows the States by Regulations to make other saving and transitional provisions.

Article 41 amends taxation enactments. The main change is to Article 115 of the Income Tax (Jersey) Law 1961 (on which charitable reliefs from goods and services tax, stamp duty and land transaction tax mostly depend in turn). Only registered charities will be eligible for both income tax exemptions and reliefs from other taxes. Income tax exemption (but not other tax reliefs) will also be available (after notifying the Comptroller) to unregistered charitable trusts and foundations that pass the charitable purposes part of the charity test (whether or not they also pass the public benefit part of the test) and do not solicit donations from the general public, on income that they apply to making donations to registered charities or to excepted foreign charities. In addition income tax exemption will continue to be available to unregistered trusts and foundations that had it under the law as it was before the commencement of this Article, as long as they do not subsequently solicit donations. In Article 115(c) of the Income Tax (Jersey) Law 1961, the income tax exemption for the property of the States is extended to the property of the parishes.

Article 42 allows the States, by Regulations, to amend taxation legislation and legislation under which the JFSC has functions, to enable the JFSC and the Comptroller to disclose information to the Commissioner for the purposes of this Law.

Article 43 allows the States, by Regulations, to make consequential amendments to references in other legislation to charities or charitable purposes. In particular those Regulations can amend the relevant provisions of the Trusts (Jersey) Law 1984 and the Foundations (Jersey) Law 2009.

Article 44 names this Law. It would bring into force, 7 days after the Law is registered in the Royal Court, the provisions that pave the way for the substantive provisions (those that allow charity registration to start and those that impose obligations on charitable and other entities). It would enable the States to bring the substantive provisions (including the taxation amendments in *Article 41*) into force by an Appointed Day Act, or in stages by different Acts for different provisions.

Schedule 1 provides for the appointment, status, termination and staff of the Commissioner. The Minister appoints the Commissioner, after seeking the views of the Jersey Appointments Commission and presenting a notice of intention to the Assembly. The Commissioner is independent of the States and the Minister, but his or her staff and resources are provided by the Minister (no provision is made for the Commissioner to make any charge for services). The Commissioner must publish an annual report, which the Minister must lay before the States. The Minister can give directions about the content and form of the annual report, but must respect the Commissioner's independence and cannot require justification of decisions on individual cases.

Schedule 2 provides for the appointment of 4 to 8 tribunal members, and for the termination of their appointment. The Minister must provide staff and resources. The States may by Regulations make provision as to the procedure of the tribunal, and the tribunal may regulate its own procedure subject to those Regulations. The tribunal must give an annual report to the Minister, who must lay it before the States.



Jersey

DRAFT CHARITIES (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT CHARITIES (JERSEY) LAW 201-

A LAW to establish a commissioner and register of charities, to impose duties on governors of charities, to regulate use of the term “charity” and for related purposes

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 Interpretation

In this Law, unless the context otherwise requires –

“annual return” means a return sent under Article 13(7);

“charitable purpose” has the meaning given by Article 6;

“Commissioner” means the person for the time being appointed to hold the office of the Jersey Charity Commissioner established by Article 3;

“company” means a company registered under the Companies (Jersey) Law 1991¹, or an existing company within the meaning of that Law, and in relation to a company the expressions “director”, “memorandum” and “articles of association” have the same meanings as in that Law;

“Comptroller” has the meaning given by the Income Tax (Jersey) Law 1961²;

“constitution” has the meaning given by Article 2(4);

“constitutional Law” has the meaning given by Article 2(5);

“court”, in the expression “the court”, means the Royal Court;

“court-approved fidéicomis” means a fidéicomis created under Article 3 of the Loi of 1862, or to which the court has extended the benefits of that Loi under Article 17 of that Loi;

“donation” is to be construed in accordance with the Order made under Article 9(3)(b)(ii);

“entity” has the meaning given by Article 2(1);

“foundation” means a foundation incorporated under the Foundations (Jersey) Law 2009³, and “charter”, “regulations” and “council member” have, in relation to a foundation, the same meanings as in that Law;

“general section” means the section of the register that is to be distinguished from the restricted and historic sections under Article 8(2);

“governor” in relation to an entity (including a registered charity) has the meaning given by Article 2(7);

“incorporated 1862 association” means an association incorporated under Article 4 of the Loi of 1862;

“JFSC” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998⁴;

“Jersey entity” has the meaning given by Article 2(3);

“Loi of 1862” means the Loi (1862) sur les teneures en fidéicomis et l’incorporation d’associations⁵;

“Minister” means the Chief Minister;

“misconduct” has the meaning given by Article 2(10), and a reference to a governor engaging in misconduct is to be read in accordance with Article 18(4);

“prescribed” and “specified” mean prescribed or specified in an Order or Regulations, as the case may be;

“property” has the meaning given by the Trusts (Jersey) Law 1984⁶;

“publish”, in respect of any information, means publish in a manner that, in the opinion of the person publishing, is likely to bring the information or how the information may be obtained to the attention of the public or of those affected by the information;

“purpose”, in relation to an entity, has the meaning given by Article 2(6);

“register” means the register kept by the Commissioner under Article 8, or (as a verb) to enter an entity on that register, and “registration” and “deregistration” are to be construed accordingly;

“registered charitable purposes” has the meaning assigned by Article 8(3)(e);

“registered charity” means an entity entered for the time being in the general section or the restricted section of the register;

“registered public benefit statement” has the meaning assigned by Article 8(3)(f);

“regulated financial services business” means business for which a person –

- (a) is registered under the Banking Business (Jersey) Law 1991⁷;
- (b) holds a permit or certificate under the Collective Investment Funds (Jersey) Law 1988⁸;
- (c) is registered under the Financial Services (Jersey) Law 1998⁹; or
- (d) is authorized by a permit under the Insurance Business (Jersey) Law 1996¹⁰;

“reportable matter” has the meaning given by Article 19;

“required steps notice” means a notice served under Article 27;

“restricted section” means the section of the register that is to be distinguished from the general and historic sections under Article 8(2);

“solicit” is to be construed in accordance with the Order made under Article 9(3)(b)(i);

“tribunal” means the Charity Tribunal established by Article 32;

“trust” means a trust over which the court has jurisdiction under Article 5 of the Trusts (Jersey) Law 1984¹¹.

2 Definition of entity and related terms

- (1) In this Law, unless the context otherwise requires, “entity” means –
 - (a) the person or persons, taken together, who are the trustees of a trust;
 - (b) without prejudice to the generality of sub-paragraph (a), the person or persons, taken together, who are the fidéicommissaires of a court-approved fidéicommis;
 - (c) an incorporated 1862 association;
 - (d) a foundation;
 - (e) a body corporate established –
 - (i) by an enactment,
 - (ii) by Act of the States, or
 - (iii) by Royal Charter, in relation to Jersey;
 - (f) a company;
 - (g) a body incorporated under, but not by, any enactment other than the Companies (Jersey) Law 1991¹²;
 - (h) a body incorporated under, but not by, an Act of the United Kingdom Parliament or Order in Council, as such Act or Order is extended to or applicable in Jersey;
 - (i) the persons, taken together, who constitute for the time being an unincorporated body or association of persons, other than a partnership and other than the trustees of a trust;
 - (j) an entity that is substantially similar to an entity mentioned in any of sub-paragraphs (a) to (h), but is established under the law of a jurisdiction other than Jersey.
- (2) The Minister may by Order add sub-paragraphs to paragraph (1).

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- (3) For the purposes of this Law, an entity is a “Jersey entity” if –
- (a) it falls within any of sub-paragraphs (a) to (h) of paragraph (1); or
 - (b) it is an unincorporated body or association of persons falling within paragraph (1)(i), in respect of which –
 - (i) the law governing the relationship between the persons constituting the body or association, in that capacity, is the law of Jersey, and
 - (ii) at least one governor is a natural person resident in Jersey, or is itself a Jersey entity by virtue of sub-paragraph (a).
- (4) In this Law, unless the context otherwise requires, “constitution” in relation to an entity means –
- (a) in the case of a trust the terms of the trust;
 - (b) in the case of a court-approved fidéicommis, the minute of the contract annexed to the application to the court for the creation of the fidéicommis, any other documents so annexed, and any authorisation granted by the court under Article 10 of the Loi of 1862 in respect of the fidéicommis;
 - (c) in the case of an incorporated 1862 association, the Act of the court incorporating it under Article 4 of the Loi of 1862, and the object and rules approved or modified under that Article;
 - (d) in the case of a foundation, the charter and regulations of the foundation;
 - (e) in the case of a company, the memorandum and articles of association of the company;
 - (f) in the case of a body corporate falling within paragraph (1)(e), the enactment, Act of the States or Royal Charter that established the body corporate;
 - (g) in any other case, any instrument or instruments (in whatever form) that establish the entity or give it any powers.
- (5) In this Law, unless the context otherwise requires, “constitutional Law” means –
- (a) in relation to an entity that is a trust, the Trusts (Jersey) Law 1984¹³;
 - (b) in relation to an entity that is a court-approved fidéicommis or an incorporated 1862 association, the Loi of 1862;
 - (c) in relation to an entity that is a foundation, the Foundations (Jersey) Law 2009¹⁴;
 - (d) in relation to an entity that is a company, the Companies (Jersey) Law 1991¹⁵; and
 - (e) in relation to an entity that is a body incorporated by (but not under) any other Law, that Law.
- (6) In this Law, unless the context otherwise requires, “purpose” in relation to an entity means –
- (a) in the case of a trust, the benefit of its beneficiaries or any other purpose mentioned in Article 2(b) of the Trusts (Jersey)

- Law 1984¹⁶ by virtue of which the trust exists, as specified in its constitution;
- (b) in the case of a court-approved fidéicommis, or of an incorporated 1862 association, the objects for which it was created or incorporated, or that were subsequently authorized under Article 10 of the Loi of 1862;
 - (c) in the case of a foundation, the objects specified in its charter or its regulations; or
 - (d) in the case of any other entity, a purpose to which that entity's property may lawfully be applied, other than by virtue of an order of a court, in accordance with the powers of the entity as set out in its constitution (including on its winding up or other termination).
- (7) In this Law, unless the context otherwise requires, “governor” in relation to an entity means –
- (a) in the case of a trust or fidéicommis, a trustee or fidéicommissaire of the trust or fidéicommis;
 - (b) in the case of a foundation, a member of the council of the foundation;
 - (c) in the case of a company, a director of the company;
 - (d) in the case of a relevant unincorporated entity, a person who is a member of the management committee of the entity; or
 - (e) in any other case, a person who, under the constitution of the entity, has the general control and management of the administration of the entity.
- (8) For the purpose of paragraph (7)(d) a relevant unincorporated entity is an unincorporated body or association of persons that –
- (a) falls within paragraph (1)(i); and
 - (b) has a constitution that conforms to a model that –
 - (i) is published for the purpose by the Commissioner, and
 - (ii) provides for the entity to have a management committee.
- (9) For the purpose of paragraph (7)(e) –
- (a) a person is not a governor merely by virtue of exercising general control and management on behalf of another person who has the general control and management in that other person's own right under the constitution of the entity; and
 - (b) a person is a governor whether that person has that general control and management alone or as one of a number of governors.
- (10) In this Law, unless the context otherwise requires, “misconduct” means –
- (a) a contravention, by a registered charity or by any of its governors, of a provision –
 - (i) of this Law, or of any enactment under this Law,
 - (ii) of the constitution of the registered charity, or of the constitutional Law of the charity,
 - (iii) of a required steps notice, or

- (iv) of an order of the court under this Law or under the constitutional Law of the charity, or under any enactment under such a Law; or
- (b) the commission by any person, in relation a registered charity or to an excepted foreign charity (within the meaning of Article 22) or to an entity equivalent to a registered charity under the law of a jurisdiction other than Jersey, of an offence –
 - (i) under the constitutional Law of that charity or other entity,
 - (ii) under the Financial Services (Jersey) Law 1998¹⁷, the Banking Business (Jersey) Law 1991¹⁸, the Collective Investment Funds (Jersey) Law 1988¹⁹, the Insurance Business (Jersey) Law 1996²⁰, any Regulation or Order made under any of those Laws, or the Alternative Investment Funds (Jersey) Regulations 2012²¹,
 - (iii) under the Income Tax (Jersey) Law 1961²², the Goods and Services Tax (Jersey) Law 2007²³, or the Taxation (Land Transactions) (Jersey) Law 2009²⁴,
 - (iv) under any other enactment, being an offence relating to money laundering or terrorist financing,
 - (v) under any other enactment or under customary law, being an offence involving deception or dishonesty, or
 - (vi) under the law of a jurisdiction other than Jersey, being an offence similar to any of those listed in clauses (i) to (v).

PART 2

JERSEY CHARITY COMMISSIONER

3 Establishment of Jersey Charity Commissioner

- (1) There is established a corporation sole to be known as the Jersey Charity Commissioner.
- (2) Schedule 1 makes further provision in respect of the Commissioner.

4 General functions of Commissioner

- (1) The general functions of the Commissioner are –
 - (a) to administer the charity test under Part 3, and to operate the charity register under Part 4;
 - (b) to supervise the compliance of charity governors with their duties under Part 5;
 - (c) to seek to enforce the requirements of Part 6 as to use of terms restricted by or under that Part;
 - (d) to publish and maintain guidance on the operation of this Law, including guidance on the duties of governors and guidance on the charity test under Article 5(4);

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- (e) to assist other persons (including the Attorney General, the court, the Bailiff, the Comptroller and the JFSC) to discharge, in relation to registered charities and entities with charitable purposes, any function of such a person under any enactment or law, particularly by giving information about registered charities and other entities under Part 7;
 - (f) generally to encourage, facilitate and monitor compliance of registered charities with this Law and any enactment under this Law; and
 - (g) any other function conferred on the Commissioner by this Law or by any other enactment.
- (2) The Commissioner may do anything (other than acting as a governor of a charity or of an entity with charitable purposes) that is calculated to facilitate, or is conducive or incidental to, the performance of any of his or her functions.
 - (3) The Commissioner may in particular, without prejudice to the generality of his or her powers –
 - (a) provide information to the public about the system of registration of charities, including information about the difference between charities and bodies with charitable purposes, information about the advantages of donating to entities that are registered as charities, and information by way of model constitutions;
 - (b) advise the Minister as to the nature of charities in Jersey and as to the merits of any proposal for further regulation of charities;
 - (c) assist a body in any jurisdiction other than Jersey, that is equivalent to the Commissioner, or to the Attorney General, the court, the Comptroller or the JFSC, in the performance of that body's functions under the law of that jurisdiction.
 - (4) In performing his or her functions, the Commissioner must, so far appears to him or her to be reasonably practicable, seek to act in a way that –
 - (a) protects public trust and confidence in registered charities, and is compatible with the encouragement of –
 - (i) all forms of charitable giving, and
 - (ii) voluntary participation in the work of registered charities; and
 - (b) is proportionate as to the burdens imposed on, and supports the development of registered charities.

PART 3

CHARITY TEST

5 The charity test

- (1) An entity meets the charity test if –
 - (a) all of its purposes are –

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- (i) charitable purposes, or
 - (ii) purposes that are purely ancillary or incidental to any of its charitable purposes; and
 - (b) in giving effect to those purposes, it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Jersey or elsewhere to a reasonable degree.
- (2) A entity that otherwise meets the charity test, nevertheless does not meet that test, despite paragraph (1), if its constitution expressly permits its activities to be directed or otherwise controlled by, or any of its governors to be –
- (a) a Minister;
 - (b) a member of the States Assembly; or
 - (c) any equivalent of such a person in another jurisdiction,
- acting in that capacity.
- (3) The Minister may by Order disapply paragraph (2) in relation to any entity or description of entity specified in the Order.
- (4) The Commissioner must publish and maintain guidance on the determination of whether an entity meets the charity test.
- (5) Any person, in determining whether an entity meets the charity test, must have regard to the guidance, and the Commissioner, the tribunal, a registered charity and a governor of a registered charity must have regard to the guidance when performing any other of their functions under this Law to which the guidance is relevant.
- (6) Before issuing or amending guidance the Commissioner must –
- (a) consult –
 - (i) any persons appearing to the Commissioner to be representative of charities or bodies with charitable purposes,
 - (ii) the Minister, and
 - (iii) such other persons as the Commissioner considers appropriate; and
 - (b) publish a report on the Commissioner’s views on the results of the consultation, and the reasons for the Commissioner’s decision on the guidance in the light of those results.
- (7) Within a reasonable time after issuing or amending guidance the Commissioner must provide to the Minister a copy of the issued or amended guidance and the report published under paragraph (6)(b).
- (8) The Minister must lay a copy of the guidance and report so provided before the States as soon as practicable after the Minister receives the guidance and report.

6 Charitable purposes

- (1) For the purposes of this Law, the charitable purposes are –
 - (a) the prevention or relief of poverty;

- (b) the advancement of education;
 - (c) the advancement of religion;
 - (d) the advancement of health;
 - (e) the saving of lives;
 - (f) the advancement of citizenship or community development;
 - (g) the advancement of the arts, heritage, culture or science;
 - (h) the advancement of public participation in sport;
 - (i) the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended;
 - (j) the advancement of human rights, conflict resolution or reconciliation;
 - (k) the promotion of religious or racial harmony;
 - (l) the promotion of equality and diversity;
 - (m) the advancement of environmental protection or improvement;
 - (n) the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage;
 - (o) the advancement of animal welfare;
 - (p) any other purpose that may reasonably be regarded as analogous to any of the purposes listed in sub-paragraphs (a) to (o).
- (2) For the purposes of paragraph (1) –
- (a) in paragraph (1)(d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering;
 - (b) paragraph (1)(f) includes –
 - (i) rural or urban regeneration, and
 - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of registered charities;
 - (c) in paragraph (1)(h), “sport” means sport that involves physical skill and exertion;
 - (d) paragraph (1)(i) applies only in relation to recreational facilities or activities that are –
 - (i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or
 - (ii) available to members of the public at large or to male or female members of the public at large;
 - (e) paragraph (1)(n) includes relief given by the provision of accommodation or care;
 - (f) for the purposes of paragraph (1)(p), the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in paragraph (1)(c).

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- (3) The States may, on the recommendation of the Commissioner, by Regulations –
 - (a) add sub-paragraphs to paragraph (1);
 - (b) add sub-paragraphs to paragraph (2) making explanatory provision in relation to any sub-paragraphs so added to paragraph (1).
 - (4) The power under paragraph (3) does not include power –
 - (a) to amend or restrict the effect of any of paragraphs (1)(a) to (p) and (2)(a) to (f); or
 - (b) to alter the effect of paragraph (5).
 - (5) The purpose of advancing a political party or promoting a candidate for election to any office, whether in Jersey or elsewhere, is neither a charitable purpose nor a purpose ancillary or incidental to a charitable purpose, irrespective of whether it would otherwise fall within paragraph (1) or Article 5(1)(a)(ii).

7 Public benefit

- (1) Paragraphs (2) and (3) apply to the Commissioner, the tribunal and the court when determining the question of whether an entity provides or intends to provide public benefit, for the purpose of Article 5(1)(b).
- (2) The person determining the question must have regard to –
 - (a) how any –
 - (i) benefit gained or likely to be gained by members of the entity or any other persons (other than as members of the public), and
 - (ii) disbenefit incurred or likely to be incurred by the public, in consequence of the entity exercising its functions, compares with the benefit gained or likely to be gained by the public in that consequence; and
 - (b) if benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.
- (3) The person determining the question must not –
 - (a) presume any particular charitable purpose to be for the public benefit; or
 - (b) treat one particular natural person or a group of identified natural persons as being a section of the public, and accordingly must not treat an entity that benefits only such a person or persons as providing public benefit.
- (4) The guidance published by the Commissioner under Article 5(4), must in particular give guidance on the determination of the question of whether an entity provides or intends to provide public benefit.

PART 4

CHARITY REGISTER

8 Charity register

- (1) The Commissioner must establish and maintain a register of charities.
- (2) The register must be kept in such a way as to distinguish between –
 - (a) the general section;
 - (b) the restricted section; and
 - (c) the historic section.
- (3) The Commissioner must enter in the register, in respect of each registered charity (whether entered in the general or restricted section), in addition to the registered name and registration number entered under Article 12(2) –
 - (a) a note of the status of the entity that is the registered charity, being –
 - (i) the sub-paragraph of the definition “entity” in Article 2(1) within which the entity falls (including, in the case of an entity falling within one of sub-paragraphs (f) to (j) of that definition, whether it also falls within sub-paragraph (a)), and
 - (ii) in the case of an entity falling within one of sub-paragraphs (e), (g), (h) or (j) of that definition, details of the enactment, Act of the States, Royal Charter, Act of the United Kingdom Parliament, Order in Council or foreign law, by virtue of which it falls within that sub-paragraph;
 - (b) the names of each of the governors of the registered charity;
 - (c) the principal address of the registered charity with the meaning of paragraph (4);
 - (d) the address of any other premises in Jersey, other than a private dwelling house, at or from which the registered charity undertakes any activity;
 - (e) a statement of the purposes of the registered charity (the charity’s “registered charitable purposes”), drawn by the charity from its constitution and approved by the Commissioner as accurately reflecting the constitution as to the purposes;
 - (f) a statement (the charity’s “registered public benefit statement”), approved by the Commissioner, of the public benefit provided by the charity and of the means by which the charity ensures that it provides that public benefit;
 - (g) the date on which the charity was registered;
 - (h) if the registered charity is an organized religious charity, within the meaning of Article 28, a note of that fact and of the provision of the Order under that Article by virtue of which it is such a charity;

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- (i) if the registered charity meets the charity test by virtue of an Order under Article 5(3), the text of the provision in the constitution that falls within paragraph (2) of that Article;
 - (j) whether the registered charity has or has not sent its annual return for the most recent year;
 - (k) if a required steps notice has been served on the registered charity, or on a governor of the registered charity, a note of that fact (or a copy of the notice) and of the date on which the notice was served;
 - (l) if the registered name has been changed, the previous registered name or names;
 - (m) if an Order under Article 13(9)(c) applies to the registered charity, any details or statement that must be entered on the register under that Order; and
 - (n) any other information prescribed by the Minister by Order.
- (4) The principal address for the purpose of paragraph (3)(c) is –
- (a) if the registered charity is a company, foundation, or other entity required by its constitutional Law to have a registered office or business address in Jersey, the address of that registered office or that business address;
 - (b) if the charity is not such an entity, the address of the main premises in Jersey at or from which the activities in Jersey of the registered charity are managed, controlled or undertaken, unless the premises are a private dwelling house; or
 - (c) if neither sub-paragraph (a) nor (b) applies, the address in Jersey of one of the governors of the charity.
- (5) The Commissioner must enter in the historic section, in relation to any formerly registered charity that has been deregistered –
- (a) the entity's former registered number;
 - (b) if the entity was registered in the general section, the name under which the entity was registered immediately before deregistration, and any names under which it was previously so registered;
 - (c) a summary of the reason why the entity was deregistered, including, if that reason was a contravention of a required steps notice, the reason for the service of that notice;
 - (d) the dates on which the entity was registered and deregistered; and
 - (e) such other matters as the Minister may prescribe by Order.
- (6) The Commissioner must retain for 10 years, in respect of each registered charity, a copy of –
- (a) the constitution of the charity, and any amendments to it;
 - (b) the annual returns of the charity;
 - (c) any notice served on the charity under this Law; and
 - (d) any other document prescribed by the Minister by Order.

9 Restricted section

- (1) For the purpose of Article 10 the public elements of the restricted section are, in relation to each charity registered in that section –
 - (a) the registration number (but not the registered name) of the charity;
 - (b) the matters registered under sub-paragraphs (a), (e), (f), (j) and (k) of Article 8(3);
 - (c) a summary, produced by the charity, to the satisfaction of the Commissioner, of the reasons for registration of the charity in the restricted section; and
 - (d) any other element that may be prescribed by the Minister by Order.
- (2) An applicant for registration, or a charity registered in the general section of the register, may request entry in the restricted section of the register if –
 - (a) the applicant meets the funding condition, prescribed by the Minister by Order for this purpose, as to refraining from soliciting donations from the general public or from any prescribed description of persons; or
 - (b) the applicant meets any other condition that may be prescribed by the Minister by Order, whether by reference to any other source of the entity's funds or on any other basis.
- (3) The Order –
 - (a) must prescribe grounds, that may include the exercise of discretion by the Commissioner, on which the Commissioner may accept or refuse such a request;
 - (b) must specify, for the purpose of paragraph (2)(a) –
 - (i) what constitutes soliciting,
 - (ii) what constitutes a donation, and
 - (iii) if the Order does not prescribe a description of persons, what constitutes the general public for the purpose of the Order; and
 - (c) may make provision under sub-paragraph (b) by reference to the exercise of discretion by the Commissioner, or in any other manner.
- (4) A request under paragraph (2) must be –
 - (a) made in the form published by the Commissioner; and
 - (b) supported by information and evidence to the satisfaction of the Commissioner.
- (5) A request under paragraph (2) must be accompanied by a statement of the applicant's intention, in the event of refusal of the request, being –
 - (a) in the case of an application for registration –
 - (i) that that application should be treated as withdrawn, or
 - (ii) that it should be treated as an application for entry in the general section of the register, on provision of any further

- information and evidence required for such an application;
or
- (b) in the case of a charity registered in the general section of the register –
 - (i) that the charity should remain so registered, or
 - (ii) that the charity should be treated as applying to be deregistered, on provision of any further information and evidence required for such an application.
 - (6) The Commissioner must not enter a charity in the restricted section of the register unless satisfied –
 - (a) that the request complied with paragraphs (4) and (5);
 - (b) that one of the conditions prescribed under paragraph (2) is met; and
 - (c) that there is no ground, prescribed under paragraph (3), on which the request must be refused or, in the case of a discretionary ground, on which the Commissioner considers the request should be refused.
 - (7) If the Commissioner refuses a request, he or she –
 - (a) must give written notice of the refusal to the applicant or charity; and
 - (b) may proceed on the basis of the intention stated under paragraph (5).

10 Public access

- (1) The Commissioner must make the public parts of the register available to the public on a website for inspection without charge.
- (2) The Minister may by Order provide for the Commissioner to make the public parts of the register available in any other specified manner, to the public or to such description of persons as may be specified, on payment of –
 - (a) a specified charge; or
 - (b) a charge determined and published by the Commissioner.
- (3) For the purpose of paragraphs (1) and (2), the public parts of the register are, subject to paragraph (5) –
 - (a) the general section;
 - (b) the public elements of the restricted section, within the meaning of Article 9(1); and
 - (c) the historic section.
- (4) Paragraph (5) applies if the Commissioner considers, in relation to a particular registered charity, that the safety or security of any person, property or premises would be significantly put at risk by public access to a matter entered on any section of the register in respect of that charity.
- (5) The Commissioner may designate that matter as not being a public part of the register, in relation to that registered charity.

11 Application to register

- (1) An entity (“the applicant”), that wishes to have available to it the advantages of registration as a charity under this Law, may apply to be registered.
- (2) The applicant must provide to the Commissioner, in such form as the Commissioner may publish in relation to an entity of a description into which that charity falls –
 - (a) information and evidence, as at the time of the application and (if different) as proposed once the entity is registered, as to –
 - (i) how the entity meets the requirements of paragraphs (4)(c) and (d),
 - (ii) the matters that are required to be registered under sub-paragraphs (a), (b) and (d) of Article 8(3), and
 - (iii) if applicable, the matters that are required to be registered under sub-paragraphs (h), (i), (m) and (n) of Article 8(3);
 - (b) a copy of the applicant’s constitution;
 - (c) a draft of the proposed statement of the entity’s registered charitable purposes;
 - (d) a draft of the entity’s registered public benefit statement;
 - (e) details of –
 - (i) the applicant’s most recent, if any, financial accounts,
 - (ii) any payment made to any governor of the entity in the 12 months preceding the application, and if an Order under Article 13(9)(b) applies to the registered charity, a draft of the proposed statement under that Order,
 - (iii) any other financial information that would be required if the application were for registration under the Non-Profit Organizations (Jersey) Law 2008²⁵, and
 - (iv) if the applicant is not requesting entry in the restricted section of the register, any further financial information prescribed by the Minister by Order; and
 - (f) such other information, documents and evidence as may be –
 - (i) required by Regulations under paragraph (3), or
 - (ii) otherwise requested by the Commissioner in order to determine the application.
- (3) The States may by Regulations –
 - (a) prescribe other information, documents or evidence that must be provided on an application;
 - (b) make further provision as to the procedure for making an application.
- (4) If the applicant complies with paragraph (2), with any Regulations under paragraph (3), and with Article 19(5), the Commissioner must register the applicant as a charity if satisfied that –
 - (a) the applicant meets the charity test, or will do so on registration;

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- (b) the constitution of the applicant is a written document;
 - (c) the applicant –
 - (i) is a Jersey entity, or
 - (ii) carries out, or intends to carry out, in or from within Jersey, an activity that is, in the opinion of the Commissioner, substantial;
 - (d) the applicant has a principal address in Jersey, within the meaning of Article 8(4);
 - (e) the name of the applicant is not undesirable under Article 12; and
 - (f) no other ground for refusal, prescribed under paragraph (7), applies or should be applied.
- (5) If not so satisfied, the Commissioner must refuse to register the applicant.
- (6) For the purpose of paragraph (4)(c)(ii) –
- (a) the Commissioner must publish and maintain guidance as to how he or she determines whether an activity is substantial;
 - (b) Articles 5(6) to (8) apply to that guidance as they apply to guidance under Article 5(4);
 - (c) the Commissioner must have regard to that guidance, in determining whether an activity is substantial; and
 - (d) a registered charity, a governor of a registered charity, the tribunal and the court must have regard to the guidance when performing any of their functions under this Law to which the guidance is relevant.
- (7) The States may by Regulations prescribe further grounds on which an application must or may be refused, and those grounds may, without limitation, include –
- (a) that the entity has only one governor, not being a person who, by way of acting as a governor, carries on a prescribed description of regulated financial services business or any other prescribed description of business; or
 - (b) that a number or proportion of its governors are related to each other in prescribed ways.
- (8) The Minister may by Order –
- (a) make provision as to –
 - (i) the period within which the Commissioner must make a decision on an application,
 - (ii) the notification to applicants of decisions and of reasons for refusal;
 - (b) after consulting the Commissioner and any body appearing to the Minister to be representative of interested entities, provide that any provision of paragraph (2) –
 - (i) does not apply to a prescribed description of applicant appearing to the Minister to require relief from the burden of that provision by virtue of the small size, or lack of resources or expertise of applicants of that description, or

- (ii) applies to a prescribed description of applicant only subject to a modification prescribed by the Order, being a modification that appears to the Minister to give reasonable relief from the burden of that provision, having regard to the small size, or lack of resources or expertise of applicants of that description.
- (9) The Commissioner must –
 - (a) on registering an entity as a charity, issue to that charity a certificate of registration, in the form published by the Commissioner, confirming the registered name, the registration number and the date of registration of the charity; and
 - (b) on entering on the register a new or alternative registered name, under Article 12(5), issue a further such certificate confirming the new or alternative registered name and the date on which that name was entered on the register.
- (10) An applicant for registration, if it is an entity that is required to be registered under the Non-Profit Organizations (Jersey) Law 2008 but is not so registered, must –
 - (a) provide with the application any additional information that must be provided to the JFSC in an application for registration under that Law; and
 - (b) request to be registered under that Law (by virtue of paragraph (11)).
- (11) If the Commissioner receives information and a request under paragraph (10) –
 - (a) the Commissioner must pass to the JFSC that request, with the information and documents, held by the Commissioner, that must be provided to the JFSC in an application for registration under the Non-Profit Organizations (Jersey) Law 2008; and
 - (b) the JFSC must treat that request, with the information and documents, as an application for registration under that Law.

12 Name of charity

- (1) For the purpose of Article 11(4)(e), the name of an entity is undesirable as the registered name of a charity if, in the opinion of the Commissioner, the name –
 - (a) is the same as, or too similar to, the name of any other registered charity;
 - (b) is likely to mislead the public as to the purpose, activities or identity of the entity;
 - (c) gives the impression that the entity is connected to any person to which it is not connected, whether in Jersey or elsewhere; or
 - (d) is offensive.
- (2) If the Commissioner registers the entity, the Commissioner must –

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- (a) enter the name of the entity in the register (the “registered name”); and
 - (b) allocate a number in respect of the registration, and enter that number (“the registration number”) in the register.
- (3) A registered charity may apply to the Commissioner for permission to change its registered name or to add an alternative registered name.
- (4) The Commissioner must refuse permission if, in his or her opinion, any of the grounds in sub-paragraphs (a) to (d) of paragraph (1) applies in relation to the proposed name.
- (5) If the Commissioner grants permission, and the registered charity notifies the Commissioner that it has changed or added the name accordingly, the Commissioner must enter on the register the new or alternative registered name.
- (6) If a registered charity reports a matter relating to its registered name under Article 13(6)(b), the Commissioner may require the charity to apply to change its registered name under paragraph (3).
- (7) A registered charity must not use any name other than –
- (a) its registered name or one of its registered names; or
 - (b) another name that –
 - (i) is related to such a name, and
 - (ii) is not, in the opinion of the Commissioner, undesirable within the meaning of paragraph (1), in the context in which it is used.

13 Effects of registration

- (1) Paragraphs (2) to (4) apply while an entity is registered as a charity, and only cease to apply if the entity is deregistered.
- (2) Any provision of the entity’s constitution or constitutional Law is of no effect to the extent that it purports to permit an amendment of the purposes of the entity to include a purpose that is not charitable.
- (3) Any provision of the entity’s constitution or constitutional Law that purports to permit an amendment of the purposes of the entity to add or substitute a different charitable purpose, is to be read as being subject to the entity –
- (a) providing evidence, to the satisfaction of the Commissioner, of a reason justifying the proposed amendment; and
 - (b) obtaining the Commissioner’s prior approval of the proposed amendment.
- (4) The entity must –
- (a) provide public benefit in accordance with its registered public benefit statement; and
 - (b) if it requests the Commissioner’s approval of a proposed amendment to that statement, provide evidence, to the satisfaction of the Commissioner, of a reason justifying that request.

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- (5) A registered charity must, while it is entered in the restricted section of the register, ensure –
- (a) that it meets the condition, prescribed under Article 9(2), as to which the Commissioner was satisfied under Article 9(6)(b); or
 - (b) if, before it ceased to meet that condition, the Commissioner gave prior permission for it to remain entered in the restricted section on the basis of a different condition prescribed under that Article, that it meets that condition as specified in that permission.
- (6) A registered charity must promptly report to the Commissioner –
- (a) a change in a matter about which information is entered on the register (whether in the general or restricted section) in relation to that charity;
 - (b) any other matter, coming to light after registration or after permission for a change of name, that could, if known before the registration or permission, have led to the Commissioner refusing to register the charity, refusing to accept the name of the charity, or entering it in a different section;
 - (c) a proposal to change the charity's constitution;
 - (d) a proposal that could result, or an event that has resulted in the charity ceasing to meet the requirements of Article 11(4)(c) or (d);
 - (e) a reportable matter, in relation to a governor of the charity, if the charity is aware that the governor has not promptly reported it to the Commissioner under Article 19(2);
 - (f) a matter likely to lead to the charity becoming bankrupt, being wound up or otherwise ceasing to exist;
 - (g) if the charity is entered in the restricted section, a proposal to change how or whether the charity meets a condition prescribed under Article 9(2); and
 - (h) any other matter prescribed by the Minister by Order for this purpose.
- (7) A registered charity must send an annual return to the Commissioner, containing information as to any matter falling within paragraph (6) arising during the year to which the return relates, and as to any other matter prescribed by the Minister by Order for this purpose.
- (8) An Order under paragraph (7) may also make provision as to the format and timing of the annual return, the consequences of lateness, and the content of any entries to be made on the register in respect of the annual return.
- (9) The Minister may by Order –
- (a) require a registered charity to include in its annual return details of a prescribed description of any payment made, during the year to which the return relates, by or on behalf of the registered charity to a governor, or to a person having a prescribed connection with a governor;

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- (b) require a registered charity to provide to the Commissioner a statement of its current intentions as to making any payments of such a prescribed description in future;
 - (c) provide for the entry on the register by the Commissioner of the details included under sub-paragraph (a) in the charity's latest annual return, and of the statement provided under sub-paragraph (b).
- (10) The Minister may by Order, after consulting the Commissioner and any body appearing to the Minister to be representative of interested registered charities, provide that any provision of paragraph (6) or (7), or of any Order under paragraph (7), (8) or (9) –
- (a) does not apply to a prescribed description of charity appearing to the Minister to require relief from the burden of that provision by virtue of the small size, or lack of resources or expertise of charities of that description; or
 - (b) applies to a prescribed description of charity only subject to a modification prescribed by the Order, being a modification that appears to the Minister to give reasonable relief from the burden of that provision, having regard to the small size, or lack of resources or expertise of charities of that description.
- (11) A registered charity –
- (a) must not make any payment that is inconsistent with a statement provided under paragraph (9)(b);
 - (b) may apply to the Commissioner, with reasons, for permission to amend that statement.
- (12) If the States make Regulations under Article 11(7), those Regulations may also make provision requiring a registered charity or its governors (or both) to avoid, or report and remedy, a situation arising at a time after registration, being a situation in which, if the charity were at that time applying for registration, there would be grounds under those Regulations to refuse that application.
- (13) If a court-approved fidéicomis or an incorporated 1862 association becomes registered as a charity under this Law, paragraphs (2) and (3) do not apply to that registered charity to the extent that they are inconsistent with any order made, whether before or after registration under this Law, by the court under the Loi of 1862.

14 Powers of court over registered charity

- (1) The court may exercise any of the powers set out in paragraph (2) in relation to a registered charity if, on an application by the Commissioner or the Attorney General, it appears to the court –
 - (a) that there is or has been misconduct in the administration of the charity; or
 - (b) that it is necessary or desirable to exercise the power for the purpose of protecting the property of the charity or securing a proper application of that property in accordance with the charity's

registered charitable purposes and registered public benefit statement.

- (2) The court may make any order that the court sees fit to remedy the misconduct, protect the property and secure its proper application.
- (3) Without prejudice to the generality of paragraph (2), the orders that the court may make include an order –
 - (a) prohibiting (whether for a specified or indefinite period) the charity or a governor from –
 - (i) referring to or holding out the entity as a charity or Jersey charity, or as being charitable, having charitable purposes or providing public benefit,
 - (ii) soliciting donations from the public, as specified in the order, or
 - (iii) taking any other action specified in the order;
 - (b) appointing a person (whether a specified or indefinite period) to manage the affairs of the charity in place of its governors;
 - (c) appointing a person to be a governor of the charity;
 - (d) suspending or removing a governor of the charity, or any other person concerned in the management or control of the charity;
 - (e) requiring a person (including without prejudice a person carrying on regulated financial services business) who holds property on behalf of the charity, or on behalf of a governor of the charity, not to part with the property without the court's consent;
 - (f) restricting the transactions that may be entered into, or the nature or amount of the payments that may be made, in the administration of the charity without the court's consent;
 - (g) making the administration of the charity subject to such supervision, restraint or conditions, from such time, and for such periods, as the court may specify;
 - (h) requiring a governor who appears to the court to have engaged in any misconduct, or any other person who appears to be responsible for any misconduct, to take such steps as the court may direct to remedy the effects of the misconduct;
 - (i) making such ancillary provision as the court thinks desirable.
- (4) The court may, on the application of the Commissioner, the Attorney General, the registered charity or any person to whom the order was directed, amend or revoke any order made under this Article.
- (5) The powers of the court under this Article apply –
 - (a) in addition to and not in derogation from any powers of the court under any other enactment or under customary law; and
 - (b) despite anything in the constitution of the charity.
- (6) The powers of the court under this Article are without prejudice to any power of the Commissioner to take any action under this Law in respect of any misconduct.

15 Deregistration on application by entity

- (1) An entity that is a registered charity may apply to the Commissioner to terminate the registration of the entity as a charity (to “deregister” the entity).
- (2) An entity applying for deregistration must provide the Commissioner with any information or document requested by the Commissioner in relation to the entity’s proposals for the continuation or winding up of the entity and for the application of any of its property remaining after deregistration.
- (3) If the entity complies with paragraph (2) the Commissioner must –
 - (a) deregister the entity; or
 - (b) refuse to deregister the entity on grounds relating to the proposals mentioned in paragraph (2).

16 Deregistration in other cases

- (1) The Commissioner may, by written notice to an entity that is registered as a charity, deregister the entity if satisfied, after giving the entity written notice specifying reasons and inviting objections within a reasonable time specified in the notice, that it is proportionate to do so on the ground that –
 - (a) the entity no longer meets the charity test;
 - (b) the Commissioner was misled into registering the entity, whether by the entity or by any other person and whether intentionally or otherwise;
 - (c) the entity has failed to comply with a required steps notice; or
 - (d) any other circumstance prescribed by the Minister by Order applies.
- (2) If the Commissioner is satisfied that an entity that is registered as a charity no longer exists, the Commissioner must, by written notice to any person purporting to be a governor of the entity or to be responsible for the winding up of the affairs of the entity, deregister the entity.

17 Effects of deregistration

- (1) After deregistering an entity, the Commissioner –
 - (a) must retain the information registered in respect of that entity for 10 years; and
 - (b) must not assign the registered number of that entity to any other registered charity.
- (2) Paragraph (3) applies if the Commissioner –
 - (a) deregisters a charity under Article 16;
 - (b) is satisfied that the grounds for deregistration have existed since a past date;
 - (c) specifies that date in the notice under Article 16(1) or (2); and

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- (d) determines that the deregistration should take effect retrospectively.
- (3) The termination takes effect from the past date specified under paragraph (2)(c) for all purposes, including the purposes of any enactment relating to taxation, but subject to paragraph (4).
- (4) An act, that occurred before the date of the giving of the notice under Article 16(1) or (2) is not rendered an offence merely by virtue of the operation of paragraph (3).
- (5) Paragraphs (6) to (11) apply, after a charity is deregistered, if and so long as there remains any property of the charity that was acquired before it was deregistered (the “remaining property”).
- (6) The entity must continue to apply the remaining property for the purposes that were its registered charitable purposes immediately before deregistration (the “preserved charitable purposes”), and in accordance with the registered public benefit statement that was in effect immediately before deregistration (the “preserved public benefit statement”).
- (7) Despite any provision of the entity’s constitution, or of the constitutional Law of the entity, the entity has no power to amend the preserved charitable purposes or preserved public benefit statement.
- (8) The entity may apply to the court for an order amending the preserved charitable purposes or preserved public benefit statement, and the court may make such amending order, and any ancillary order, as it considers expedient to ensure that the remaining property continues to be applied for purposes that are, in the opinion of the court, charitable purposes and in a manner that, in the opinion of the court, provides public benefit.
- (9) The court may exercise any of the powers set out in Article 14 in relation to the deregistered entity, as if it were still registered, if, on an application by the Attorney General or a governor of the entity, it appears to the court –
- (a) that there is or has been any conduct in the administration of the entity in relation to the remaining property, that would have been misconduct if the entity had not been deregistered; or
- (b) that it is necessary or desirable to exercise the power for the purpose of protecting the remaining property or securing a proper application of the remaining property for the preserved charitable purposes of the entity and in accordance with the preserved public benefit statement.
- (10) A governor may not apply under paragraph (9) unless the governor has first given notice to the Attorney General of the governor’s intention to do so and of the reasons for that intention.
- (11) The Attorney General may at any time, by giving notice to the governor and the court, take over an application made by a governor under paragraph (9), and may then withdraw or proceed with the application as the Attorney General sees fit.

PART 5

GOVERNORS OF REGISTERED CHARITIES

18 General duties of governors of registered charities

- (1) A governor of a registered charity must seek, in good faith, to ensure that the charity –
 - (a) acts in a manner that is consistent with its registered charitable purposes and with its registered public benefit statement; and
 - (b) complies with any direction, requirement, notice or duty imposed on it by or under this Law.
- (2) A governor of a registered charity, that is an unincorporated body or association of persons falling within Article 2(1)(i), must in the execution of his or her duties and in the exercise of his or her powers and discretions –
 - (a) act –
 - (i) with due diligence,
 - (ii) as would a prudent person,
 - (iii) to the best of the governor's ability and skill; and
 - (b) observe the utmost good faith.
- (3) The duties imposed by this Article apply despite any contrary provision in the constitution or the constitutional Law of the charity, except to any extent that such provision imposes a more onerous duty.
- (4) For the purposes of this Law a governor engages in misconduct if –
 - (a) the governor contravenes a provision, or commits an offence, mentioned in Article 2(10);
 - (b) the governor concurs in misconduct by the charity;
 - (c) the governor assists or encourages another governor to engage in misconduct; or
 - (d) the governor –
 - (i) becomes aware or ought to have become aware of any misconduct in relation to the charity, or of the intention of another governor to engage in misconduct, and
 - (ii) the governor actively conceals that misconduct or that intention, or fails within a reasonable time to take proper steps to protect or restore the property of the charity or to prevent the misconduct.

19 Reportable matters and acting as a governor

- (1) A reportable matter in relation to a person is the fact that the person –
 - (a) has engaged in misconduct as a governor of a registered charity, being misconduct that led to the service of a required steps notice on that governor or on that charity or on another governor of that charity;

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- (b) is the subject of a disqualification order, or of any other restriction on his or her acting as a governor, imposed under this Law;
 - (c) has been disqualified from or for being a charity trustee or trustee for a charity under the law of any part of the United Kingdom, or from holding any equivalent position under the law of any other jurisdiction;
 - (d) has been disqualified from being a company director, or has been made subject to any equivalent disqualification under the law of any jurisdiction other than Jersey;
 - (e) is bankrupt or otherwise insolvent, whether under the law or Jersey or elsewhere;
 - (f) has a conviction (whether or not spent) for an offence under this Law;
 - (g) has an unspent conviction for an offence falling within Article 2(10)(b); or
 - (h) falls within any other description that may be prescribed by the Minister by Order.
- (2) A governor of an entity applying for registration, or of a registered charity, must report any reportable matter promptly to that entity or charity and to the Commissioner.
 - (3) A governor of an entity applying for registration must, if there is no reportable matter in relation to that governor, provide to the entity a declaration to that effect before the application is made.
 - (4) A governor of a registered charity must, if there is no reportable matter in relation to that governor, provide to the charity a declaration to that effect when notified by the charity that it is preparing its annual return.
 - (5) The entity must state in its application, and the registered charity must state in its annual return, that it has declarations from all of its governors who have not made a report under paragraph (2).
 - (6) An application for registration is not complete if the entity has not complied with paragraph (5).
 - (7) A registered charity that contravenes paragraph (5) must explain to the Commissioner the reason for the contravention.
 - (8) A person must not act as a governor of a registered charity at any time when the person is in breach of paragraph (2) or (4).
 - (9) If a governor reports a reportable matter to the Commissioner, the Commissioner –
 - (a) must make inquiries to determine whether the governor is a fit and proper person to be a governor;
 - (b) may apply to the court to determine that issue under Article 20;
 - (c) must not, in the case of an application for registration, grant that application until the issue has been determined and any resulting order or notice complied with;
 - (d) may, in the case of a registered charity, by written notice to the charity, permit, either unconditionally or subject to any condition

- appearing to the Commissioner to be necessary, the governor to act as a governor until that issue is determined or the notice is withdrawn;
- (e) must, if the issue is not to be determined by the court under subparagraph (b), on determining the issue –
 - (i) notify the entity that the application will be refused unless the governor is removed, or in the case of a registered charity serve a required steps notice requiring the charity to suspend or remove the governor, or
 - (ii) by notice in writing, entered in the register, give permission for the governor to act as a governor, either unconditionally or subject to any condition or time limit that appears to the Commissioner to be necessary.
- (10) A person must not act as a governor of a registered charity at any time after reporting a reportable matter, unless the governor –
- (a) is permitted to do so by the Commissioner under paragraph (9)(d) or (e)(ii), or by the court under Article 20; and
 - (b) does so in either case in accordance with any condition on that permission.
- (11) A person who without reasonable excuse contravenes paragraph (10) commits an offence and is liable to imprisonment for one year and to a fine.
- (12) Paragraphs (10) and (11) are not to be construed as requiring an act to be treated as void or invalid merely by virtue of the act constituting a contravention of paragraph (10).
- (13) If at any time the Commissioner suspects that a governor of a registered charity may have breached paragraph (2), the Commissioner may, without prejudice to any other of his or her powers, apply to the court to determine whether the governor is a fit and proper person to be a governor.

20 Court orders as to fitness of governor

- (1) On an application under Article 19(9)(b) or (13), the court may make any order that the court sees fit, including without limitation –
 - (a) an order dismissing the application;
 - (b) an order giving permission for the governor to act as a governor despite a reportable matter;
 - (c) an order that the entity must not be registered as a charity;
 - (d) an order requiring a registered charity to suspend or remove the governor;
 - (e) an order making any provision that could be made by a required steps notice;
 - (f) any order ancillary to any such order.
- (2) An order under paragraph (1) may, without limitation –

- (a) apply to a governor in respect of a particular registered charity, a description of registered charities or all registered charities;
 - (b) be made subject to any condition or time limit that appears to the court to be necessary or equitable.
- (3) If it appears to the Commissioner or the Attorney General that it is or may be expedient in the public interest that a person should not, without the leave of the court, be a governor of or in any way whether directly or indirectly be concerned or take part in the management of a registered charity, the Commissioner or the Attorney General may apply to the court for an order to that effect against the person (a “disqualification order”).
- (4) The court may, on such an application or on an application under Article 19(9)(b) or (13), make a disqualification order if it is satisfied that the person is unfit to be concerned in the management of a registered charity, by virtue of –
- (a) the person’s conduct in relation to a registered charity, or to an entity applying for registration; or
 - (b) the seriousness of a reportable matter in relation to the person.
- (5) A disqualification order is to be for such period, not exceeding 15 years, as the court directs.
- (6) A person who contravenes a disqualification order commits an offence and is liable to imprisonment for 2 years and to a fine.

PART 6

USE OF EXPRESSIONS “CHARITY”, “CHARITABLE” AND RELATED TERMS

21 Prohibition of unauthorized use of expression “charity” and related terms

- (1) An entity that is not a registered charity –
- (a) must not refer to itself as being registered by the Commissioner; and
 - (b) must not cause or permit another person to refer to the entity as being registered by the Commissioner.
- (2) A person must not refer to an entity, that is not a registered charity, as being registered by the Commissioner, if the person –
- (a) knows, suspects or has reasonable grounds to suspect that the entity is not a registered charity; and
 - (b) intends, by so referring to the entity, to cause another person –
 - (i) to be misled as to the nature of the entity, or
 - (ii) to give to the entity any property or financial or other advantage.
- (3) A Jersey entity that is not a registered charity –
- (a) must not refer to itself as a “charity”; and

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- (b) must not cause or permit another person to refer to the entity as a “charity”.
- (4) A person must not refer to a Jersey entity, that is not a registered charity, as a “charity”, if the person –
 - (a) knows, suspects or has reasonable grounds to suspect that the entity –
 - (i) is a Jersey entity, and
 - (ii) is not a registered charity; and
 - (b) intends, by so referring to the entity, to cause another person –
 - (i) to be misled as to the nature of the entity, or
 - (ii) to give any property or financial advantage to the entity.
 - (5) An entity that is not a registered charity and is neither a Jersey entity nor an excepted foreign charity (within the meaning of Article 22) –
 - (a) must not refer to itself as a “charity” in connection with any of its activities in Jersey; and
 - (b) must not cause or permit another person to refer to the entity as a “charity” in connection with any of its activities in Jersey.
 - (6) A person must not refer to an entity, that is not a registered charity and is neither a Jersey entity nor an excepted foreign charity (within the meaning of Article 22), as a “charity” in connection with any of its activities in Jersey, if the person –
 - (a) knows, suspects or has reasonable grounds to suspect that the entity –
 - (i) is neither a Jersey entity nor an excepted foreign charity, and
 - (ii) is not a registered charity; and
 - (b) intends, by so referring to the entity, to cause another person –
 - (i) to be misled as to the nature of the entity, or
 - (ii) to give any property or financial advantage to the entity.
 - (7) Paragraphs (2), (4) and (6) apply whether or not the person making the reference is also the entity, and is referring to itself.
 - (8) The States may by Regulations prescribe exceptions to the prohibitions in paragraphs (1) to (6).
 - (9) An entity or other person, that contravenes paragraph (2), (4) or (6), commits an offence and is liable to imprisonment for a term of 2 years and to a fine.
 - (10) An entity, that contravenes paragraph (1), (3) or (5), commits an offence and is liable to a fine of level 3 on the standard scale.

22 Excepted foreign charities

- (1) For the purpose of Article 21, an entity is an excepted foreign charity if it meets both the condition in paragraph (2) and the condition in paragraph (3).
- (2) The first condition is that the entity is –

- (a) established under the law –
 - (i) of the United Kingdom, or of any jurisdiction that is part of the United Kingdom, or
 - (ii) of a jurisdiction (not being Jersey, the United Kingdom or a part of the United Kingdom) that is prescribed for this purpose by the Minister by Order; and
 - (b) entitled, under the law of that jurisdiction, to refer to itself in that jurisdiction as a “charity” (or by any equivalent term in a language other than English that is used in that jurisdiction).
- (3) The second condition is that the entity –
- (a) is managed wholly or mainly from the jurisdiction under the law of which it is established; and
 - (b) is not a registered charity.
- (4) The Minister may by Order prescribe that a specified entity is not required to meet the first condition, despite sub-paragraphs (a) and (b) of paragraph (2).
- (5) The States may by Regulations amend paragraph (1), (2) or (3) to make different provision as to the conditions that are to be met.

23 Prohibition of unauthorized use of expression “Jersey charity”

- (1) Unless an entity meets all of the conditions in paragraph (3), that entity –
- (a) must not refer to itself as a “Jersey charity”; and
 - (b) must not cause or permit another person to refer to the entity as a “Jersey charity”.
- (2) Unless an entity meets all of the conditions in paragraph (3), a person must not refer to that entity as a “Jersey charity”, if the person –
- (a) knows, suspects or has reasonable grounds to suspect that the entity does not meet all of those conditions; and
 - (b) intends, by so referring to the entity, to cause another person –
 - (i) to be misled as to the nature of the entity, or
 - (ii) to give any property or financial advantage to the entity.
- (3) The conditions are that the entity –
- (a) is a registered charity;
 - (b) is a Jersey entity; and
 - (c) is wholly or mainly managed or controlled in or from within Jersey.
- (4) Paragraphs (1) and (2) are subject to any exception prescribed by the States by Regulations.
- (5) Paragraph (2) applies whether or not the person making the reference is also the entity, and is referring to itself.
- (6) An entity that contravenes paragraph (1) commits an offence and is liable to a fine of level 3 on the standard scale.

- (7) An entity or other person, that contravenes paragraph (2), commits an offence and is liable to imprisonment for a term of 2 years and to a fine.

24 Power to restrict use of term “charitable” in soliciting funds

- (1) The States may by Regulations make provision restricting the use, other than by a registered charity, of any relevant term in relation to the soliciting of donations from the general public or from any prescribed description of persons.
- (2) The relevant terms are “charitable”, “public benefit” and any related term (other than “charity”) specified as such in the Regulations.
- (3) Without prejudice to the generality of paragraph (1) any Regulations under that paragraph –
- (a) may make the provision by adapting any provisions of Articles 21 to 23;
 - (b) may impose the restriction by any means, including by requiring permission to be sought from the Commissioner, who may be given discretion as to whether to grant that permission; and
 - (c) may provide for the Commissioner to issue guidance as to the operation of the Regulations.
- (4) The Regulations may make it an offence to contravene a restriction imposed by the Regulations, being an offence carrying a penalty no greater than a fine.

25 Power to require registered charities to identify themselves as such

- (1) The Minister may by Order prescribe statements that must be made (including the manner in which they must be made) by a registered charity in relation to its registration in prescribed descriptions of document or publicity.
- (2) Without prejudice to the generality of paragraph (1), the provision that may be made includes –
- (a) provision requiring the charity to state any or all of the following –
 - (i) that it is a charity,
 - (ii) its charity registration number,
 - (iii) that it is registered with the Commissioner,
 - (iv) how documents relating to its registration may be inspected,
 - (v) the nature of its purposes,
 - (vi) the identity or contact details of one or more of its charity governors;
 - (b) provision as to the legibility of the statement, and the language or languages in which the statement must or may be made;
 - (c) provision as to whether the requirement only applies to documents or publicity issued or signed on behalf of the charity, or to other descriptions of document or publicity;

- (d) provision as to whether and how the requirement applies to web pages and websites, and the responsibility of the charity for those pages or sites.

PART 7

INFORMATION AND ENFORCEMENT

26 Power to demand information

- (1) The Commissioner may, by notice in writing served on a person falling within paragraph (2), require that person –
 - (a) to provide to the Commissioner, at such time and place as may be specified in the notice, any information or document of a specified description that the Commissioner reasonably requires for the purpose of determining whether to serve a required steps notice; or
 - (b) to attend at such place and time as may be specified in the notice and answer questions that the Commissioner reasonably requires the person to answer for that purpose.
- (2) The persons falling within this paragraph are –
 - (a) a registered charity or an entity that was formerly a registered charity; and
 - (b) a governor or former governor of a registered charity or of an entity that was formerly a registered charity.
- (3) If a person from whom provision of a document is required under paragraph (1) claims a lien on any such document, the provision is without prejudice to the lien.
- (4) If the Commissioner exercises a power under paragraph (1) to require a document to be provided, the Commissioner may –
 - (a) if the document is provided, retain or take copies of it or extracts from it and require the person providing it, or any person who appears to be in possession of relevant information and to be a governor or employee of the registered charity, to provide an explanation of the document; and
 - (b) if the document is not provided, require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where the document is.
- (5) A document, copy or extract retained or taken under paragraph (4)(a) may be retained for whichever is the longer of –
 - (a) a period of one year; and
 - (b) if within that period proceedings to which the document is relevant are commenced against any person, until the conclusion of those proceedings.
- (6) A person who requires a document retained under paragraph (4)(a) for the purpose of the person's business, and who requests that document, must be supplied with a copy as soon as practicable.

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- (7) A person who without reasonable excuse contravenes a requirement imposed on the person under paragraph (1) or (4), commits an offence and is liable to imprisonment for a term of 3 months and to a fine of level 3 on the standard scale.
 - (8) Nothing in this Article is to be construed as requiring the disclosure or production by a person to the Commissioner of information or documents that the person would in an action in court be entitled to refuse to disclose or produce on the grounds of legal professional privilege.
 - (9) A statement made by a person in compliance with a requirement imposed under this Article may not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (7) or (10).
 - (10) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person provides information to the Commissioner, knowing that it is false in a material particular and intending it to be used by the Commissioner for the purpose of an application for registration or for the purpose of determining whether to serve a required steps notice.
 - (11) For the purpose of paragraph (10) it is irrelevant whether the information –
 - (a) is contained in a document or not; or
 - (b) is provided under this Article or not.

27 Required steps notices

- (1) Paragraph (2) applies if the Commissioner believes that –
 - (a) there has been misconduct by a registered charity;
 - (b) a registered charity does not pass the charity test;
 - (c) a governor of a registered charity has engaged in misconduct;
 - (d) a governor of a registered charity is, by reason of a reportable matter, unfit to be a governor of a registered charity; or
 - (e) a registered charity has ceased to meet the requirements of Article 11(4)(c) or (d).
- (2) The Commissioner may serve written notice on any one or more of the relevant persons, within the meaning of paragraph (3), requiring steps specified in the notice to be taken by that person in a time specified in the notice, being steps that in Commissioner's opinion are appropriate to remedy the matter prompting service of the notice.
- (3) The relevant persons for the purpose of paragraph (2) are –
 - (a) the registered charity; and
 - (b) the governors of the registered charity.
- (4) If the notice is served by virtue of paragraph (1)(c) or (d), the steps required may include (subject to Article 28) the suspension, removal or replacement of the governor referred to in that paragraph.

- (5) The Minister may by Order make further provision as to the procedure for, and restrictions on, serving a notice under this Article.

28 Required steps notices restricted in relation to governors of organized religious charities

- (1) The Minister may by Order provide for registered charities to be categorized as organized religious charities for the purpose of paragraph (3), being registered charities that appear to the Minister –
- (a) to meet the charity test by virtue of Article 6(1)(c), whether solely or in combination with any other charitable purpose; and
 - (b) to be organized in such a way that the supervision and discipline of the governors of the registered charity, in relation to the activities of the registered charity in Jersey (whether or not also in relation to activities elsewhere), is adequate to justify the application of paragraph (3).
- (2) The provision that may be made under paragraph (1) includes, without limitation –
- (a) provision granting discretion to the Commissioner to grant or withdraw status as an organized religious charity;
 - (b) provision that distinguishes between charities on the basis of the status of the charity as –
 - (i) a designated religious charity within the meaning of the Charities and Trustee Investment (Scotland) Act 2005 of the Scottish Parliament,
 - (ii) an institution falling within section 10(2) of the Charities Act 2011 of the parliament of the United Kingdom, or
 - (iii) an entity in Jersey that is similar to such a designated religious charity or to such an institution.
- (3) A required steps notice served on an organized religious charity, or on a governor of such a charity, is invalid to the extent that it purports to impose a requirement to suspend, remove or replace a governor of that charity.

29 Restricted information

- (1) Subject to paragraph (2) and to Articles 30 and 31, a person who receives information relating to the business or other affairs of any person –
- (a) under or for the purposes of this Law; or
 - (b) directly or indirectly from a person who has so received it,
- commits an offence and is liable to imprisonment for a term of 2 years and a fine if he or she discloses the information without the consent of the person to whom it relates and (where sub-paragraph (b) applies) the person from whom it was received.
- (2) This Article does not apply to information –

-
- (a) that is registered in the public parts of the register, within the meaning of Article 10(3) to (5);
 - (b) that at the time of the disclosure is or has already been made available to the public from other sources; or
 - (c) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

30 Required disclosure of information

- (1) The Commissioner must disclose information to the Comptroller, if required by the Comptroller for the purpose of enabling the Comptroller to discharge any of his or her functions in relation to the taxation of registered charities or other entities with any charitable purposes.
- (2) The Commissioner must disclose information to the JFSC, if required by the JFSC for the purpose of enabling the JFSC to discharge any of its functions under the Non-Profit Organizations (Jersey) Law 2008²⁶.

31 Permitted disclosure of information

Article 29 does not preclude the disclosure of information –

- (a) by or on behalf of the Commissioner, for purpose of enabling the Commissioner to discharge any of his or her functions;
- (b) to the Comptroller for purpose of enabling the Comptroller to discharge any of his or her functions;
- (c) to the JFSC for purpose of enabling the JFSC to discharge any of its functions;
- (d) to the Attorney General, the Bailiff or the court for the purpose of enabling them to discharge any of their functions in relation to charities, whether under this Law, a constitutional Law, the customary law, or any other law;
- (e) to any person for the purpose of the investigation or prosecution of any offence under any enactment or under the customary law of Jersey, or for the purpose of taking or deciding whether to take any proceedings under this Law;
- (f) in any other circumstances prescribed by the States by Regulations.

PART 8

APPEALS TO CHARITY TRIBUNAL

32 Establishment of Charity Tribunal

- (1) There is established a tribunal to be known as the Charity Tribunal.
- (2) The function of the tribunal is to hear and determine appeals under this Part.

- (3) Schedule 2 makes further provision in respect of the tribunal.

33 Persons who may appeal and decisions that may be appealed

- (1) An applicant for registration may appeal against a decision of the Commissioner –
- (a) to refuse to register the applicant; or
 - (b) to refuse to register the applicant in the restricted section of the register.
- (2) A registered charity may appeal against a decision of the Commissioner –
- (a) to deregister the charity;
 - (b) to refuse permission, under Article 12(4), for the charity to change its registered name or add an alternative registered name;
 - (c) to require the charity, under Article 12(6), to apply to change its registered name;
 - (d) to refuse approval, under Article 13(3), of a proposed amendment of the charity's purposes to add or substitute a different charitable purpose; or
 - (e) to refuse to approve an amendment, proposed under Article 13(4)(b), to the charity's registered public benefit statement.
- (3) A person on whom the Commissioner serves a notice under Article 26 or a required steps notice may appeal against the decision of the Commissioner to impose a requirement contained in the notice.
- (4) The Attorney General may appeal against any decision of the Commissioner.
- (5) A person, other than an applicant for registration, a registered charity, or the Attorney General, may appeal against a decision of the Commissioner to register an applicant, on the ground that, at both the time of the application and the time of the appeal –
- (a) the applicant did not meet the charity test; or
 - (b) if the appellant has an interest in the registered name of the applicant, that name was undesirable under Article 12(1).

34 Grounds of appeal and powers of tribunal in determining appeals

- (1) An appeal may be made to the tribunal on the ground that the decision of the Commissioner was wrong or unreasonable on its merits, the facts or the law.
- (2) The tribunal may –
- (a) make such interim order on an appeal as it thinks fit;
 - (b) consider evidence that was put to the Commissioner or accept other evidence.
- (3) On determining an appeal the tribunal may –

- (a) remit the decision to the Commissioner, substitute the tribunal's decision for that of the Commissioner, or dismiss the appeal;
- (b) award costs if satisfied that the appeal was vexatious or otherwise grossly unreasonable;
- (c) make any recommendation to the Commissioner, as to the performance of his or her functions in connection with the subject matter of the appeal, that appears to the tribunal to be called for in the circumstances of the case.

35 Appeal and reference to court

- (1) A party to an appeal to the tribunal, or the Attorney General, may appeal from the decision of the tribunal to the court on the ground that the decision was unreasonable having regard to all the circumstances of the case.
- (2) The court, on determining the appeal, may remit the decision to the tribunal or to the Commissioner, substitute the court's decision for that of the tribunal or that of the Commissioner, or dismiss the appeal.
- (3) The tribunal may refer any point of law to the court for the court to give a ruling on the point.
- (4) The court may make such interim order on an appeal or reference as it thinks fit.

36 Further provision as to appeals to tribunal or court

- (1) Nothing in this Part is to be read as limiting the Commissioner's power to reconsider his or her own decisions or the decisions of his or her staff, whether at the request of any person or on the Commissioner's own motion.
- (2) The Minister may by Order –
 - (a) prescribe time limits within which appeals to the tribunal or court are to be brought; and
 - (b) make such provision as to the giving of notice of decisions by the Commissioner or the tribunal, or of notice of reasons for such decisions, as appears to the Minister to be expedient for the purpose of enabling appeals to be brought within any time limits.
- (3) If the court or tribunal substitutes its decision for any other decision, it may order that the substituted decision is to take effect for all purposes from any date appearing to the court or tribunal to be appropriate, whether that date is before, on or after the date of the original decision or of the court's or tribunal's own decision.
- (4) If the court or tribunal makes an order under paragraph (3) that a substituted decision is to take effect from a date before the date of the order, an act, that occurred before the date of the order, is not rendered an offence merely by virtue of the operation of the order.

PART 9

MISCELLANEOUS AND FINAL PROVISIONS

37 Offences by corporate and other bodies

- (1) If an offence under this Law, committed by a limited liability partnership, a separate limited partnership or a body corporate is proved to have been committed with the consent or connivance of –
 - (a) a person who is a partner of the partnership, or director, governor, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate 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 body corporate.

38 Service of notices

The Minister may by Order make further provision as to the service of any notice under this Law.

39 Regulations and Orders

- (1) An Order or Regulations under this Law may contain such transitional, consequential, incidental, supplementary or savings provisions, other than an amendment of this Law, as appear to the Minister or the States (as the case may be) to be necessary or expedient for the purposes of the Order or Regulations.
- (2) A power under this Law to amend, by Regulations, any provision of this Law includes the power to make such transitional, consequential, incidental or supplementary amendments to any other provision of this Law as appears to the States to be necessary or expedient.

40 Savings and transitional provisions

- (1) Nothing in this Law is to be read as derogating from any power or function of the Attorney General, the Bailiff, or the court, being a power or function that exists independently of this Law (under customary law or otherwise), in respect of charities or of acts for charitable purposes (whether as defined in this Law or otherwise).
- (2) The States may by Regulations make such other saving provision as appears to the States to be necessary or expedient for the purposes of this Law.

- (3) The States may by Regulations make such transitional provision as appears to the States to be necessary or expedient for the purposes of the bringing into force of this Law.

41 Amendments of enactments in relation to exemption from liability for tax

- (1) In the Income Tax (Jersey) Law 1961²⁷ –
- (a) for Article 115(a) there is substituted the following paragraph –
- “(a) any income derived from the property of a charity registered under the Charities (Jersey) Law 201-²⁸, in so far as such income is applied in accordance with that Law;”;
- (b) after Article 115(ab) there are inserted the following paragraphs –
- “(ac) any income derived from the property of a foundation within the meaning of the Foundations (Jersey) Law 2009²⁹ or of a trust, if –
- (i) the income does not fall within sub-paragraph (a), but all of the purposes of the foundation or trust are charitable purposes, or purposes that are purely ancillary or incidental to any of its charitable purposes, within the meaning of the Charities (Jersey) Law 201-,
- (ii) the foundation or trust does not solicit donations, within the meaning of that Law, from the general public, and
- (iii) before the income is derived, the foundation or trust notifies the Comptroller in writing that it qualifies for and intends to rely on this exemption,
- in so far as such income is applied to the making of donations to charities registered under the Charities (Jersey) Law 201-, or to excepted foreign charities within the meaning of Article 22 of that Law;
- (ad) any income derived from the property of a foundation within the meaning of the Foundations (Jersey) Law 2009 or of a trust, if –
- (i) the foundation or trust was established in Jersey, before the date on which Article 41 of the Charities (Jersey) Law 201- comes into force (“the relevant date”), for any of the following purposes –
- (A) the advancement of education,
- (B) the relief of poverty,
- (C) the furtherance of religion,
- (D) a purpose beneficial to the whole community,
- (E) the service of any church or chapel or any building used solely for the purpose of divine worship,
- (ii) the income does not fall within paragraph (a) or (ac), but the foundation or trust was entitled immediately before the relevant date to exemption from income tax under paragraph (a) of this Article as then in force on the income derived from its property, and

- (iii) the foundation or trust does not (at any time on or after the relevant date) solicit donations within the meaning of the Charities (Jersey) Law 201-,
in so far as such income is applied to a purpose mentioned in subparagraph (i);
 - (c) in Article 115(c) for the words “the States” there are substituted the words “the States or any of the parishes”;
 - (d) in paragraph 7(a) of Schedule 2, for the words “any charity or ecclesiastical body” there are substituted the words “any registered charity (within the meaning of the Charities (Jersey) Law 201-³⁰) or ecclesiastical body”.
- (2) In the Goods and Services Tax (Jersey) Law 2007³¹ –
 - (a) in paragraph 5(2) of Schedule 5 for the words “means a corporation, association, or trust,” there are substituted the words “means a corporation, association, trust or other entity,”;
 - (b) in paragraph 1A of Schedule 6, in the definition “use for a relevant charitable purpose”, after the word “charity” there are inserted the words “(within the meaning of paragraph 5(2) of Schedule 5)”.
- (3) In Regulation 28 of the Goods and Services Tax (Jersey) Regulations 2007 –
 - (a) in paragraph (1)(aa) for the words “in the course or furtherance of the charitable activities of the charity and in accordance with the rules, articles or other constitution of the charity” there are substituted the words “in the furtherance of the charitable purposes of the charity, in accordance with the constitution of the charity and, if the charity is registered under the Charities (Jersey) Law 201-³², in accordance with the requirements of that Law”;
 - (b) in paragraph (3) for the definition “charitable purposes” there is substituted the following definition –
 - “ ‘charitable purposes’ has the meaning given by the Charities (Jersey) Law 201-³³.”

42 Amendments of Laws relating to sharing of information

- (1) For the purpose of paragraph (2) a relevant enactment is –
 - (a) the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008³⁴;
 - (b) any other enactment under which the JFSC has functions;
 - (c) any enactment relating to taxation.
- (2) The States may by Regulations amend any relevant enactment, to make such provision as the States consider necessary or expedient to enable any supervisory body, the JFSC and the Comptroller to disclose information to the Commissioner for the purposes of this Law.

43 Consequential amendments of other enactments

The States may by Regulations –

- (a) amend the Trusts (Jersey) Law 1984³⁵ and the Foundations (Jersey) Law 2009³⁶, to make provision for the application under those Laws of the charity test under this Law (by reference the test itself, or to whether a trust or foundation is registered under this Law, or otherwise), or of the definition of charitable purposes under this Law, and for related purposes;
- (b) amend any other enactment (not including this Law) to make such consequential provision as the States consider necessary or expedient, in relation to a reference (direct or indirect) in that other enactment to charities or charitable purposes or related terms.

44 Citation and commencement

- (1) This Law may be cited as the Charities (Jersey) Law 201-.
- (2) Parts 1 to 3, Articles 32, 38, 39, 40, 42 and 43, this Article and the Schedules come into force 7 days after registration.
- (3) The remainder of this Law comes into force on such day or days as the States may by Act appoint.

SCHEDULE 1

(Article 3)

JERSEY CHARITY COMMISSIONER**1 Appointment of Commissioner**

- (1) The Minister must appoint a person appearing to the Minister to be suitable to hold the office of the Commissioner.
- (2) Before appointing a person as the Commissioner, the Minister must seek the views of the Jersey Appointments Commission, established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005³⁷, on the appointment (without prejudice to the powers of the States or the Jersey Appointments Commission under Article 15 of that Law).
- (3) The Minister must, at least 2 weeks before appointing a person as the Commissioner, present to the States a notice of his or her intention to make the appointment.
- (4) A person appointed as the Commissioner holds and vacates that office in accordance with the terms of his or her appointment, subject to this Law.
- (5) When appointing a person as the Commissioner the Minister must determine the period of the appointment, being not more than 6 years.
- (6) The Minister may re-appoint a person serving as the Commissioner (and references in this paragraph to appointment include re-appointment).
- (7) The Minister must take all reasonable steps to ensure that at all times the office of the Commissioner is filled.
- (8) Nothing in sub-paragraph (7) is to be construed as preventing the terms of a person's appointment from requiring the person to work under the appointment for only a limited number of days in a year or hours in a day.

2 Status of Commissioner

- (1) The Commissioner may, as a corporation sole, in the name of his or her office –
 - (a) enter into an agreement for any purpose of his or her office;
 - (b) acquire, hold and dispose of movable property;
 - (c) sue and be sued in any civil proceedings;
 - (d) be charged with an offence and defend criminal proceedings; and
 - (e) do anything reasonably necessary or expedient for or incidental to any of the Commissioner's functions.
- (2) The Commissioner is independent of the States and the Minister.
- (3) The terms and conditions of the appointment of the Commissioner must not be construed so as to create a contract of employment or agency between the States, or the Minister, and the person appointed.

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- (4) Despite sub-paragraphs (2) and (3) –
 - (a) the remuneration or other payment for services of the Commissioner, due under the terms of his or her appointment, must be paid out of the annual income of the States; and
 - (b) all fees and other sums received by the Commissioner in the exercise of his or her functions must be paid to the income of the States.

3 Termination of office as Commissioner

- (1) A person ceases to be appointed as the Commissioner if –
 - (a) he or she resigns from office by giving not less than 3 months' notice in writing to the Minister;
 - (b) the Minister terminates his or her appointment under sub-paragraph (2); or
 - (c) his or her appointment expires under sub-paragraph (4).
- (2) The Minister may terminate the appointment of a person as the Commissioner, after satisfying himself or herself that the person –
 - (a) has been absent from his or her duties for a period longer than 4 consecutive weeks;
 - (b) has become bankrupt;
 - (c) is incapacitated by illness; or
 - (d) is otherwise unable or unfit to discharge the functions of the Commissioner.
- (3) The Minister must, not more than 2 weeks after terminating the appointment, present to the States a notice that the Minister has terminated the appointment.
- (4) A person's appointment as the Commissioner expires if –
 - (a) the period for which the person was appointed expires without re-appointment;
 - (b) the person becomes a member of the States; or
 - (c) the person completes 12 years (whether consecutive or in aggregate) of service as Commissioner.

4 Staff, resources and reporting

- (1) The Minister must make available to the Commissioner such number and descriptions of staff as the Minister considers are required for the proper and effective discharge of the Commissioner's functions.
- (2) To the extent that any States' employee (within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005), while made available under sub-paragraph (1), performs a function under the direction of the Commissioner, the employee is to be treated as a member of the Commissioner's staff for the purposes of this Law.

- (3) Any function of the Commissioner may, to the extent authorized by the Commissioner, be exercised on behalf of the Commissioner by any member of the Commissioner's staff, except –
 - (a) the decision under Article 11 on whether to register a charity;
 - (b) the decision under Article 15(3) on whether to refuse to deregister a charity; and
 - (c) the decision under Article 16 on whether to deregister a charity.
- (4) The Minister may designate a person as the relevant person for the purpose of sub-paragraph (5).
- (5) A relevant person designated under sub-paragraph (4) is to be treated as the Commissioner for the purposes of this Law, if –
 - (a) the person appointed as the Commissioner is unable to act through incapacity or absence; or
 - (b) there is a vacancy in the office of Commissioner,
on a temporary basis until the Commissioner becomes able to act again or a new Commissioner is appointed under paragraph 1.
- (6) The Minister must provide such accommodation and equipment as the Minister considers are required for the proper and effective discharge of the Commissioner's functions.
- (7) The cost of providing staff, accommodation and equipment under this paragraph must be met out of the annual income of the States.
- (8) The Commissioner must prepare and publish a report on the activities of the Commissioner in each calendar year.
- (9) The Commissioner must provide the Minister with the report as soon as practicable after the end of the year to which the report relates, but in no case later than 4 months after the end of that year.
- (10) The Minister must lay a copy of the report so provided before the States as soon as practicable after the Minister receives the report.
- (11) The Minister may, by giving written notice to the Commissioner and publishing that notice, give directions to the Commissioner as to the content and form of the report.
- (12) Directions under paragraph (11) must respect the independence of the Commissioner and, in particular, must not require the report to contain justification of any decision of the Commissioner in relation to individual charities, governors or applicants for registration.

SCHEDULE 2

(Article 32)

CHARITY COMMISSION TRIBUNAL**1 Appointment**

- (1) The Minister must appoint as members of the tribunal at least 4, and no more than 8, persons appearing to the Minister to be suitable for the position and to have appropriate experience to safeguard the interests of the public and the charitable sector in Jersey.
- (2) Before appointing a person as a tribunal member, the Minister must seek the views of the Jersey Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005³⁸ on the appointment (without prejudice to the powers of the States or the Jersey Appointments Commission under Article 15 of that Law).
- (3) The Minister must, at least 2 weeks before appointing a person as a tribunal member, present to the States a notice of his or her intention to make the appointment.
- (4) A person appointed as a tribunal member holds and vacates that position in accordance with the terms of his or her appointment, subject to this Law.
- (5) When appointing a person as a tribunal member the Minister must determine the period of the appointment, being not more than 6 years.
- (6) The Minister may re-appoint a person serving as a tribunal member (and references in this paragraph to appointment include re-appointment).
- (7) The Minister must, among the members of the tribunal, designate one as the chair and another as the vice-chair.
- (8) Service as a tribunal member is honorary, unless the Minister determines that the chair is, or all the members are, to be remunerated by the States as Minister sees fit.

2 Termination of appointment

- (1) A person ceases to be a member of the tribunal if –
 - (a) he or she resigns from office by giving not less than one month's notice in writing to the Minister;
 - (b) the Minister terminates his or her appointment under sub-paragraph (2); or
 - (c) his or her appointment expires under sub-paragraph (4).
- (2) The Minister may terminate the appointment of a person as a member of the tribunal, after satisfying himself or herself that the person –
 - (a) has been absent from his or her duties for a period longer than 8 consecutive weeks;

- (b) has become bankrupt;
 - (c) is incapacitated by illness; or
 - (d) is otherwise unable or unfit to discharge the functions of a member of the tribunal.
- (3) The Minister must, not more than 2 weeks after terminating the appointment, present to the States a notice that the Minister has terminated the appointment.
- (4) A person's appointment as a member of the tribunal expires if –
- (a) the period for which the person was appointed expires without re-appointment;
 - (b) the person becomes a member of the States; or
 - (c) the person completes 12 years (whether consecutive or in aggregate) of service as a member of the tribunal.

3 Staff, resources and reporting

- (1) The Minister must make available to the tribunal such number and descriptions of staff and resources as the Minister considers are required for the proper and effective discharge of the tribunal's functions.
- (2) The Minister must secure that there is available to the tribunal at least one member of staff to serve as the responsible officer, charged with assisting with the administration of (but not determinations by) the tribunal.
- (3) The responsible officer must prepare a report on the activities of the tribunal in each calendar year.
- (4) The responsible officer must provide the Minister with the report as soon as practicable after the end of the year to which the report relates, but in no case later than 4 months after the end of that year.
- (5) The Minister must lay a copy of the report so provided before the States as soon as practicable after the Minister receives the report.

4 Procedure of tribunal

- (1) A sitting of the tribunal is to be presided over by –
- (a) the chair;
 - (b) the vice-chair, if the chair is absent; or
 - (c) if both the chair and vice-chair are absent, a tribunal member appointed for the purpose by the tribunal members present at the sitting.
- (2) Subject to sub-paragraph (1), and to any Regulations under sub-paragraph (3), the tribunal may regulate its own procedure.
- (3) The States may by Regulations make further provision as to the procedure of the tribunal, including in particular provision as to –
- (a) the burden of proof on an appeal;
 - (b) the summoning of witnesses and the administration of oaths;

- (c) securing the production of documents and evidence;
- (d) the conduct of hearings, the determination of appeals with or without hearings, and the holding of hearings wholly or partly in public or private or in the absence of any party;
- (e) enabling an appeal to be determined, or any matter preliminary or incidental to an appeal to be dealt with or direction given, by the chair or vice-chair, or subject to any quorum or voting rules;
- (f) the award of costs, and the creation of offences in relation to the tribunal, carrying a penalty not exceeding imprisonment for a term of 2 years and a fine;
- (g) the publication of reports of the tribunal's decisions;
- (h) duties of the Commissioner in relation to an appeal;
- (i) striking out, withdrawal and amendment of appeals or replies;
- (j) such ancillary powers of the tribunal as the States think necessary for the proper discharge of its functions.

1	<i>chapter 13.125</i>
2	<i>chapter 24.750</i>
3	<i>chapter 13.265</i>
4	<i>chapter 13.250</i>
5	<i>chapter 04.120</i>
6	<i>chapter 13.875</i>
7	<i>chapter 13.075</i>
8	<i>chapter 13.100</i>
9	<i>chapter 13.225</i>
10	<i>chapter 13.425</i>
11	<i>chapter 13.875</i>
12	<i>chapter 13.125</i>
13	<i>chapter 13.875</i>
14	<i>chapter 13.265</i>
15	<i>chapter 13.125</i>
16	<i>chapter 13.875</i>
17	<i>chapter 13.225</i>
18	<i>chapter 13.075</i>
19	<i>chapter 13.100</i>
20	<i>chapter 13.425</i>
21	<i>chapter 17.245.51</i>
22	<i>chapter 24.750</i>
23	<i>chapter 24.700</i>
24	<i>chapter 24.980</i>
25	<i>chapter 15.430</i>
26	<i>chapter 15.430</i>
27	<i>chapter 24.750</i>
28	<i>P.108/2014</i>
29	<i>chapter 13.265</i>
30	<i>P.108/2014</i>
31	<i>chapter 24.700</i>
32	<i>P.108/2014</i>
33	<i>P.108/2014</i>
34	<i>chapter 08.785</i>
35	<i>chapter 13.875</i>
36	<i>chapter 13.265</i>
37	<i>chapter 16.325</i>
38	<i>chapter 16.325</i>