

# STATES OF JERSEY



## REVIEW OF THE DRAFT CHARITIES (JERSEY) LAW (S.R.7/2014): RESPONSE OF THE CHIEF MINISTER

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Presented to the States on 5th August 2014  
by the Chief Minister

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STATES GREFFE

**REVIEW OF THE DRAFT CHARITIES (JERSEY) LAW (S.R.7/2014):  
RESPONSE OF THE CHIEF MINISTER**

**Ministerial Response to:** S.R.7/2014

**Ministerial Response required by:** 22nd August 2014

**Review title:** Review of the Draft Charities (Jersey) Law

**Scrutiny Panel:** Corporate Services

## **INTRODUCTION**

The Chief Minister would like to thank the Scrutiny Panel, and their officers, for the work they undertook with regard to their review of the Draft Charities Law. In particular, the Chief Minister would like to thank the Panel for their very positive report which clearly identified that the draft Law provided a good foundation on which to develop secondary legislation.

The Chief Minister recognises that the Panel undertook their review in a very tight timeframe, thus allowing the Law to be debated prior to the summer recess. A timely debate was important to all those organisations and individuals, from across the voluntary and community sector and the financial services industry, who gave a significant amount of their own time and expertise to supporting the development of this Law.

The Chief Minister fully supports the Panel's findings and recommendations. In particular the Chief Minister is committed to ensuring full and detailed consultation on all matters relating to the development of secondary legislation, and would very much welcome the Panel's input as that secondary legislation is brought forward.

## **FINDINGS**

	<b>Findings</b>	<b>Comments</b>
<b>1</b>	The Chief Minister's Department recognised the need for the draft Law to help and support charities without adversely affecting the financial services sector.	This has been a key principle that has underpinned the development of the Law.
<b>2</b>	The majority of respondents from both the finance services sector and the voluntary and community sector are satisfied with the draft Law as it currently stands.	Agreed. It is fully acknowledged however that much work still needs to be done to ensure that all related secondary and amending legislation is appropriate for both sectors. It must meet the needs of the sectors and of the Public.

	<b>Findings</b>	<b>Comments</b>
<b>3</b>	The Department has been praised for the manner in which the draft Law has been developed having consulted thoroughly with the general public and representatives from the finance services sector and voluntary and community sector.	The Department is committed to ensuring ongoing consultation.
<b>4</b>	Without a charities register, there is currently no way of determining the exact size and nature of Jersey's charitable sector.	Agreed. The development of the Law has always been perceived as a two-phase project in order that information about the size and nature of the sector can be fully understood prior to the development of regulatory standards.
<b>5</b>	It is anticipated that the phased approach for the development of the legislation will allow time for charities, particularly small organisations, to adjust to the changes prior to the introduction of regulatory standards.	Agreed. It is recognised that small organisations needed to be provided both time and support in order to adjust to the new requirements.
<b>6</b>	The Chief Minister's Department will provide support throughout the registration process to charities currently on the Taxes Office "charities list".	Agreed. The Chief Minister's Department will work with representatives of the sector to identify their needs in advance, in order to ensure that the right support services are put in place.
<b>7</b>	The Scottish Charities Law has been used as the basis for the development of our own draft legislation.	Agreed. The Scottish Law did provide the basis for Jersey's Charities Law, although some key changes have been made to ensure it is appropriate for the Jersey context; including, for example: restricted registration; payment of charity governors; a requirement on the Commissioner to consider impact on small organisations.  The Chief Minister's Department has worked to achieve the right balance for Jersey, as opposed to simply adopting legislation from a different jurisdiction.
<b>8</b>	Following the second consultation, Articles 5 and 6 of the draft Law were amended and references to the Commissioner's opinion were removed in response to concerns raised by the Financial Services Sector.	Agreed. The Chief Minister's Department recognised that legitimacy of the concerns raised and therefore sought to address them.

	<b>Findings</b>	<b>Comments</b>
<b>9</b>	All entities, including all faith groups, will be required to demonstrate they pass the charities test.	Agreed. The charities test provides a gateway to charitable tax reliefs and to the right to use the term “charity”. If the Law is to help build public trust and confidence, the Public must have assurance that those organisations that call themselves a charity, really are a charity.
<b>10</b>	The Department has addressed the concerns raised with regard to charitable purposes through allowing the States by Regulation to add the list of purposes.	Agreed. This is a unique feature of our Law, providing greater flexibility than the Scottish Law.
<b>11</b>	There is a lack of clarity within Article 6 of the draft Law as to what constitutes “poverty, “education” and “religion”.	It is acknowledged that this is a concern, but the Chief Minister’s Department are confident that this will be addressed in the guidance that the Commissioner will issue.
<b>12</b>	Public benefit is not defined within the draft Law. Rather, it will be the responsibility of the Charity Commissioner to develop guidance on what is meant by public benefit and apply the benefit test to individual applicants.	Agreed. This is as per the Scottish Law.
<b>13</b>	The draft Law clearly states that appeals which only benefit a specific person, or a very limited number of people, do not provide sufficient public benefit to warrant being a charity.	Agreed. If an organisation is to receive public monies in the form of charitable tax reliefs, it is essential that it benefits the wider public, not just a few specific people.
<b>14</b>	In response to concerns raised regarding public benefit guidance, the draft Law has been amended by placing a requirement on the Charity Commissioner to lay the guidance before the States after consulting with the Chief Minister and representatives of charities about its content.	Agreed. The Law was amended to make this an explicit requirement rather than implied assumption.
<b>15</b>	The Law will be introduced in stages, allowing the Charity Commissioner to publish the guidance on public benefit before organisations are required to apply for registration.	Agreed. A proposed timeframe will be published during Q3 2014.

	<b>Findings</b>	<b>Comments</b>
<b>16</b>	The Chief Minister's Department has provided reassurance that small community organisations will not be adversely effected by the new charity test and, in particular, the requirement to provide a degree of public benefit.	Agreed. The Commissioner's guidance will make it clear that it is absolutely understood that the quantum of public benefit delivered will be much smaller, if the charity is itself a small organisation.
<b>17</b>	Charitable tax reliefs are a form of public monies and the Panel agree that such benefits should only be available to organisations that benefit the public.	The Chief Minister's Department welcomes the Panel's position.
<b>18</b>	The draft Law proposes a one-stop registration process, automatically aligning the charities registration process, the Taxes Office charities process and the Jersey Financial Services Commission's non-profit organisations registration process.	Agreed. It is intended that the Law, and the registration processes that underpin it, will be more efficient and more user-friendly.
<b>19</b>	The Jersey Voluntary and Community Sector support the proposal of a Charity Commissioner, as opposed to a Charity Commission, on the grounds of cost and proportionality.	The Chief Minister's Department welcomes the JVCS position.
<b>20</b>	The Chief Minister's Department advised that consideration would be given as to whether the Commissioner should be given powers to voice concerns to the public about specific organisations operating in Jersey during Phase 2 of the Law.	Agreed. This will be scoped in Phase 2.
<b>21</b>	As a result of the concerns raised in regards to the accountability and transparency of the Charity Commissioner, it is now a requirement within the draft Law for the Commissioner to prepare an annual report to be laid before the States.	Agreed. The Chief Minister's Department acknowledged the concerns raised and recognised the need to ensure the Commissioner could be held to account.
<b>22</b>	There is no requirement for charitable organisations to apply to become registered charities. However, only charities registered under the proposed Law can refer to themselves as a charity and receive charitable tax reliefs.	Agreed. The Chief Minister's Department recognises that the voluntary and community sector is extremely diverse, and that enforced registration was disproportionate in terms of managing risk and building public trust and confidence.

	<b>Findings</b>	<b>Comments</b>
<b>23</b>	The creation of a charity register will allow the public, for the first time, to access information about both “public” and “private” charities.	Agreed. Albeit it is an important feature of the Law that limited information will be available for those “private” charities that are on the restricted section of the register. This is to protect the confidentiality of people who use only private money for charitable means.
<b>24</b>	To address concerns raised by the financial services sector during the first consultation, the draft Law proposes a restricted section on the register for “private” charities that do not solicit funds from the public and do not want the public to have full access to their information.	Agreed. See 23 above.
<b>25</b>	The draft Law proposes amendments to the tax Laws, as set out in Article 42, which would allow “private” charitable structures that, do not solicit donations from the public, to choose not to register but allows them to continue to receive exemption for income tax.	Agreed. It is important to note, however, that income tax relief is only available on those monies used to make donations to Jersey-registered charities or exempt foreign charities, thus ensuring public benefit in return for income tax relief.
<b>26</b>	The aim of the draft Law is to help protect public trust without putting an unnecessary burden on charities.	Agreed. This was another key principle of the Law.
<b>27</b>	The information that charitable organisations are requested to provide during the registration process is similar to the information currently required by the Tax Office, the Financial Services Commission or by the Association of Jersey Charities.	Agreed. The intention was not to create any unnecessary burdens by requesting superfluous information.
<b>28</b>	In the event that flexibility is required in the future, the draft Law has been amended to allow the Chief Minister by Order to reduce the information required by small organisations upon registration.	Agreed. Whilst it is not believed that the Law does place unnecessary burdens on small organisation, the legitimacy of the concerns expressed was fully acknowledged, and the Law was amended to allow for future changes.
<b>29</b>	To help avoid deterring small organisations from registering, it is imperative that the public understand the draft Law and what is being proposed.	Agreed. The Chief Minister’s Department is committed to ensuring that user-friendly information and support is available.

	<b>Findings</b>	<b>Comments</b>
<b>30</b>	Until Phase 2 of the Law is complete, organisations will be unaware of the extra requirements that may be placed upon them through regulatory standards.	Agreed. The Chief Minister's Department acknowledges that this is a source of concern, because organisations do not know what is around the corner. The Department is committed, however, to continuing to work with the sector to help ensure that Phase 2 is proportionate. There is no intention to bringing in overly-onerous or unnecessary Regulations.
<b>31</b>	The Regulations introduced in Phase 2 must not be too onerous for small, community-based organisations as to deter them from registering.	Agreed. See 30 above.
<b>32</b>	The draft Law does not place a requirement on charities to produce a set of annual accounts upon application for registration.	Agreed, although this may be introduced in Phase 2 if, in consultation, it is deemed that this is right and proportionate.
<b>33</b>	Under Jersey's Income Tax Law, churches, as well as parishes, are entitled to income tax exemption. This provision within the Income Tax Law will remain if the draft Charities Law is implemented.	Agreed. The Law is not intended to amend the position for any organisation other than charities.
<b>34</b>	The draft Law provides the Chief Minister with the power by Order, rather than the States by power of Regulations, to add to the list of "excepted foreign charities".	Agreed. It is believed that this is a more pragmatic and cost-effective solution, as charities will be added to the list on relatively regular basis.
<b>35</b>	As a result of the concerns raised during the consultation, the term 'manager', which was used to describe people who have overall control of a charity, was replaced by the term 'governor'.	Agreed. Ideally the Chief Minister's Department would like to have followed the UK Laws and used the term "trustee"; this was however not possible due to the existence of Jersey's Trusts Law, which already uses that term. 'Governor' was deemed to be a suitable compromise.
<b>36</b>	The financial services sector expressed concerns that enforcing restrictions on the remuneration of charity governors could potentially limit the growth of the philanthropic wealth management market in Jersey.	Agreed. This concern was expressed in both written submissions and also via the Charities Law Working Group set up by Jersey Finance Limited.

	<b>Findings</b>	<b>Comments</b>
<b>37</b>	Whilst the restriction placed on the remuneration of governors has been removed, organisations will be required to declare, upon registration, that their governors are paid and the amount paid.	Agreed. This issue was given very careful consideration as the remuneration of governors is a unique feature of our Law. The position taken is that Jersey charities should be trusted to make their own decision with regard to remuneration, but where they do pay governors they must declare this in the public domain, so the public can make informed decisions about whether they wish to donate to that charity.
<b>38</b>	To address issues concerning accountability, the Tribunal are now required to produce an annual report to be laid before the States.	Agreed. The Department acknowledged the concerns raised and recognised the need to ensure the Tribunal could be held to account
<b>39</b>	In response to the concerns raised by representatives of the financial services sector, the draft Law was amended to allow charitable trusts and foundations to apply their donations to excepted foreign charities as well as registered charities in Jersey.	Agreed. It was originally proposed that donations should only be made to Jersey charities, but the financial services sector raised many legitimate concerns about this being too restrictive as many people rightly and understandably want to support other charities; in particular, for example, those operating in the Developing World.
<b>40</b>	The Panel agrees that exemption from all tax reliefs should only be available to bona fide charities that provide a reasonable degree of public benefit. If a charitable trust or foundation does not register to become a registered charity, it should not be entitled to full charitable tax reliefs.	The Chief Minister's Department welcomes the Panel's position.
<b>41</b>	The majority of concerns raised throughout the consultation process have been adequately addressed and there is no reason why the draft Law as it currently stands should not be adopted by the States. However, the 'devil is in the detail' and a conclusion on the Law's potential impact cannot be drawn until the Regulations are known.	The Chief Minister welcomes the Assembly's acceptance of the draft Law. The Chief Minister is fully committed to bringing forward Regulations in a timely fashion, in full consultation with the sector.

## RECOMMENDATIONS

	<b>Recommendations</b>	<b>To</b>	<b>Accept/ Reject</b>	<b>Comments</b>	<b>Target date of action/ completion</b>
<b>1</b>	The Chief Minister must ensure that the consultation process which was carried out for the draft Law acts as a blueprint for all future public consultations undertaken by the States.		Accept	The Chief Minister will ensure that the SoJ Communications Unit is aware of this recommendation and of the work that underpinned the Charities Law consultation.  The SoJ Communications Unit is responsible for the development of guidance on public consultations and also provides advice to Ministers who wish to undertake a public consultation.	September 2014
<b>2</b>	The Chief Minister's Department must provide further guidance on the definition of charitable purposes prior to the registration period.		Accept	As set out in the report and proposition, the Charity Commissioner will be recruited, and will bring forward guidance significantly ahead of the start of the charity registration period.	Commissioner recruited: Q2 2015* Guidance: Q3 2015*
<b>3</b>	The Chief Minister's Department must ensure that the draft Law is widely publicised before it is implemented to help encourage registration.		Accept	Work will be undertaken to ensure awareness. This will include working through the Parishes, churches, community groups, Jersey Finance Limited and the Jersey Financial Services Commission.	Q2 2015 onwards*
<b>4</b>	The Chief Minister must ensure that representatives from the Voluntary and Community Sector are fully consulted on the details of the regulatory standards at the earliest opportunity prior to publication.		Accept	The Chief Minister is absolutely committed to this. A full consultation timetable will be developed.	Q3 2014 onwards*
<b>5</b>	In order to maintain public trust and confidence, the Chief Minister must ensure that accounting requirements for all charities are introduced during Phase 2 and that the accounts are made available for public scrutiny.		Accept	As set out in the report and proposition, the Charities Law was designed as a two-phase project, and it is fully intended that proportionate, sensible accounting requirements are introduced in Phase 2.	Q1 2018*

\*all dates are subject to Privy Council approval.

## **CONCLUSION**

As stated above, the Chief Minister thanks the Panel for all its work and is committed to delivering against all the Panel's recommendations.