



Corporate Services Scrutiny Panel

Review of the Draft Charities (Jersey) Law



Presented to the States on 11th July 2014

S.R.7 /2014

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1. CHAIRMAN'S FOREWARD

- 1.1 It has been recognised by everyone involved with this Draft Law that it must not be so complicated that it makes life too difficult for small local charities whilst also being sufficiently rigorous to provide a regulated framework for the private charities. This has been effected by a first consultation, which led to amendments to the Law, followed by a second consultation.
- 1.2 Witnesses commented favourably on the consultation process and, indeed, one of our main recommendations is that this particular consultation process should be used as a blue print for all States consultations.
- 1.3 This is an enabling Law and much of the more detailed work will be in the regulations. This gives time for small charities to understand the requirements and to organise themselves. The regulations are intended to contain direction and limits on such matters as accounts. In order to retain public trust and confidence, it is essential that, in due course all public charity accounts are available for public scrutiny.
- 1.4 There are a number of attributes where some clarification will be required before the Law is fully functional. For example, the Panel does feel that there should be guidance on such matters as "charitable purposes" before the registration period. At the same time there is a lack of clarity in the Law as to what constitutes poverty, education and religion. These are words with a degree of subjectivity when defining their meaning and guidance is required. It is equally necessary to set out the guidelines for public benefit, a responsibility which will be shouldered by the Charity Commissioner.
- 1.5 As with other enabling Laws the "devil will be in the details" and the Panel will address this in due course. In the meantime, this Law provides an excellent basis for commencing the regulation of the Charities sector.



Senator S. Ferguson

Chairman, Corporate Services Scrutiny Panel

2. EXECUTIVE SUMMARY

- 2.1 *Draft Charities (Jersey) Law 201- (P.108/2014)* was lodged in the States by the Chief Minister on 3rd June 2014. The overarching aim of the draft Law is to support local charities to flourish by building public trust and confidence. Alongside that, it is hoped that the draft Law will 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. Throughout the development process the Chief Minister's Department recognised the need for the draft Law to help and support charities without adversely affecting the financial services sector in Jersey.
- 2.2 The Panel has found that the majority of respondents from both the finance services sector and the voluntary and community sector were satisfied with the draft Law as it currently stands. The Department was praised for the manner in which the draft Law was developed, having consulted thoroughly with the general public and representatives from both of these sectors. As a result of this, the Panel recommends that a similar consultation process to the one that was carried out for this draft Law is used for all future public consultations undertaken by the States.
- 2.3 The draft Law is to be developed in two phases. The first phase introduces the primary Legislation and the second phase will deal primarily with the introduction of regulatory standards. During the consultation process, however, some concerns and queries were raised in regards to the content of draft Law as well as the potential implications of its application. These related to the perceived lack of clear definition in some areas of the Law, for example in respect of 'charitable purposes' and 'public benefit'. Concerns were also expressed about whether the draft Law would impose an overly bureaucratic burden on charities; questions were particularly asked about the impact the draft Law would have on smaller, community-based charities. The financial services sector, meanwhile, expressed concerns that certain proposals contained within the draft Law could potentially limit the growth of the philanthropic wealth management market in Jersey.
- 2.4 The Chief Minister's Department has endeavoured to address all of the concerns and questions, either by amending the draft Law prior to lodging or by highlighting that matters will be addressed during the second phase of work. For example, Regulations and Order-making powers have been included in the draft Law to ensure that clarity can be provided where there is currently doubt. Requirements have also been introduced in the draft Law for the Commissioner and Tribunal to produce annual reports, thereby addressing questions raised about accountability. It is also anticipated by the Chief Minister's Department that the phased approach for the development of the Legislation will allow

charities, particularly small organisations, time to adjust to the changes. We were advised that the Chief Minister's Department would therefore provide support throughout the registration process to charities currently on the Taxes Office "charities list".

- 2.5 The majority of concerns raised throughout the consultation process have indeed been adequately addressed and there is therefore no reason why the draft Law as it currently stands should not be adopted by the States. However, it will be during phase 2 of the work that it will become apparent whether all of the questions have truly been addressed and what the full impact of the regulatory standards will be. Those standards must not be too onerous for small, community-based organisations as to deter them from registering. We have also made recommendations that the Chief Minister's Department issue further guidance to ensure there is clarity in respect of such matters as charitable purposes. Ultimately therefore, whilst further work will be required to ensure that the draft legislation achieves what is intended without having undue effects, the Chief Minister and his Department are to be commended for the work undertaken to date in developing, consulting upon, and bringing forward the draft Law for debate.

3. FINDINGS AND RECOMMENDATIONS

Key Findings

- 3.1 The Chief Minister's Department recognised the need for the draft Law to help and support charities without adversely affecting the financial services sector. (5.11)
- 3.2 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. (5.15)
- 3.3 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. (5.16)
- 3.4 Without a charities register, there is currently no way of determining the exact size and nature of Jersey's charitable sector. (5.34)
- 3.5 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. (5.37)
- 3.6 The Chief Minister's Department will provide support throughout the registration process to charities currently on the Taxes Office "charities list". (5.38)
- 3.7 The Scottish Charities Law has been used as the basis for the development of our own draft Legislation. (5.43)
- 3.8 Following the second consultation, Article 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. (6.6)
- 3.9 All entities, including all faith groups, will be required to demonstrate they pass the charities test. (6.11)
- 3.10 The Department has addressed the concerns raised with regard to charitable purposes through allowing the States by Regulation to add the list of purposes. (6.15)
- 3.11 There is a lack of clarity within Article 6 of the draft Law as to what constitutes "poverty, "education" and "religion". (6.18)
- 3.12 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. (6.22)

- 3.13 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. (6.25)
- 3.14 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. (6.30)
- 3.15 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. (6.34)
- 3.16 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. (6.40)
- 3.17 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. (6.42)
- 3.18 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. (7.3)
- 3.19 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. (7.7)
- 3.20 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. (7.9)
- 3.21 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. (7.13)
- 3.22 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. (8.2)
- 3.23 The creation of a charity register will allow the public, for the first time, to access information about both "public" and "private" charities. (8.18)
- 3.24 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. (8.22)
- 3.25 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. (8.24)
- 3.26 The aim of the draft Law is to help protect public trust without putting an unnecessary burden on charities. (8.35)
- 3.27 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. (8.43)
- 3.28 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. (8.45)
- 3.29 To help avoid deterring small organisations from registering, it is imperative that the public understand the draft Law and what is being proposed. (8.51)
- 3.30 Until phase two of the Law is complete, organisations will be unaware of the extra requirements that may be placed upon them through regulatory standards. (8.58)
- 3.31 The Regulations introduced in phase two must not be too onerous for small, community-based organisations as to deter them from registering. (8.59)
- 3.32 The draft Law does not place a requirement on charities to produce a set of annual accounts upon application for registration. (8.67)
- 3.33 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. (8.71)
- 3.34 The draft Law provides the Chief Minister with the power by Order, rather than the States by power of Regulation, to add to the list of “excepted foreign charities”. (8.82)
- 3.35 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’. (9.3)
- 3.36 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. (9.15)

- 3.37 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. (9.16)
- 3.38 To address issues concerning accountability, the Tribunal are now required to produce an annual report to be laid before the States. (10.10)
- 3.39 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. (11.9)
- 3.40 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. (11.14)
- 3.41 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. (12.4)

Recommendations

- 3.42 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. (5.17)
- 3.43 The Chief Minister’s Department must provide further guidance on the definition of charitable purposes prior to the registration period. (6.19)
- 3.44 The Chief Minister’s Department must ensure that the draft Law is widely publicised before it is implemented to help encourage registration. (8.52)
- 3.45 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. (8.60)
- 3.46 In order to maintain public trust and confidence, the Chief Minister must ensure that accounting requirements for all charities are introduced during phase two and that the accounts are made available for public scrutiny. (8.68)

4. INTRODUCTION

4.1 A Charities Law and Charities Regulation public consultation was launched by the Chief Minister's Department on 8th July 2013 and ran for an eight week period until 20th August 2013. The aim of the consultation was to seek islanders' views on proposals for a charities law and regulatory framework in Jersey. As it currently stands there is no regulatory body specifically established to oversee the creation and activities of charities which, by the nature of work undertaken and position held in the community, benefit from public trust and tax exemptions. The consultation paper set out proposals for a two phase approach to the Law. Phase one provides for the introduction of a new Law and focuses on four main areas:

- A new definition of charity
- The establishment of a charities commissioner
- The creation of a public register of charities
- Basic duties and responsibilities for charity trustees

4.2 Phase two provides for the primary Law, introduced in phase 1, to be amended at a later date to bring in regulatory standards for charities following consultation.

4.3 Overall the results and feedback from the first consultation showed that the majority of people who responded were supportive of the introduction of a charities Law in Jersey and for the future introduction of charities regulation. Based on the feedback received from the consultation the Chief Minister's Department has recently developed the *Draft Charities (Jersey) Law 201-*.

4.4 A second consultation on the details of that draft Law was undertaken between 12th March and 1st May 2014. The purpose of this consultation was to ensure that the draft Law achieves the Chief Minister's overarching aim of *"supporting Jersey charities to flourish by building public trust and confidence"*. Alongside this it is hoped that the draft Law will *"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"*.

4.5 The draft Law was lodged by the Chief Minister on 2nd June 2014, following a number of amendments to the first draft as a result of the consultation. A supporting Report, which acts as an addendum to Report and Proposition, was lodged in early July. The draft Law is due to be debated by the States Assembly on 14th July 2014.

- 4.6 In this report, we will examine the responses from the latest consultation, consider the proposals contained within the draft Law and determine the implications of the draft Law for the voluntary sector and the finance sector. We will also consider whether the draft Legislation will deliver on its objectives and overarching aims previously highlighted.
- 4.7 Unfortunately due to the limited time we had to undertake this review and present this report before the debate on 14th July, we were unable to undertake an in-depth review of the draft Law. As a result we have focused our attention on the issues that were raised during the second consultation and how, in turn, the Chief Minister's Department has responded to such concerns.
- 4.8 It is important to note that near the end of our review two more written submissions were received by the Chief Minister's Department from representatives of the finance sector which raised concerns about aspects of the draft Law. Whilst the Panel considered these matters, there was not sufficient time to address them within this report. However we found that the concerns raised would not have impacted on the Panel's overall conclusion. The Chief Minister's Department has since lodged an addendum to the Charities Law Report and Proposition which outlines the matters raised and explains how they are to be addressed.

5. THE DEVELOPMENT OF THE DRAFT LAW

Background

- 5.1 In 2004 and again in 2009 the Jersey Law Commission recommended the establishment of a charities regulator of a charities Law which included 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”*.
- 5.2 In 2008, the now Chief Minister, Senator Ian Gorst, brought a Proposition (P.28/2008) to the States calling for an investigation into the feasibility of establishing a Jersey Charities Commission and associated Regulation. The States voted overwhelmingly in favour of these proposals.
- 5.3 In September 2012 the Council of Ministers, on consideration of the proposals from the Economic Development Department relating to a Charitable Purposes Law, instructed that additional work was required in relation to charities regulation and the need to support and develop the voluntary and community sector. The Economic Development Department proposals were driven, in part, by financial services organisations who were clear that a modern legal framework for charities was urgently required in order to support growth of the philanthropic wealth management market.
- 5.4 In June 2013, after consideration of the financial and resource implications of the Charities Law, the Council of Ministers supported proposals for a public consultation process on the principles of developing a charities Law. The consultation was launched by the Chief Minister’s Department on 8th July 2013 and ran for an eight week period until 20th August 2013. Over 240 people attended this round of consultation meetings.
- 5.5 The Trusts Law Steering Group reported that the lack of a modern definition for charities does not assist in growing the philanthropic and charitable trusts and foundations market in Jersey.¹
- 5.6 Concerns were also raised by representatives from charities and other organisations operating in the voluntary and community sector who identified:
- The need for a charities Law that includes an up-to-date definition of charity and enables charities to more readily identify themselves and their intents and purpose to the public.

¹ P.108/2014

- The need to consider regulation in a wider context of protecting and building public trust in order to support the sector to flourish and to be better placed to meet community need.
- The positive impact that regulation, and associated independent official recognition, could have on fund-raising and volunteering.
- The need to safeguard against any potential abuses of charitable status, if any such abuses exist, and ensure there is an effective mechanism to identification and management.²

5.7 An overwhelming 96 per cent of respondents from the consultation supported the need for a new legal definition of charities. In a public hearing, Jim Hopley, Chairman of the Jersey Voluntary and Community Sector (JVCS), advised the Panel of the sector's support for a Charities Law in Jersey:

“So the whole of the sector has been pushing for some sort of regulation and some sort of legislation. The codicil to that always was that it must not be simply inflicted...it needed to be proportionate, balanced and sensible and take cognisance of the nature of Jersey, the nature and variety of organisation that already exist in Jersey and the great depth and breadth of charity within the Island, which is amazing when you scratch the surface.”³

5.8 Following the first consultation Senator Routier advised the media and members of the public:

“Having consulted people about the principle of whether or not we needed a charities law, we now want to know what Islanders think about the detail of that draft law”.

He also stated:

“Our aim in developing this Law is to create a clear, modern framework that supports and sustains the diversity and independence of the sector, while also protecting and enhancing public trust through appropriate oversight.”⁴

5.9 The first draft of the Charities (Jersey) Law was released for consultation on 12th March 2014, which ended on 1st May 2014. In total:

- 181 people attended public meetings
- 10 representatives of the Financial Services Industry participated in a Charities Law Working Group established by Jersey Finance Limited

² P.108/2014

³ Chairman of the JVCS, Public Hearing, Transcript, 30th May 2014, p3

⁴ Third Sector Online

- 27 people submitted written comments (mixture of representatives from the Financial Services Sector and the Voluntary and Community Sector)
- In addition, two other written submissions were received from financial services industry representatives after the end of the consultation period.

5.10 After reviewing the written submissions from the second consultation it became apparent that the respondents held very diverse views and concerns regarding the draft Law. It can be said that the mixed responses were a reflection of the diversity of organisations that will be affected by the Law if adopted; from financial services companies, to small all-volunteer community groups, to household name charities. The Chief Minister's Department recognised this challenge after completing the first round of public consultation in 2013:

“Whilst the needs of these two sectors [voluntary and community sector and financial services industry] are, to a large extent, complimentary they are also perceived as having the potential to be diametrically opposed to one another. This tension was played out throughout the consultation process and, in broadest terms reflected a divergence of opinion between those whose position was informed from a VSC perspective and those whose position was informed from an FSI (Financial Services Industry) perspective. It is clear from the consultation that the Law must be supportive and helpful to charities, but must not be harmful to the financial services sector.”⁵

KEY FINDING

5.11 The Chief Minister's Department recognised the need for the draft Law to help and support charities without adversely affecting the financial services sector.

5.12 Notwithstanding this challenge, from the evidence we received it appears that the majority of respondents from both sectors are generally happy with the draft Law as it stands, following consultation and the subsequent amendments. For example, the Chairman of JVCS advised the Panel that *“the vast bulk of respondents were incredibly supportive, not only of the general proposition but of the elements of the proposition”*. However, he also made the point that *“there will always be detractors. Individuals will always have concerns.”⁶*

5.13 Philip Callow, Chairman of the Association of Jersey Charities (AJC), also supported the introduction of this Law. Mr Callow has worked on both the Jersey Finance Working

⁵ Charities Law and Regulation, Consultation Response Report, October 2013

⁶ Chairman of JVCS, Public Hearing, Transcript, 30th May 2014, p6

Group for Charities Law and the general charities Working Group since 2008. When we asked whether the two sectors groups were diametrically opposed he told the Panel:

“No...I believe, although I am not speaking for the Finance Working Group per se, the general feeling was that we were quite happy with this Law as it stands. We have had a good chance to debate issues as we have gone through and we have challenged on certain issues. Insofar as I am aware and certainly from my perspective, I am comfortable with where we are at the moment.”⁷

5.14 The consultation process as a whole and the manner in which the Department has undertaken the development of the draft Law to date has been praised by a number of respondents. Representatives from both sectors have been given the opportunity to help assist in the development of the draft Law and the Department, in return, has been very thorough in responding to individual concerns and queries. Accordingly, the Chairman of AJC advised the Panel that *“it has been a very fair and good process.”*⁸ A similar view was held by the Commissioner of the Jersey Financial Services Commission who praised the Department’s response to the concerns raised and the subsequent conclusions that were reached.

KEY FINDING

5.15 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.

KEY FINDING

5.16 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.

RECOMMENDATION

5.17 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.

⁷ Chairman of AJC, Written Submission to CMD, 3rd June 2014

⁸ Chairman of AJC, Written Submission to CMD, 3rd June 2014

Current legal structures

Current definition of “charity” and Income Tax (Jersey) Law 1961

5.18 Whilst a charity must exist for exclusively charitable purposes, no statutory provisions are in place in Jersey to provide a definition of what these purposes are. Current authority is essentially based on the English statute of Elizabeth I 1601 but it has been argued that this definition is outdated and insufficient for modern day purposes. In the Statute of Elizabeth there were 4 divisions of charity. To be charitable, a purpose must be (a) enforceable by the court; and (b) fall within any of the four following divisions of charity:

- Trusts for the relief of poverty;
- Trusts for the advancement of education;
- Trusts for the advancement of religion;
- Trusts for other purposes beneficial to the community not falling under any of the three over divisions⁹

5.19 The current definition of “charity”, drawn from the 1601 Statute of Elizabeth, is set out in the 1961 Income Tax (Jersey) Law. Jersey Law allows for the creation of various charitable structures, including incorporated associations under the Fidéicomis Law, unincorporated associations and charitable trusts. Seemingly, all these vehicles may be liable to Jersey Income Tax. However Article 115 of the Income Tax Law grants exemption from income tax if organisations meet the definition of charity stated within the Law¹⁰. Before an organisation can claim such benefits it has to apply to the Comptroller of Taxes for an exemption to be granted.

Non-Profit Organisation (Jersey) Law 2008

5.20 The Non-Profit Organisations (Jersey) Law 2008 came into force on 8th August 2008 and provides for the registration and monitoring of non-profit organisations (NPO). The purpose of the Law is to comply with international standards designed to prevent NPOs being used for terrorist financing.

5.21 One of the respondents from the consultation made the following comment regarding this Legislation and its benefit for Jersey:

“The Non-Profit organisations (Jersey) Law 2008 was constructed to enable the Island to meet the abuse of non-profit organisations in Jersey for terrorist purposes without disturbing the balance of charity work in the Island, and by the different levels of

⁹ The Jersey Law Commission, The Jersey Law of Charities, January 2004

¹⁰ Income Tax (Jersey) Law 1961

*registration required by the Law, I think the States achieved a good result – satisfying the international community and at the same time not disturbing the local charitable set-up.*¹¹

5.22 Under the Law, an organisation is an NPO if it is established solely or primarily for charitable, religious, cultural, educational, social, or fraternal purposes, with the intention of benefiting the public or a section of the public and which raises or disburses funds in pursuance of those purposes. It will also include an organisation by means of persons acting as trustees of a trust.¹²

5.23 It is important to note that although an NPO can be a charity, it is not necessarily a charity. For example NPOs can include: general charities, trade unions, social enterprises, community interest, companies, voluntary and community organisations, independent schools, faith groups, housing associations, friendly societies, mutual societies etc.

5.24 An NPO must be registered if it is established in or administered in or from Jersey, regardless of whether it carries on any activity in Jersey. To register, an application must be sent to the Jersey Financial Services Commission, must follow the form set out in the Schedule to the Law, and has to be signed and dated by a person acting on behalf of the NPO. The information necessary for registration includes:

- a) the name of the NPO and contact details;
- b) purpose, objectives and activities of the NPO;
- c) structure of the NPO;
- d) estimate of the funds to be raised and disbursed in each financial year of the NPO within Jersey and outside Jersey.

5.25 Set out in the Law are a number of exemptions by which non-profit organisations do not need to register. Firstly, an NPO that has not raised funds that exceed £1,000 during the preceding 12 months does not need to register or comply with other requirements of the Law. Second, regulated NPOs do not need to register under the Law, but still must comply with the obligation to prepare and keep financial records for at least 5 years.¹³ A “regulated NPO” is defined in the Order as any NPO that is provided with services in the course of trust company business under the Financial Services (Jersey) Law 1998 by:

- a) a person acting as a director or a trustee that is registered under the Financial Services (Jersey) Law 1998; or

¹¹ Written Submission 1, 28th April 2014

¹² Non-Profit Organisation (Jersey) Law 2008

¹³ Jersey Finance Services Commission

- b) a person acting as a trustee that is a private trust company business that benefits from the concession set out in paragraph 4 of the Schedule to the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000.

5.26 Whilst the Non-Profit Organisation (Jersey) Law 2008 may be beneficial for preventing NPOs being used for terrorist laundering purposes, its functions are somewhat limited in respect of charities. For instance, the Legislation does not provide transparency. The public cannot view the register and cannot glean any information about organisations that they give direct donations to, or organisations that receive public monies in the form of charitable tax reliefs. The Law does not provide a definition of what a charity is nor does it provide a gateway to charitable tax reliefs (an organisation must apply to the Comptroller of Taxes separately). Perhaps most importantly, the NPO Law does not provide for regulation of an entity as a “charity”, as opposed to a financial vehicle. The Jersey Financial Services Commission does not have any responsibility for, nor the right experience to, monitor and regulate entities as “charitable” vehicles.¹⁴

Foundations (Jersey) Law 2009 and Trusts (Jersey) Law 1984

5.27 These Laws provide for the establishment of trusts and foundations which can be charitable, non-charitable or a mixture of both. Essentially they provide a legal form which can be used by an individual who wishes to set up a charity or a non-charitable organisation (as can the Companies (Jersey) Law 1991 as some charities may take the legal form of a company).

5.28 These Laws do not require any form of registration. However, if the trust/foundation deems itself a charity and it wants charitable tax reliefs then it has to register with the Comptroller of Taxes. Furthermore, depending on what the trust/foundation does, they may be registered under the *Non-Profit Organisation (Jersey) Law 2008*. Currently, it is unknown how many Trusts/Foundations exist in Jersey.

Rationale behind the new Charities Law

5.29 We have been advised that the key aim of the draft Law is to establish a modern legal framework that will support Jersey Charities to flourish and to support the growth of the philanthropic wealth management market in Jersey. With regards to these overarching aims, the Chief Minister commented:

“we have such a strong volunteering spirit in our community and it is only right that anything that we bring forward for the charitable and voluntary sector should be based around their need and enhancing what they have to offer. That is what this law does but in

¹⁴ Jersey Finance Services Commission

*the process of doing that we have to acknowledge that we do have an important economic sector in our community that administers charitable structures.*¹⁵

5.30 The Draft Law is intended to help protect public trust and maintain their confidence in charities. The principles that have underpinned the development of the draft Law are that it must:

- be proportionate;
- avoid doubt and uncertainty wherever possible;
- avoid costs to charities and the public;
- reflect the capabilities of both large and small charitable entities; and
- recognise, and allow for the differences, between charities that raise funds from the public and those that are established using private monies.¹⁶

Phased Approach

5.31 The Draft Charities (Jersey) Law is intended to form Phase 1 of the Charities project. It provides a new and up-to-date definition for a charity, creates a charities registration scheme and establishes the role of Charity Commissioner. We have been advised that phase 2 of the project (2016-2017) will primarily deal with the regulation of charities. However, it is also intended that the primary Legislation will be amended to allow for the development of charity re-organisation schemes (see below) and the potential introduction of a new legal structure for small charity groups.

During the second consultation, a number of individuals that attended the meetings felt 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.) The Department recognised that, as per the Scottish Charities Law, it would be desirable to provide the Commissioner with such powers. It was therefore agreed that this would be considered in Phase 2 of the Charities Law.

5.32 According to the Department, Phase 2 cannot be developed in any meaningful manner until information about the size, scale and scope of the charitable sector in Jersey is collected via the charities registration system introduced in Phase 1. Furthermore, they

¹⁵ Chief Minister, Public Hearing, Transcript, 9th June 2014, p14

¹⁶ Draft Charities (Jersey) Law 201-, 3rd June 2014, p6

have advised us that such information is crucial in determining what regulatory standards would be relevant in Jersey.

5.33 At present this information is not available from the Non-Profit Organisations register administered by the Jersey Financial Services Commission, the Taxes Office or the Association of Jersey Charities.¹⁷ In this regard, the Chairman of JVCS spoke about the potential opportunities that this Law could present:

“You need to understand the great opportunity with this registration process is nobody – and I mean nobody – at the moment in time knows the breadth and depth and nature of the charitable sector here. We have been trying since we were created over 2 years ago to get some sort of feel for the number of non-profit organisations on the Island.”¹⁸

KEY FINDING

5.34 Without a charities register, there is currently no way of determining the exact size and nature of Jersey’s charitable sector.

5.35 A number of concerns were expressed, during the recent public consultation, in regards to the proposal to phase the introduction of the Charities Law. In particular, it was thought that a staged introduction would cause uncertainty for those wishing to register as a charity from both the Finance Services Industry and Voluntary Sector. In this regard, the Association of Jersey Charities provided the following comment:

“We note that the intention of the Charities Law is to introduce the role of the Commissioner and consider, after the introduction of the Law, the merits of any proposal for further regulation of charities. As you know, in the UK, the Charity Commission is the regulator for charities in England and Wales and performs a dual role, the Scottish position is similar too in that the Office of the Scottish Charity Regulator performs a dual function. We consider that the introduction of the Law now, without including how charities will be regulated, has the potential to cause confusion and uncertainty.”¹⁹

5.36 In contrast, the Chief Minister’s Department has highlighted the benefits of the phased approach for both Sectors. It has been suggested that the time gap between establishing the Law and introducing Regulatory Standards would allow sufficient time for charities, particularly small charities, to adjust to the changes. We have been advised that, during that time, the Department would provide support to those currently on the Taxes Office “charities list” and help them through the registration process. Furthermore, with regard to

¹⁷ Charities Law and Regulation, Consultation Response Report, October 2013

¹⁸ Chairman of JVCS, Public Hearing, Transcript, 30th May 2014, p13

¹⁹ Association of Jersey Charities, Written Submission to CMD, 1st May 2014

the Finance Sector, the Chief Minister’s Department has indicated that the introduction of a modern fit-for-purpose definition of charity in Phase 1 would support the industry in a more timely fashion *“by creating potential to grow the charitable trusts market ahead of regulation in Phase 2”*.²⁰

KEY FINDING

5.37 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.

KEY FINDING

5.38 The Chief Minister’s Department will provide support throughout the registration process to charities currently on the Taxes Office “charities list”.

Other Jurisdictions

United Kingdom

5.39 The Charities Act 2011 provides the legal and regulatory framework for charities in England and Wales and combines previous charity Legislation. The act covers important rules, such as the definition of a charity, the requirement of charities to register with the Charity Commission, and how to prepare and submit annual accounts and reports. The Charity Commission is the independent Government department which registers and regulates charities in England and Wales. The role of the Commissioner is to ensure that the public can support charities with confidence and this is done in a number of ways, including:

- Only granting charitable status to organisations that can demonstrate they meet the criteria for being a charity;
- Ensuring charities meet their legal requirement to provide information on their activities each year;
- Making searchable information about each registered charity widely available;
- Providing online services and guidance to help charities run as effectively as possible;
- Taking timely and decisive action when there is malpractice or misconduct.²¹

²⁰ Charities Law and Regulation, Consultation Response Report, October 2013

²¹ Charity Commission.gov.uk

Scotland

5.40 At the beginning of April 2006, a number of the provisions of the Charities and Trustee Investment (Scotland) Act 2005 came into force. The Act provides a modern regulatory framework designed to support and encourage charitable activity in Scotland, while reassuring the public that their money is being well used. Furthermore, the Act sets out a new definition of charity, with a requirement for all charities to demonstrate public benefit. Certain elements of the Draft Charities (Jersey) Law are similar to those contained within the Charities and Trustee Investment (Scotland) Act 2005.

5.41 The Office of the Scottish Charity Regulator (OSCR) became a Non-Ministerial Department and part of the Scottish Administration following commencement of the Charities and Trustee Investment (Scotland) Act 2005. OSCR is the body which determines whether organisations should have charitable status, maintains a public register of charities, encourages and monitors compliance with the Act and investigates apparent misconduct and takes remedial action.²²

5.42 At a public hearing, the Chairman of the Jersey Voluntary Community Sector praised the Scottish Charities Law and welcomed the fact that it has been used as the basis for the development of our own draft Legislation. Jim Hopley told the Panel:

“The Scottish model, when it came, took the best of the English model, learned some lessons, tweaked it to suit the Scottish scenario and gave Jersey an opportunity, in many ways, not to fall into the same traps that the English situation has got into, to take the Scottish model and refine the Scottish model to “Jersify” it. That was a considered policy, which I think the whole of the detailed involved elements of the charity sector would concur with.”²³

KEY FINDING

5.43 The Scottish Charities Law has been used as the basis for the development of our own draft Legislation.

²² www.scotland.gov.uk

²³ Chairman of JVCS, Public Hearing, Transcript, 30th May 2014, p4

6. A NEW DEFINITION OF CHARITY

The Charity Test

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 degree that justifies registration. The Commissioner must publish guidance on the charity test, and the Commissioner and others must have regard to the guidance in performing their functions. A Minister or member of the Assembly (or overseas equivalent) cannot be a governor in that capacity, unless an Order provides otherwise.

6.1 The first draft of the Law that went out for public consultation set out that an entity would only be a charity if, in the opinion of the Commissioner, it passes the charity test. An entity would only pass the charity test if it only has charitable purposes and it provides public benefit in Jersey or elsewhere to a degree that justifies registration as a charity.

6.2 However, during the second consultation a number of queries were raised by Financial Services representatives as to the determination of charitable status for non-registered organisations (it is important to note that although an organisation can only be a charity if it is on the register it can still hold the status of a charitable structure if not on the register). It was suggested that the charity test would present a hurdle for the future of philanthropy business within the financial services sector in Jersey. For example, the Director of Howard Consulting Limited provided the following view in his submission to the Chief Minister's Department:

"...one can only obtain confirmation of charity status by submitting successfully to the registration process under the draft Charities Law. It will not be possible to demonstrate that the entity established in Jersey has been set up exclusively to serve charitable objectives as such status can only be confirmed under the proposed regime by registration under the draft Charities Law and receipt of the Commissioner's confirmation of charitable status."²⁴

6.3 Zillah Howard expressed a similar concern within her submission:

"Article 5(1) provides that an entity meets the charity test if, in the opinion of the Commissioner, all of its purposes are charitable purposes or purposes that are purely ancillary or incidental to any of its charitable purposes. It would seem that the reference to the opinion of the Commissioner is not helpful here."²⁵

²⁴ Howard Consulting, Written Submission to CMD, 30th April 2014

²⁵ Zillah Howard, Written Submission to CMD, 20th March 2014

- 6.4 The provision within the first draft of the Law states that an organisation can only pass the charities test if it does so “*in the opinion of the Commissioner*” creates a problem for financial services organisations that need to advise clients whether their structures meet the charity test. These organisations that set up non-registered charitable structures will not have access to the Commissioner’s “opinion” and would therefore be unable to advise their clients appropriately.
- 6.5 The concerns above were recognised and accepted by the Department and, as a result, amendments were made to Article 5 and 6 of the draft Law to remove references to the Commissioner’s opinion. Under Article 11 however, the Commissioner will still determine whether an organisation should be placed on the charity register on the basis of whether it passes the charity test to the satisfaction of the Commissioner.²⁶

KEY FINDING

6.6 Following the second consultation, Article 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.

Charitable Purposes

Article 6 sets out the charitable purposes, in broader and more specific terms than under the current Law, for example making express provision for culture, sport, environment 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 in tax legislation and *Article 43* enables the States to make Regulations amending references to charitable purposes in other enactments.

What constitutes a charitable purpose?

- 6.7 Article 6 of the draft Law is based on Section 7 of the Charities and Trustee Investment (Scotland) Act 2005. Unlike the Scottish Law however, the draft Law provides the States with the power to add to the list of charitable purposes. The list under Article 6(1) includes the divisions of relief of poverty, advancement of religion and advancement of education found under the Statute of Elizabeth, along with the following additional purposes:
- the advancement of health (which includes the prevention or relief of sickness, disease or human suffering)
 - the saving of lives;

²⁶ P.108/2014

- the advancement of citizenship or community development (which includes rural or urban regeneration and the promotion of civic responsibility, volunteering , the voluntary sector or the effectiveness or efficiency of charities);
 - the advancement of the arts, heritage, culture or science;
 - the advancement of public participation in sport;
 - the provision of recreational facilities, or the organisation of recreational facilities with the object of improving conditions of life for persons for whom the facilities or activities are primarily intended for;
 - the advancement of human rights, conflict resolution or reconciliation;
 - the promotion of religious or racial harmony;
 - the promotion of equality and diversity;
 - the advancement of environmental protection or improvement;
 - the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage (including relief given by the provision of accommodation or care);
 - the advancement of animal welfare; and
 - any other purpose that may reasonably be regarded as analogous to any of the preceding purposes (with the advancement of philosophical belief, whether or not involving belief in a god, being analogous to the advancement of religion).
- 6.8 The draft Law specifically provides that the advancement of a political party is not a charitable purpose nor is the promotion of a candidate for election.
- 6.9 Whilst the draft Law does not abolish the customary Law definition of “charity” under Jersey Law, it does provide the power to bring amendments to change current Legislation in line with the draft Law, if required.

Consultation Responses

- 6.10 During the first public consultation in 2013 some respondents questioned whether all Christian charities/institutions that advance faith should be automatically granted charitable status without having to demonstrate public benefit. However, the decision was made by the Department not to make this provision within the draft Law. The Department advised that “*all entities, including all faith groups, will be required to demonstrate they pass the charity test.*” It was not envisaged that the draft Law would present a barrier to

the majority of faith groups that wished to register as a charity, due to the fact that public benefit can be:

- tangible (e.g. relief of distress) or intangible (e.g. recognition of benefits of social inclusion) and
- direct (e.g. to the individual who participates in worship) and indirect (e.g. to the general public through improved social cohesion).²⁷

KEY FINDING

6.11 All entities, including all faith groups, will be required to demonstrate they pass the charities test.

6.12 A number of respondents from the second consultation suggested changes to the charitable purposes list in the draft Law. These suggestions included adding mental health; non-physical sporting games/activities (e.g. chess), handcraft, homelessness and conservation to Article 6 of the draft Law. For example, Richard C A Syvret raised a concern regarding the definition of “sport”, stated in Article 6(2)(c), as meaning “*sport that involves physical skill and exertion*”. In this written submission he stated:

*“It appears that chess will be excluded despite it being regarded very recently as important in developing strategic thinking. Darts and croquet will also be excluded because it does not involve both “physical skill” and “exertion”.”*²⁸

6.13 The definition of sport under the Charities Act 2011 is somewhat different to the definition under the *Charities and Trustee Investment (Scotland) Act 2005* and, subsequently, what has been proposed in the draft Law. The UK Act defines sport as “*sports or games which promote health by involving physical or mental skill or exertion*”. The UK definition appears to encapsulate a wider variety of sports that wouldn’t necessarily fall under the drafts definition.

6.14 Despite the queries raised, the listed charitable purposes have not been changed. The Department advised that this decision was based on the fact that “*most of the suggested requirements were implicit in the purposes listed, or would fall into Article 6 (1)(p) and be considered analogous to the purposes listed.*”²⁹ However, in order to provide future flexibility, Article 6 has been amended to allow the States by Regulation to make additions to the list of purposes. The additional power of the States will not allow existing purposes

²⁷ Draft Charities Law Consultation, Supporting paper.

²⁸ Richard C A Syvret, Written Submission to CMD, 25th April 2014

²⁹ P.108/2014

to be removed or deleted as this would create uncertainty amongst charities and the community.

KEY FINDING

6.15 The Department has addressed the concerns raised with regard to charitable purposes through allowing the States by Regulation to add the list of purposes.

6.16 A point which does not appear to have been addressed by the Department in its consultation report, in respect of charitable purposes, is one that was raised by the Association of Jersey Charities (AJC). AJC advised the Department:

“Based upon the experience of the Committee, there is potential scope for disagreement as to what constitutes ‘poverty’, ‘education’, ‘religion’, ‘advancement of health’ etc. We believe that there is scope for further guidance in this area. It would be helpful to have the guidance before the draft Charities Law is formally adopted so that it can be carefully and properly considered.”³⁰

6.17 The Panel agree that some of the charitable purposes within the draft Law are subjective in nature and for this reason it would be beneficial for further guidance to be provided on the particular matter.

KEY FINDING

6.18 There is a lack of clarity within Article 6 of the draft Law as to what constitutes “poverty, “education” and “religion”.

RECOMMENDATION

6.19 The Chief Minister’s Department must provide further guidance on the definition of charitable purposes prior to the registration period.

Public Benefit

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 the public. Fees and other conditions must be unduly restrictive. Benefiting 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.

³⁰ Association of Jersey Charities, Written Submission to CMD, 1st May 2014

- 6.20 The current definition of “charity” as set out in the Income Tax (Jersey) Law 1961 fails to make the delivery of public benefit an explicit requirement for charities. As it stands, a “charity” can operate in a field which is considered charitable but that does not provide benefit to the wider public. The organisation may only provide minimal benefit to a very limited number of people.³¹
- 6.21 As proposed, public benefit will not be defined within the draft Law. It will be the duty of the Commissioner to determine if an entity provides public benefit to a degree that justifies registration. Article 7(4) sets out that the guidance published by the Commissioner under Article 5 (4) for the charity test must include guidance on the determination of the question of whether an entity provides or intends to provide public benefit. The draft Law is similar in this respect to the *Charities and Trustee Investment (Scotland) Act 2005* in which the Office of the Scottish Charity Regulator (OSCR) must issue guidance as to whether a body meets the charity test.

KEY FINDING

6.22 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.

- 6.23 The draft states that the Commissioner cannot presume that an entity is delivering public benefit simply because its purposes are charitable as defined in Article 6. Rather, the Commissioner must consider:
- How the benefit, or disbenefit, gained by the public compares to the benefit gained by other people (for example; members of the charity)
 - Whether there are conditions associated with gaining that benefit (fees or charges)
- 6.24 Under the draft Law fundraising appeals for named individuals, or groups of named individuals, will not be able to become registered charities. 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. The draft Law does not however preclude registered charities from benefiting individuals as part of the process of seeking to deliver their charitable purposes. For example, charities will still be able to run “sponsorship” schemes for named individuals as long as they are clear that the

³¹ P.108/2014

overarching purposes of the charity is not to benefit that individual.³² The Charity Commissioner will provide guidance on this matter.

KEY FINDING

6.25 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.

Consultation responses

6.26 Many of the respondents welcomed the idea to define ‘charity’ not just by purposes but by whether a public benefit is provided. However, a number of respondents raised concerns during the first consultation and most recent consultation about the lack of clarity within the draft Law in respect of what constitutes public benefit. Some examples of these include:

“Public benefit needs further clarification and it should include specific members of the public” (1st consultation)

“There needs to be certainty as to what is meant by public benefit and I am concerned that the Law is not clear enough in this regard.” (1st consultation)

*“Since public benefit is a key part of the charity test to define whether an organisation will or will not be treated as a charity under the draft Charities Law, the absence of a definition or guidance makes it difficult to comment on whether the charity test (the key determinant) is reasonable for the sector in Jersey”.*³³ (2nd consultation)

6.27 These concerns result from the fact that ‘public benefit’ is not defined within the draft Law. However we were advised that, in this regard, the draft Law shares similarities with other charities Laws, as no other jurisdiction in the world defines public benefit within its Legislation due to its complexities.³⁴ Under the draft Law the Commissioner will be responsible for developing guidance on what is meant by public benefit and applying the benefit test to individual applicants.

6.28 Queries have been raised about whether the States, as opposed to the Commissioner, should issue the guidance on the determination of public benefit. Primarily, these concerns arise from the recent problems that have been faced in the UK. For example, the Charities Act 2011 places an obligation on the Charity Commission to produce public benefit guidance. The Commission, however, has been highly criticised and has faced costly legal battles with the Independent Schools Council, for its interpretation of public

³² Draft Charities Law 2nd stage consultation feedback report, May 2014

³³ Association of Jersey Charities, Written Submission to CMD, 1st May 2014

³⁴ Assistant Director of Social Policy, Public Hearing, Transcript, 9th June 2014

benefit under the Act. In a written submission to the Chief Minister's Department, Mr Richard Syvret strongly advised against placing a similar obligation on the Commissioner under the draft Law:

"When combined with Article 5(4), the relevant words in Article 5(1) make the Commissioner and not the legislature (the States) the determiner of charitable status. This is clearly incorrect and is, in fact, a repeat of the discredited system under the Charities Act 2006 by the House of Commons Public Administration Select Committee. In it the Government stated: "The Government agrees that it is for Parliament, not the Charity Commission or the Government of the day, to define the criteria for charitable status, including what is meant by "public benefit". And it is for the Charity Commission, not for Parliament or the Government, to determine whether organisations meet those criteria in individual cases." Jersey's Law should now follow that line."³⁵

6.29 In a public hearing with the Chief Minister, we were advised that, unlike the English Law, the Draft Charities (Jersey) Law includes baseline parameters about the factors that must be considered by the Commissioner when determining public benefit. In this respect, the draft Law follows the Scottish model which, according to the Department, is a lot more successful than the UK Law.³⁶ In response to the concerns, the Department has amended Article 5 of the draft Law. Whilst the draft Law still maintains the Commissioner's responsibility of issuing guidance, the Commissioner will now be required to consult the Minister about the content of the guidance prior to publication. The Minister will then be required to lay the guidance before the States as a Report. Furthermore, the Law places a requirement on the Commissioner to consult with representatives of charities or bodies with charitable proposes before issuing or amending the guidance.³⁷

KEY FINDING

6.30 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.

6.31 Other respondents were concerned that there was a greater chance that the guidance on public benefit would be subject to challenge if issued by the Commissioner rather than the States. In part, this concern was based on the premise that the Commissioner would not be appointed prior to the Law coming into force and therefore the guidance would not be

³⁵ Richard C A Syvret, Written Submission to CMD, 25th April 2014

³⁶ Chief Minister, Public Hearing, Transcript, 9th June 2014

³⁷ Chief Minister, Public Hearing, Transcript, 9th June 2014

in place prior to the Law being implemented. The Chairman of AJC, among others, voiced this particular concern:

“It is the view of the Committee that the position would be clearer if the draft guidance on public benefit (and indeed on charitable purpose) was issued together with the draft Law and that the Commissioner was obliged to follow the guidance once the Charities Law took effect. This would remove the risk of delay or revision and would allow organisations to review themselves against the required registration criteria ahead of the time and knowing that the criteria would not be changed when the Commissioner was appointed.”³⁸

6.32 Article 44 states that Parts 1 to 3 of the draft Law, which includes the establishment of the Commissioner, will come into force 7 days after registration. The part of the draft Law that creates the Charity Register, however, will not come into force until such day as the States agree an appointed day Act. In reference to Article 44 and in response to the concerns expressed, the Department advised the Panel:

“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.”³⁹

6.33 The Chairman of AJC was satisfied that the concerns expressed by the Association had been adequately addressed by the Department through the additional amendments to the draft Law and the phased approach to its implementation.⁴⁰ Furthermore, the Chairman of JVCS, who had previously expressed the view that public guidance should be ratified by the States, welcomed the proposed amendments to Article 5.⁴¹

KEY FINDING

6.34 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.

6.35 During the second consultation, queries were raised regarding Article 7(3)(a) and whether it was appropriate that a person must not “presume” any particular charitable purpose to be for the public benefit. It has been suggested that this provision insinuates that it would be appropriate for a person to presume any other matter, just not this matter. For example, Richard Syvret commented:

³⁸ Association of Jersey Charities, Written Submission to CMD, 1st May 2014

³⁹ Assistant Director of Social Policy, Public Hearing, Transcript, 9th June 2014

⁴⁰ Chairman of AJC, Public Hearing, Transcript, 3rd June 2014, p8

⁴¹ Chairman of JVCS, Public Hearing, Transcript, 30th May 2014, p10

*“Article 7(3)(a) is a legislative provision which seeks to stop “the person determining the question” **presuming** “any particular charitable purposes to be for the public benefit”. The implication of that prohibition is that it will be perfectly acceptable for those persons (the Commissioner, the tribunal and the Court) to **presume** anything else they might wish to presume except this particular presumption. Strange indeed.”⁴²*

- 6.36 Notwithstanding such queries, Article 7(3)(a) has not been amended. According to the Department *“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.”⁴³*
- 6.37 Since the Chief Minister’s Department first went out to the public for consultation, a number of individuals have expressed great concerns about the impact that the draft Charities (Jersey) Law could potentially have on the smaller organisations within the Jersey community. The majority of those concerns relate to the proposed registration process and will therefore be dealt with in the subsequent chapters of this report. However, it is important to consider whether the new proposed charity test would have any implications for small organisations who wish to register under the draft Law.
- 6.38 Jean Le Maistre, in his written submission to the Chief Minister’s Department, was concerned that the judgement by, and opinion of, the Commissioner when determining public benefit *“could effectively destroy a small but important community activity or service”⁴⁴*. According to the Department, however, determining whether an applicant provides public benefit would not be a problem for the Commissioner as their public benefit would be evident, regardless of the size of the organisation. For example, the size of an organisation would be taken into account when considering the degree of public benefit it provides. If the organisation, activity or service was small the Commissioner would accept that the degree of public benefit may be proportionate.
- 6.39 The Charity test in the draft Law is directly based on the charity test contained within the *Charities and Trustee Investment (Scotland) Act 2005*. In response to Mr Maistre’s concerns, the Department provided reassurance that very small organisations in Scotland, where registration is also a requirement for all charities, pass the charities test.

⁴² Richard C A Syvret, Written Submission to CMD, 25th April 2014

⁴³ 2nd Stage Consultation Feedback Report,

⁴⁴ Jean Le Maistre, Written Submission to CMD, 28th April 2014

KEY FINDING

6.40 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.

6.41 One of the overarching aims of the draft Law is to support Jersey charities to flourish and the Department hopes that broadening the definition of charitable purposes, to include sports groups and clubs that are currently excluded, will help achieve this purpose. The new charity test, however, could potentially result in a small number of organisations not being entitled to charitable tax exemptions because either they do not have only charitable purposes or they do not provide public benefit.

KEY FINDING

6.42 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.

7. THE ESTABLISHMENT OF A CHARITY COMMISSIONER

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.

7.1 An independent Commissioner will be appointed for Jersey by the Chief Minister, after having sought the views of the Appointments Commission. The Commissioner will be a corporation sole, which means they will have a legal existence that is separate from the States of Jersey. The Commissioner can make independent decisions – they can sue, or be sued, in their own right and any decisions made by one Commissioner will pass to his or her successor. Article 3 gives effect to Schedule 1 which sets out details relating to the appointment of the Commissioner and their status. Article 4 sets out the general functions of the Commissioner, which are:

- to administer the charity test;
 - to set up and manage the charity register;
 - to supervise the compliance of charity governors with the Law;
 - to seek to ensure the terms “charity”, “Jersey charity” and “charitable” are only used in accordance with the Law;
 - to publish and maintain guidance on the operation of the Law (i.e. charity test and duties of charity governors);
 - work with others to ensure registered charities and other relevant agencies operate in accordance with the Laws of Jersey, including Laws relating to tax and financial services;
 - encourage, facilitate and monitor compliance of registered charities with the Law;
 - Provide information and advice to the public, the Minister and relevant stakeholders;
- and

- work with key agencies/individuals, either in Jersey or elsewhere, who have functions that are relevant to the Commissioner (i.e. the Attorney General and Comptroller of Taxes).

7.2 Under the current Legislation, charities have to apply separately to the tax office for tax exemptions. However, 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. The Charities Commissioner will be responsible for determining which organisations are charities but the Comptroller of Taxes will retain statutory responsibility for granting tax exemptions.⁴⁵

KEY FINDING

7.3 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.

7.4 In the first round of public consultation, a number of respondents raised concerns about having an individual Commissioner rather than a Commission (a group of Commissioners) responsible for determining whether an organisation is a charity. It was felt that the draft Law, as drafted, would invest too much power and responsibility in one individual. For example, one respondent from the 2013 consultation remarked:

"The concern is that the appointment of a charities Commissioner would grant too much power to one person. Decisions which are proposed to be the responsibility of the charities commissioner should be referred to a board of persons."⁴⁶

7.5 During the drafting of the Law, we have been advised that consideration was given to appointing a group of Commissioners as opposed to a single Commissioner. However, the Department decided to progress with a Commissioner on the grounds that the costs of a Commission would be much higher than those for a Commissioner and would be disproportionate to the size of the charitable sector in Jersey. Furthermore, the draft Law proposes the establishment of an Appeals Tribunal which will consist of between 4 and 8 members. The Tribunal will be able to collectively review the decisions of the Commissioner when called into question (see chapter 10).⁴⁷

⁴⁵ Charities Law and Regulation, Consultation Response Report, October 2013

⁴⁶ Charities Law and Regulation, Consultation Response Report, October 2013

⁴⁷ P.108/2014

7.6 The Department informed us that that this particular matter was discussed at length during the consultation meetings with representatives from both the voluntary sector and finance services sector. For this reason, the issue was not raised as being of any significant concern in the 2nd round of consultation. During the undertaking of our review, we also did not hear of any concerns regarding this matter. The Jersey Voluntary and Community Sector did however express support for the proposal of a Charity Commissioner:

“We strongly support the proposal that there should be a Charities Commissioner and not a Charities Commission, on the grounds of both cost and proportionality.”⁴⁸

KEY FINDING

7.7 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.

7.8 Questions have been raised with regard to whether the Charity Commissioner would have sufficient power under the draft Law to prevent organisations, which purport to be charities, from operating in Jersey when they are not charities. As the Law is currently drafted, no such powers are proposed for the Charity Commissioner. The Law places restrictions on entities that are not charities from calling themselves a charity when operating in Jersey, but such restrictions have limitations. Article 4(1)(1) does however give the Commissioner power to assist others to fulfil their functions under all other relevant Laws (e.g. investigation under fraud Law). Furthermore, in the 2nd stage consultation report, the 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 during phase 2 of the Law.

KEY FINDING

7.9 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.

7.10 Some concerns have been raised about the accountability of the Commissioner. Under the draft Law the Commissioner is a corporation sole. The corporation sole status provides the Commissioner with independence from the States and means that their decisions cannot be influenced or dictated by the Chief Minister. The Chief Minister is

⁴⁸ Jersey Voluntary and Community Sector, Written Submission to CMD

however responsible for; appointing a person to hold the office of the Commissioner and for terminating their appointment. The Chief Minister must present to the States a notice of his or her intention to make the appointment, at least 2 weeks before appointing a person as the Commissioner.

- 7.11 The Institute of Chartered Secretaries and Administrators (ICSA) believed that further information regarding the reporting arrangements and accountability framework, concerning the Commissioner's role would benefit the sector and general public.⁴⁹
- 7.12 Following consultation, Article 4(1) of the draft Law has been amended to help improve accountability and transparency of the Commissioner and the work that has been carried out in that role. Schedule 1, Article 4(8) now requires the Commissioner to prepare and publish a report on their activities in each calendar year and present it to the Chief Minister no later than 4 months after the end of that year. The report must be laid before the States by the Minister as soon as practicable once the report has been received. Furthermore, Part 8 of the draft Law now includes a requirement on the Tribunal to produce an annual report to also be laid before the States.⁵⁰

KEY FINDING

7.13 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.

⁴⁹ ICSA, Written Submission to CMD, 1st May 2104

⁵⁰ Draft Charities (Jersey) Law 201-

8. THE CREATION OF A PUBLIC REGISTER OF CHARITIES

Who can register?

8.1 Key to all the principles that have underpinned the development of the draft Law is the concept of **voluntary registration**. The draft Law does not require non-profit or charitable organisations 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. If, however, an organisation chooses not to register then it cannot call itself a charity and it cannot access charitable tax reliefs. Under the draft Law, small charitable organisations that are not registered charities can describe themselves as a “community” or “voluntary” organisation.

KEY FINDING

8.2 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.

8.3 Article 11 of the draft Law sets out information relating to which entities can apply to be on the register and the information they must provide on application. For instance, an entity can apply to be on the register if:

- the applicant meets the charity test, or will do so upon registration;
- the entity has a written constitution (if an entity does not have a written constitution the Commissioner will produce skeleton constitutions to help assist);
- it is a Jersey entity, or carries out or intends to carry out substantial activity in Jersey (it is up to the Commissioner to determine if the activity is substantial enough to warrant registration. The Commissioner will issue guidance related to this);
- the entity has a principal address in Jersey.

8.4 If an entity is eligible to apply to be a registered charity then it will be required to provide the following information as part of its application:

- name of entity;
- form of entity (e.g. company; trust; foundation etc.)
- names of charity governors;
- whether the entity pays its governors and, if so, how much;
- address/es;

- dates of registration;
 - if it is an externally organised religious charity (an Order will be developed setting out those entities which will be considered externally organised religious charities. This will include those religious bodies recognised in the Charities Law in England and Wales);
 - if any States member/minister is a charity governor or has control of the charity;
 - copy of constitution;
 - registered charitable purpose statement;
 - whether the entity has sent its most recent annual return;
 - registered public benefit statement;
 - copy of financial accounts (if any); and
 - financial information as required by the Non-profit Organisations (Jersey) Law 2008 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.
- 8.5 Under the draft Law, the Charity Registration and Non-profit Organisations (NPO) registration process will be streamlined. As a result, an entity that is applying for registration as a charity, which is not already a registered NPO, will also need to provide information required under the NPO Law as part of its application. It will then be the responsibility of the Commissioner to pass that information on to JFSC for the purposes of NPO registration.
- 8.6 Article 11(3) of the draft Law allows the States by Regulations to prescribe other information, documents or evidence that must be provided on application and make further provision as to the procedure for making an application. Furthermore, Article 13(6) and (8) allows the Chief Minister to bring in Orders requiring registered charities to provide additional information to the Commissioner if, for example, it is deemed necessary to keep the register up-to-date to provide further information, in order to help the Commissioner fulfil their functions.
- 8.7 If the entity provides the information requested for application and any further information that may be requested under Article 11(3) then the Commissioner must register the applicant if satisfied that; it passes the charity test; its name is not undesirable (see below); and there are no other grounds on which it should be refused registration. On entry to the register, the Commissioner will issue the application a registration number and a registration certificate.

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 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.

8.8 To help ensure that the public has confidence in the management of registered charities, Article 11 (7) of the draft Law proposes to allow the States to make Regulations that may allow an entity to be refused registration if it only has one charity governor or a proportion of those governors are related to each other. Queries were raised during the consultation process as to whether it was fair and proportionate to include this provision within the Law. For instance, one of the respondents stated:

“The current draft Law regrettably proposes the introduction of several discriminations, as against single manager or family-managed charities, without any evidence of any actual negative impact of such operations on society.”⁵¹

8.9 In response, the Department provided the following comment:

“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.”⁵²

What information will appear on the register?

8.10 Article 8 of the draft Law requires the Commissioner to establish and maintain the charity register. The register will have three different sections – general, restricted and historic. Each section will contain different information and public access to that information will vary according to the section.

8.11 The general section is for “public” charities that solicit donations from the general public (the Minister will make an Order setting out what is meant by soliciting donations). This section of the register will include all the information that was provided upon application

⁵¹ Written Submission to CMD, 1st May 2014

⁵² Draft Charities Law 2nd stage consultation feedback report, May 2014

(see 8.4 above) and, in addition, the registration number and whether a required step notice has been issued to the charity.

The Commissioner will issue a **requires step notice** to a charity if they believe there is misconduct, or the charity no longer passes the charity test, or that charity governor is unfit to manage. The Step notice may result in suspension, removal or replacement of the charity governor and, if the charity fails to comply, the Commissioner can deregister the charity (Article 16 of the draft Law).

8.12 The general public will have access to all the information included under the general section of the register unless the Commissioner felt, under Article 10(4) and (5), that putting certain information into the public domain could present a risk to a person or property.

8.13 The restricted section of the register is for “private” charities only. A “private” charity does not solicit funds from the public and is established using private monies only, whether by a family, individual or organisation. The information that an applicant must provide to be included on the restricted section will be the same as the information included on the general section as well as an explanation as to why the charity wants to be on the restricted section of the register, as opposed to the public section. The Commissioner must be satisfied that the reasons for wanting to register onto the restricted section are justifiable. For example, an applicant that applies to be on the restricted part of the register will not be put on if the Commissioner does not believe that the organisation qualifies to be on the restricted section.⁵³ In regards to what information is available to the public, this section differs considerably to the general section. It has been proposed that the public will only have access to the following information:

- registration number;
- form of entity;
- registered charitable purpose statement and registered public benefit statement; and
- an explanation of why the charity is on the restricted section of the register.

8.14 A charity registered in the general section of the register may request entry in the restricted section of the register if it ceases to solicit donations from the general public or 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 an any other basis.

⁵³ Chief Minister, Public Hearing, Transcript, 9th June 2014

8.15 The historic section of the register is for entities that were previously registered charities but have since been de-registered (see below).

Articles 15-17 set out the proposed **deregistration** process and what will happen on deregistration. The Commissioner can de-register a charity either on the charity's request, or if the Commissioner is satisfied that the charity no longer meets the charity test or it no longer exists, or if the charity has failed to comply with a required steps notice. If a charity requests to remove itself from the register then the Commissioner must be satisfied that proper arrangements have been put in place to ensure that the charities property continues to be applied in accordance with its registered charitable purposes and registered public benefit statement. The Charity cannot vary these statements and use the property for any other purpose unless the Court gives it permission. The Court also retains the power, on the application of the Attorney General to make orders to remedy misconduct or secure proper application of property but only in respect of property required before deregistration. If a charity chooses to de-register it will lose its entitlement to charitable tax reliefs from the date specified by the Commissioner on the de-registration notice.

8.16 It is proposed that the following information would be included on the register in the historic section:

- registered number from when the entity was a registered charity;
- the name under which the entity was registered immediately before deregistration (if the entity was registered in the general section);
- the reason why the entity was de-registered; and
- the dates on which the entity was registered and deregistered.

All of the information entered in the historic section of the register will be available to the public.

8.17 Under Article 8 of the draft Law the Chief Minister can make Orders requiring additional information to be included on any of the sections of the register. The Department advised that such information may include whether the charity has a "parent" charity or whether it is a local branch of a national/international charity.

KEY FINDING

8.18 The creation of a charity register will allow the public, for the first time, to access information about both "public" and "private" charities.

What concerns have been raised?

8.19 Due to the diversity of organisations that will potentially be effected by the draft Law, the first and second consultation revealed quite a large mixture of queries and concerns held by respondents in respect of part 4 of the draft Law. The majority of these concerns have been highlighted by the Department within its 2nd stage Consultation Feedback Report. Within this section, however, we will focus on the overarching themes that emerged from the consultations in relation to the charity register and the registration process and, in turn, we will consider how these concerns have been addressed by the Department.

Public access to “private” charities

8.20 Whilst the first consultation demonstrated a strong level of support for the development of a charities registration system, questions were raised about the need for all charitable structures to be registered. For instance, one of the overarching themes that emerged from the consultation was the potential need for differences of approach in the treatment of “public” and “private” charities. Some respondents, for example, felt that an individual or organisation using private monies to set up a “private” charity should have access to tax benefits without being required to register. On the other hand, it was argued that the purpose of the draft Law was to help protect public confidence and trust in charities and thus the public have the right to know which organisations are receiving tax benefits. The following two quotes, from the first consultation, illustrate these opposing positions:

“It is imperative that clients who wish to set up private charities which will not seek public funding can establish charities which are Charitable under Jersey Law but which do not need to be on a public register. If the charity is administered by a regulated entity this should be sufficient; it might be the regulated entity should be required to make a private filing with the Registrar to ensure the charity is not being used for illegal purposes.”⁵⁴

“Transparency is paramount to ensure public trust and confidence. We can see no justification for any registered charity not to appear publicly on the charities register or for any such registered charity information not to appear in the public domain.”⁵⁵

8.21 In response to the concerns raised during the 1st consultation, the draft Law provides for the charity register to have both a general section (for “public” charities) and a restricted section (for “private” charities). Charities on both sections will be able to call themselves a charity and receive all of the associated charitable tax reliefs (exemption from income tax, GST, stamp duty and Land Transaction Tax). As discussed earlier, the restricted section of the register does not allow the public full access to information about these “private”

⁵⁴ Charities Law and Regulation, Consultation Response Report, October 2013

⁵⁵ Charities Law and Regulation, Consultation Response Report, October 2013

charities, but it does allow access to the charity’s charitable purpose and public benefit statements.

KEY FINDING

8.22 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.

8.23 In addition, 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 from income tax (see Chapter 11).

KEY FINDING

8.24 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.

8.25 In regards to the decision to include a restricted section on the register, the Department commented:

“It is reasonable for the public to access information about entities that receive charitable tax reliefs and solicit donations from the public. At the same time it is also reasonable for those who set up private arrangements for charitable giving 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.”⁵⁶

8.26 During a public hearing, the Chief Minister explained the benefits of having a restricted section on the register:

“Some of the individuals do not want to have their name on the front of the JEP. We have seen some of our wealthy people who have moved to the Island who are giving millions of pounds away for charitable purposes that they do not want to have their name on the front page of the JEP and we should respect that. We should welcome them because they are

⁵⁶ Supporting Paper, 1st Consultation

*giving money to the public benefit, and should they have to give up their privacy in order to do that? I do not think they should.*⁵⁷

8.27 In this respect, the draft Law differs to the Scottish Charities Law and the Charity Law in England & Wales. Both of these Laws apply the same standards to “private” and “public” charities for registration and regulation. It has been argued however, that since Jersey’s Foundations and Trusts Laws are so different to those in England & Wales and Scotland, a comparison cannot be made. Interestingly, we were advised that Switzerland has no register at all for charitable foundations and, as a result, a very limited amount of information is available to the public.⁵⁸

8.28 From the written submissions provided to the Panel and from the evidence gathered at public hearings, there seems to be general support for the concept of the restricted registration. The Chairman of the Association of Jersey Charities, who also sat on the Jersey Finance Working Group, feels that the proposal for a restricted section on the register will help to maintain the status quo⁵⁹. Representatives from the finance sector had previously voiced concerns that a lack of distinction between “public” and private” charities on the register could potentially damage the ability to grow the philanthropic and charitable trusts and foundations market in Jersey. In a public hearing, the Chairman of AJC advised us:

“...the compromise we settled on of having the public registration requirement and the private charitable registration requirement is the compromise to overcome the fact that, on the one hand, you had these private charitable purpose trusts which are set up for purposes which are charitable in nature but which themselves are not a charity. They now have the right to register if they so choose or not, but if they do register the information is then kept private because the funding is private and the benefits are private. That is a sensible outcome, I think.”

8.29 The Chairman further advised us that, in his opinion, the draft Law would deliver its overreaching aims to not only support Jersey charities to flourish, but to support the growth of charitable trusts and foundations. It has even been suggested that the concept of a restricted section on the register could potentially encourage individuals involved in philanthropic wealth management to Jersey. For example, the Financial Services Officer told the Panel that *“all the research into philanthropic wealth management suggests*

⁵⁷ Chief Minister, Public Hearing, Transcript, 9th June 2014, p16

⁵⁸ Chief Minister, Public Hearing, Transcript, 9th June 2014,

⁵⁹ Chairman of AJC, Public Hearing, Transcript, 3rd June 2014

*people want to flock to places which are well regulated, which have a register, which have modern laws of charities. This is absolutely everything this Law is doing.*⁶⁰

8.30 Whilst there is general support for a restricted section on the register, queries have been raised about whether there will be enough information about “private” charities in the public domain, in order to be able to determine their effectiveness. In their written submission to the Chief Minister’s Department, the Institute of Chartered Secretaries and Administrators stated:

“the desire to support and promote a flourishing voluntary and philanthropic sector within the States is to be applauded and the draft legislation should help to create that vision. There is a need however, to balance the desire to create that environment with the necessity to ensure an appropriate level of transparency and accountability for those entities placed on the registered section of the charities register.”

ICSA continued:

*“Regardless of the form of the charity, where the organisation seeks, and gains, tax advantages from registering as a charity, there should be a corresponding level of public accountability. ICSA therefore urges that the proposal to develop a restricted part of the register is carefully considered and any benefits balanced by any potentially adverse impact on the sector in terms of public confidence and trust. All charities should be held to account for the way they raise and apply their resources. A minimum level of information regarding their effectiveness should therefore be available to the public regardless of whether they ask for public donations or not.”*⁶¹

8.31 In response to the concern over the lack of information available to the public about “private” charities, the Department referred to Article 4(1) of the draft Law, which was amended following consultation. As mentioned earlier, Article 4 now places a responsibility on the Commissioner to provide an annual report to the States. The Department advised that, whilst information about individual restricted registration charities would not be put into the public domain, the annual report would be publically available and would include headline information about the numbers of such charities and about any issues or trends relating to this category of charities.⁶²

8.32 Notwithstanding, there is still a question of accountability. One respondent from the second consultation felt that there must be the opportunity of some scrutiny of the Charity Commissioner’s determinations in relation to the restricted section. In the absence of such scrutiny the respondent believes that there is *“the potential for a “secret” register to be set*

⁶⁰ Financial Services Officer, Public Hearing, Transcript, p41

⁶¹ ICSA, Written Submission to CMD, 1st May 2014

⁶² Draft Charities Law 2nd stage consultation feedback report, May 2014

*up which might be damaging to the Island's interests, whether for money-laundering or other reasons.*⁶³ During a public hearing with the Chief Minister, the Panel was advised that Article 42 of the draft Law includes a provision for the States to make Regulations for the exchange of information between the Commissioner, Regulatory bodies and law enforcement authorities. This provision will allow those bodies to access the restricted section of the register which is a critical part of preventing money laundering and countering terrorism. Furthermore, it is possible, through regulations that foreign enforcement bodies will also be given access to this information. The Financial Services Officer advised the Panel that, as result of Article 42, *"if the Charities Commissioner was not acting to the letter of the Law you could expect to hear from those foreign enforcement bodies."*⁶⁴

8.33 In regards to the restricted section of the register, queries were also raised as to whether it would comply with Financial Action Task Force (FATF) guidelines. For example, the Institute of Chartered Secretaries and Administrators recommended that *"any legislation should take into account the FATF guidelines to ensure that regulatory measures are suitably robust to prevent and counter abuse of the sector."*⁶⁵ According to the Chief Minister's Department, the restricted section of the register would not present any difficulties in relation to FATF compliance. All of the information held on the register (restricted and general) would be made available by the Commissioner to competent authorities and law enforcement officials where appropriate (through Article 42)⁶⁶. During a public hearing, the Chairman of the Association of Jersey Charities championed the draft Law and its potential benefits for the fight against money laundering and tax invasion. For example, he advised the Panel:

*"What this Law enables us to do, probably better than what the non-profit Organisations Law did, was tick an FATF box. They have 40 statements we have to meet in terms of money-laundering and 9 for financing of terrorism and I think number 8 of those extra 9 on the financing of terrorism talks about the control and regulation of the charitable sector, because it is clear that this sector is used for money laundering and for financing of terrorism around the world. What we have got at the moment, the NPO Legislation, does not, in my mind, tick the box anywhere near enough as this Law will do for us. By having the Law in place and then regulation in place, I think it will do Jersey a world of good."*⁶⁷

⁶³ Written Submission to CMD, 28th April 2014

⁶⁴ Financial Services Officer, Public Hearing, Transcript, p31

⁶⁵ ICOSA, Written Submission to CMD, 1st May 2014

⁶⁶ Draft Charities Law 2nd stage consultation feedback report, May 2014

⁶⁷ Chairman of AJC, Public Hearing, Transcript, 3rd June 2014

Impact on small organisations

8.34 One of the main concerns that have been raised in regards to the draft Law is the potential implications it would have for smaller organisations and, in particular, all-volunteer run organisations. The intention of the draft Law is to help protect public trust *without* putting an unnecessary financial or bureaucratic burden on charities. However, a number of respondents believe that the draft Law places an overly onerous burden on smaller charities. As a result, it has been suggested that the draft Law fails to deliver its overarching aim to support local charities to flourish.

KEY FINDING

8.35 The aim of the draft Law is to help protect public trust without putting an unnecessary burden on charities.

8.36 In his written submission to the Department, Jean Le Maistre expressed such concerns:

“the statement in the first paragraph and the belief that a complex Law will enable Jersey Charities to flourish to better meet community needs fails, in my view, to understand the demands that this Law may well place on important community services, particularly the smaller ones, which are largely run by volunteers.”⁶⁸

8.37 Another respondent from the second consultation held a similar view:

“I well see that the new legislation may support the growth of a charitable trusts and foundations market in the Island for use by the International community. What is really critical is that in delivering this objective, the local charitable sector is not adversely affected. I very much regret to say that in my view the draft Law does not achieve this. It provides for a system which most professionals will find manageable but it does not provide for a system which is easily comprehensible to ordinary men and women going about their daily lives, a part of which is committed to the charitable sector. I fear that such people will find the provisions to this legislation to be oppressive and threatening, and there is a substantial risk that they will either not register so that their organisations forego the advantages of being a charity, which include in particular the ability to refer to themselves as charities and to escape tax on their income, or, perhaps worse, simply withdraw from the charitable sector altogether.”⁶⁹

⁶⁸ Jean Le Maistre, Written Submission to CMD, 28th April 2014

⁶⁹ Written Submission to CMD, 28th April 2014

- 8.38 In order to determine the extent to which the draft Legislation and the new registration process in particular will affect small organisations, we must consider what is currently required from charities.
- 8.39 At the moment, a new charitable organisation has to navigate two separate registration processes; one relates to the requirements of the Non-Profit Organisations Law and the other relates to the requirements of the Comptroller of Taxes. In addition, if a charity wants to become a member of the Association of Jersey Charities (AJC) it then has to navigate a third process. The draft Charities Law proposes to reduce the administrative burden by creating a 'one-stop' registration process by automatically aligning these processes.⁷⁰
- 8.40 Concerns have been raised about the information that will be required by organisations upon application for registration. The Department, however, has provided reassurance that the information requested will be little more than organisations are currently obligated to provide for the NPO register. For example, currently under the NPO Law organisations must provide their name, address, charity governor's names and financial information relating to income and expenditure. Baseline financial information is also required if an organisation wishes to apply for membership of AJC or receive a grant.
- 8.41 Under the draft Law, organisations that wish to register will also have to provide an annual return and written constitutions. At the moment, any organisation that is currently a member of AJC has to complete an annual return. In regards to the latter, this requirement already exists for any organisation that wishes to receive tax reliefs. In order to assist small organisations with registration, we have been advised that the Charity Commissioner will provide support and guidance on how to register and how to complete annual returns and written constitutions.⁷¹
- 8.42 In contrast to the concerns expressed above, both the Chairman of the JVSC and the Chairman of AJC are of the opinion that the draft Law, as it currently stands, will not negatively impact small organisations who wish to apply for registration. With regard to this matter, the following comments were provided:

Chairman of JVCS

"The registration process is really simple. You are not being asked to do anything more than you would be doing now to register with the Financial Services Commission as a not-

⁷⁰ Draft Charities Law 2nd stage consultation feedback report, May 2014

⁷¹ Draft Charities Law 2nd stage consultation feedback report, May 2014

*for-profit organisation, with the Tax Office if you want to get your tax benefit or with AJC if you want to join the AJC.*⁷²

Chairman of AJC

*“What is being proposed at the moment is probably less than they have to do already, so I cannot see it having a huge impact.”*⁷³

KEY FINDING

8.43 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.

8.44 Whilst the Department does not agree that the draft Law will place a heavy bureaucratic burden on small organisations, the legitimacy of the concerns expressed has been recognised. As a result, Articles 11 and 13 of the draft Law were amended to give the Chief Minister power to make an Order lessening the information required from small organisations, on registration or in their Annual Return, in the event that this flexibility is deemed necessary at some point in the future.⁷⁴ However, with regards to the Order-making power, the Chief Minister advised the Panel:

*“I do not think it will be necessary but because of the absolute importance of the benefit to local charities that we have right at the forefront of our mind, we have even put in that backstop position.”*⁷⁵

KEY FINDING

8.45 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.

8.46 During the consultation it had been suggested that organisations that fall under a certain threshold should be exempt from registration – similar to the English Charities Law and the Non-Profit Organisations Law. However, the Department rejected this option for a number of reasons. Firstly, a dual system for tax reliefs would need to be established to allow unregistered charities to apply separately to the Comptroller of Taxes. The

⁷² Chairman of JVCS, Public Hearing, Transcript, 30th May 2014, p13

⁷³ Chairman of the AJC, Public Hearing, Transcript, 3rd June 2014, p15

⁷⁴ Draft Charities Law 2nd stage consultation feedback report, May 2014

⁷⁵ Chief Minister, Public Hearing, Transcript, 9th June 2014, p6

Department felt that such a system would cause confusion amongst the sector and would fail to provide the public with the assurance that *“an appropriately qualified Charity Commissioner, as opposed to the Comptroller of Taxes, has verified charitable status.”*⁷⁶

8.47 Secondly, if smaller organisations were exempt from registration they would not be allowed to call themselves a charity unless, however, the draft Law was amended to provide for this exemption. According to the Department, such an exemption would have an adverse effect on the Law’s aim to encourage public trust and confidence, as the public would be unable to determine whether an organisation that called itself a charity was, in fact, a charity.

8.48 Thirdly, the Charities Law’s key objective - to develop a knowledge base about the size, scale and scope of charities in Jersey - would be impossible to achieve if small organisations were exempt from registration. Without the knowledge of how these charities operate it would be difficult to determine how they can best be supported.

8.49 During a public hearing, the Chairman of JVCS supported the decision made by the Department to reject the option to introduce an exemption threshold for registration. Mr Hopley advised the Panel:

*“I think the critical thing you must not do in this is fall into the English dilemma of allowing certain organisations below a level not to register because if you do that you open up this whole issue of vulnerability and bad eggs. I mean whether somebody is extorting £1,000 a year or whether they are extorting £500,000 is relative and the danger of non-regulation is organisations can then be set up to claim to be charities who are being totally spurious and that is the big concern the sector has already had. A couple of bad eggs will taint the whole sector with concern.”*⁷⁷

8.50 To help minimise the risk of deterring organisations, particularly small ones, from registering, the Panel strongly believes that publicity is key to improving the public’s understanding of the draft Law and the changes it will entail. The Chairman of AJC also felt that publicity in respect the draft Legislation was necessary in order to raise awareness, before the Law takes effect.⁷⁸ When this matter was raised at a public hearing with the Chief Minister, we were advised:

“...if the Law should be adopted by the States then we will start work straight away on an implementation timetable and a communications package associated with that. As we have already said, we will work with the AJC and JVCS. We will also work with Jersey financial services organisation to extend our reach out for the not for profit register. We

⁷⁶ Draft Charities Law 2nd stage consultation feedback report, May 2014

⁷⁷ Chairman of JVCS, Public Hearing, Transcript, 30th May 2014, p16

⁷⁸ Chairman of the AJC, Public Hearing, Transcript, 3rd June 2014, p14

*will also look at working with the parishes as well to see what we can do to work with them to access the community groups. If we need to sit there with the Yellow Pages and pull off individual churches one by one we will do that. That is fine.*⁷⁹

KEY FINDING

8.51 To help avoid deterring small organisations from registering, it is imperative that the public understand the draft Law and what is being proposed.

RECOMMENDATION

8.52 The Chief Minister’s Department must ensure that the draft Law is widely publicised before it is implemented to help encourage registration.

8.53 As we have previously mentioned, the draft Law does not require non-profit or charitable organisations to become registered charities. Organisations can choose not to register if it is felt that the benefits gained by registration are not sufficient to warrant registration (returns on tax reliefs may be minimal). If an organisation does not register it will not receive tax relief and it will not be able to call itself a charity. Despite this, it is anticipated that a number of smaller, community based charitable organisations will choose not to register. As a result, the Department’s overarching aim to “support local charities to flourish” will only be applicable to those organisations that choose to operate within the Charities Law. The Chairman of the Jersey Voluntary and Community Sector advised the Panel that he would continue to represent and support those organisations that chose not to register within his sector.⁸⁰ However, consideration must be given to whether these small charitable organisations will receive enough support (financial and otherwise), to allow them to continue providing valuable services in our community, once the Law is in force.

Regulatory standards

8.54 Whilst there appears to be general support from the voluntary and community sector about the proposals contained within the primary legislation, we have been advised that there is real concern about the regulatory standards, which will be introduced during Phase 2. For example, the Chairman of the Jersey Voluntary and Community Sector told the Panel:

⁷⁹ Assistant Director of Social Policy, Public Hearing, Transcript, 9th June 2014, p18

⁸⁰ Chairman of JVCS, Public Hearing, Transcript, 30th May 2014

“Our understanding of the whole process and our involvement has given us the belief that the sector has got some concerns. Most of these concerns are not about the first stage. It will be about the detail, when you get into the regulation.”⁸¹

8.55 As we discussed earlier, whilst a number of individuals still hold concerns that the registration process would be overly onerous for small organisations, the majority are satisfied that the proposals will not have a significant impact. However, there is still apprehension that the regulatory standards will place too many requirements on smaller, community-based organisations. Both the JVCS and AJC strongly believe that the standards must be *“proportionate, reasonable and sensible”*.

8.56 Until the regulatory standards are finalised and published, organisations will be unaware of the extra requirements that may be placed upon them through regulations. As it is often said of legislation - the ‘devil is in the detail’. However, to ensure a fair and reasonable process, the Chief Minister’s Department has formally committed to undertake a similar consultation process to Phase 1. In this regard, the Chairman of JVCS advised:

“[We] have already extracted, in writing, promises from the Chief Minister – and whoever the Ministers are subsequent to the general election will not change that situation; whoever sits in the chairs then will have to take cognisance of what their predecessors have agreed to – we have been assured that there will be detailed consultation as the regulations evolve. If there are elements within the regulation that cause concern, because of the timescales, we will certainly have time to open that up to debate within the sector and take cognisance of the general opinions of everybody.”⁸²

8.57 Phase 2 will only be scoped once the Register has been established and more detailed information is known about the size and scope of the charitable sector in Jersey. Despite this, the Assistant Director of Social Policy revealed that, prior to the Regulatory Standards being published and prior to registration commencing, the Department would continue to have dialogue with representatives about Phase 2 and the potential proposals.⁸³ It is hoped that this approach will provide some comfort and surety about what is to come.

KEY FINDING

8.58 Until phase two of the Law is complete, organisations will be unaware of the extra requirements that may be placed upon them through regulatory standards.

⁸¹ Chairman of JVCS, Public Hearing, Transcript, 30th May 2014, p9

⁸² Chairman of JVCS, Public Hearing, Transcript, 30th May 2014, p9

⁸³ Assistant Director of Social Policy, Public Hearing, Transcript, 9th June 2014

KEY FINDING

8.59 The Regulations introduced in phase two must not be too onerous for small, community-based organisations as to deter them from registering.

RECOMMENDATION

8.60 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.

Provision of Annual Accounts

8.61 The draft Law does not place a requirement on charities to produce a set of annual accounts upon application for registration. Rather, the draft Law only requires a charity to provide baseline financial information on application to the register and on the annual return they are required to submit to the Charity Commissioner. The base-line information – income, source of income, expenditure and assets – is required by the Commissioner to determine charitable status.

8.62 The majority of respondents from the second consultation supported this position for a number of reasons. Firstly, it was felt that it would provide an opportunity to gather baseline information, via registration, about the scale scope and size of charities in Jersey. This would enable informed decisions to be made in Phase 2 with regard to accounting standards and requirements, plus exemptions to such standards. Secondly, it would allow 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.⁸⁴ At a Public Hearing, the Chairman of AJC, expressed his support for this decision:

“I am an accountant by trade and I should be in favour of accounts, but I do genuinely think that the first stage of this has to be to try and get as many organisations registered for us to understand the size and the stratification of the sector. A lot of people have said they want exemptions, but where do you place that exemption unless you know what the stratification is among all those charitable organisations? So I would be in favour of some accounting requirement but I do not think it is something we can define at stage 1. I think it has to come out once we have got the register.”⁸⁵

⁸⁴ Draft Charities Law 2nd stage consultation feedback report, May 2014

⁸⁵ Chairman of the AJC, Public Hearing, Transcript, 3rd June 2014, p14

8.63 In contrast, a number of respondents felt that a requirement for annual accounts should be introduced, for charities over a certain income, in Phase 1 of the Law. For example, one respondent commented:

“It is conventional for charities to have financial accounts, even if they are not audited. Therefore we think that Article 13(7) ought to be amended by adding this requirement, with a reasonable exemption for small size organisations.”⁸⁶

8.64 Having reflected on the feedback received from the consultation, the Department decided not to amend the Draft Law. In this regard the Department advised that *“accounts will not be required in Phase 1 of the Law, but could potentially be introduced in Phase 2.”*

8.65 Research undertaken by the UK Charity Commission highlights the important role that regulation plays in maintaining public trusts and confidence including:

- The desire for charities to be held to account for how they spend their money (the most important driver of trust and confidence is knowing that a reasonable proportion of donations get to the end cause).
- Information about charities to be in the public domain where it can be interrogated.

8.66 For these reasons it is imperative that, similar to Scotland and the UK, the requirement for charities to produce annual accounts is introduced, at some stage, and that these accounts are available for public scrutiny. The Chief Minister confirmed his commitment to introduce the provision of annual accounts during Phase 2 of the Law:

“From a political point of view, we are absolutely committed to that second phase introduction because of the filing of accounts and members of the public giving to charities need to be confident. They get greatest confidence, I think, not only through ensuring that there is appropriate governance but also that they understand the numbers and what the charities are doing with those numbers.”⁸⁷

KEY FINDING

8.67 The draft Law does not place a requirement on charities to produce a set of annual accounts upon application for registration.

RECOMMENDATION

8.68 In order to maintain public trust and confidence, the Chief Minister must ensure that accounting requirements for all charities are introduced during phase two and that the accounts are made available for public scrutiny.

⁸⁶ Written Submission to CMD, 1st May 2014

⁸⁷ Chief Minister, Public Hearing, Transcript, June 9th 2014, p11

Registration Process for Churches

8.69 Similar to the concerns expressed about smaller organisations, some respondents from the consultation raised queries about the registration process for churches. For example queries had been raised about how churches in Jersey would navigate the Law given their complex and various structures. Jean Le Maistre raised the following concerns with regard to this matter:

“I also wish to raise the question about the relationship of our Parish Churches which are legally linked to the Civic Parish. The Churches will clearly need to register individually (although I understand that there was a different view expressed at the time of the initial consultation) as the majority, if not all, benefit from the ‘tax back’ arrangements with the Comptroller of Income Tax. Which body will need to register and will the Civic Parish need to be included in the Constitution of that body?”⁸⁸

8.70 Regardless of its structure or denomination, a church will be able to choose, like all other charity organisations, whether it wishes to register and therefore become a registered charity. This decision will be based on whether the Church believes that the benefits derived from registration are significant enough to warrant registration. Aside from being able to call yourself a charity, one of the key benefits of registering is that you would be eligible for tax reliefs. However, under the Income Tax Law churches, as well as parishes, are already entitled to income tax exemption. This provision within the Income Tax Law will remain if the draft Charities Law is implemented. For this reason, it is possible that a number of churches will choose not to become registered charities.⁸⁹

KEY FINDING

8.71 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.

8.72 For those churches that choose to register however, the Department has assured those concerned that 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. In this regard the Panel was advised:

We will be working with them [churches] and we are going to be working with the Law Officers, because we recognise there are some very unique structures there, to look at

⁸⁸ Jean Le Maistre, Written Submission to CMD, 28th April 2014

⁸⁹ Chief Minister, Public Hearing, Transcript, June 9th 2014

*how they can navigate and negotiate the registration process. The way it works in the UK jurisdictions is that, for want of a better description, the mother ship is registered. For example, the Church of England is a registered charity and the Methodist Church is a registered charity. In addition to that, each of the individual churches also registers within its own right, using a standard constitution that has been agreed between the Charity Commissioner and the Church of England or the Methodist church or the larger governance structure.*⁹⁰

8.73 During a Public Hearing, the Chairman of the JVCS expressed confidence that the Department would sufficiently address any issues that arose during the registration process with particular regard to church organisations. He commented:

*“There will be some anomalies here but, to my personal satisfaction by observation when these questions have come up, the officers of the Chief Minister’s Department involved in this have recognised some of these difficulties and I am sure they will do whatever they can to accommodate and make the necessary adjustment where it is possible and where it is valid to accommodate this sort of thing in the fullness of time.”*⁹¹

8.74 During the consultation process, the Department has also recognised that there are a number of religious structures that already have governance structures in place. In the UK for example, the Church of England has well defined governance structure which feeds down to the parish churches and the operation of these churches. As a result, amendments have been made to some of the powers that the Charity Commissioner has over the Governors of those organisations.

Use of Expressions “Charity” and “Jersey Charity”

8.75 *Part 6* of the draft Law restricts the use of expressions “charity”, “charitable” and “Jersey Charity”, in order to help protect the public being misled by entities claiming they are charities, or claiming they are Jersey Charities when they are not. Articles 21 and 23 of the draft Law 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 in another jurisdiction (see below – excepted foreign charity);

⁹⁰ Assistant Director of Social Policy, Public Hearing, Transcript, June 9th 2014, p9

⁹¹ Chairman of the JVSC, Public Hearing, Transcript, 30th May 2014, p11

- any entity that is not a registered charity and a Jersey entity and managed or controlled in Jersey from calling itself a “Jersey charity”.

In addition to prohibiting entities from misrepresenting themselves, the draft Law also disallows the entity from permitting someone else to misrepresent them.

- 8.76 It is an offence, carrying a term of imprisonment of up to 2 years, an unlimited fine, or both, to breach any prohibition specified above.
- 8.77 Article 22 of the draft Law defines an excepted foreign charity. An excepted foreign charity can refer to itself as a “charity” in Jersey, despite not being registered in Jersey. However, the foreign charity must be established and entitled to call itself a “charity” under the UK Law (or any other country that the Minister chooses to recognise by Order), must be managed wholly or mainly from the country whose Law entitles it to call itself a charity and cannot be a registered charity.⁹²

Consultation responses

- 8.78 In a written submission to the Chief Minister’s Department, Simon Howard from Howard Consulting suggested that the exemptions for excepted foreign charities should apply to OECD (Organisation for Economic Co-operation and Development) Countries, where there is a charity registration scheme in that jurisdiction, as opposed to the UK and others by Order. In response to this suggestion the Department advised that consideration would be given to this as part of the Order, to be developed under Article 23.
- 8.79 The draft Law that went out for public consultation included a condition in Article 23 that meant that an excepted foreign charity could not carry out any activity in Jersey, apart from fundraising activity, if it wanted to call itself a “charity” in Jersey. However, during the consultation it was questioned whether this condition was 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. The Department recognised the concerns raised and Article 23 of the draft Law was subsequently amended. It is now proposed that a charity, which is not registered in Jersey, can call itself a charity in Jersey even if it does carry on activity in Jersey, that is not fundraising activity, providing it is registered and managed in the UK or a jurisdiction recognised by the Minister (excepted foreign charities). It cannot however, access charitable tax reliefs in Jersey.
- 8.80 It is proposed that the Chief Minister has the power by Order to add other jurisdictions to the list of “excepted foreign charities”. During consultation it has been suggested that this

⁹² Draft Charities (Jersey) Law 201-

power conferred by Article 23(2)(a)(ii) should be a power conferred on the States by Regulation rather than upon the Minister by Order. In a written submission, the respondent explained:

“there is the likelihood that particular ministers will come under pressure to approve particular jurisdictions upon the basis of a specific application for financial business emanating from the jurisdiction. The grounds for taking the decision ought to be the relevant statutory regime in the foreign country or territory but there is a greater risk, if the power is conferred on the Minister by Order, that a pragmatic decision will be taken having regard to the particular application which is envisaged.”⁹³

8.81 Article 23(2)(a)(ii) was not amended following consultation as the Department felt that an Order, opposed to a Regulation making power, was administratively a more proportionate approach.

KEY FINDING

8.82 The draft Law provides the Chief Minister with the power by Order, rather than the States by power of Regulation, to add to the list of “excepted foreign charities”.

⁹³ Written Submission to CMD, 28th April 2014

9. BASIC DUTIES AND RESPONSIBILITIES FOR CHARITY GOVERNORS

- 9.1 Part 5 of the draft Law deals with governors of registered charities. What is meant by the term “governor” is set out in Article 2(7) of the draft Law. For example, “governor” in relation to an entity means:
- a) in the case of a trust or fideicommiss, a trustee or fideicommissaire of the trust or fideicommiss;
 - 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.
- 9.2 Originally, when the draft Law went out for consultation earlier this year, the term “manager” had been used to describe what is now known as “governor”. However, representatives from both sectors were concerned that the term ‘manager’ could generate unnecessary confusion. It was felt that there needed to be a clear delineation between those that control the charity and those responsible for implementing their decisions.⁹⁴ For instance, the term “manager”, for many people, carries an implied meaning of someone who is involved in the day to day management and administration of a charity rather than someone who has overall control of an organisation. It has been recognised, however, that the term ‘governor’ is by no means perfect.⁹⁵

KEY FINDING

9.3 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’.

General duties of governors of registered charities

- 9.4 Article 18 of the draft Law provides for the 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.

⁹⁴ ICSA, Written Submission to CMD, 1st May 2014

⁹⁵ Chairman of AJC, Public Hearing, Transcript, 3rd June 2104

- 9.5 The draft Law, which went out for public consultation, set out duties for all governors of registered charities. Article 18(2) stated that a governor must, in the execution of their duties and in the exercise of their powers and discretions, act;
- i) with due diligence
 - ii) as would a prudent person
 - iii) to the best of the governor's ability and skill.
- 9.6 A number of concerns, however, were raised about additional duties being placed on charity governors over and above trusts, foundations and companies Laws and the potential uncertainty this could create as to which Law "trumps" other Laws. For example, Simon Howard raised this concern in his response to the Chief Minister's Department:
- "Article 18(2) of the draft Law is unnecessary as each of the existing constitutional Laws in force in the island deals with the duties applicable to directors/trustees/council members"*⁹⁶
- 9.7 As a result of the concerns raised, Article 18 has been amended to ensure that, where the charity takes the form of a trust, company, foundation or fidicommis, no additional duties are placed on the charity governor, other than those that directly relate to compliance with this Law. It has been proposed that additional duties only apply to governors of unincorporated associations who currently have no legal structure setting out their duties.⁹⁷

Remuneration of Governors

- 9.8 Within the supporting papers that were provided to the public, alongside the draft legislation, earlier this year, the Department advised that *"it is a key principle of the draft Law that a charity manager cannot be paid to act as a charity manager."*⁹⁸ Accordingly, Article 19 prohibited remuneration of governors of registered charities. The Article did not however preclude charity governors from being paid by the charity to undertake other tasks. It was proposed that the Commissioner would produce guidance which set out circumstances in which a charity governor could be paid to undertake other tasks or provide services to the charity.
- 9.9 According to the Department, issues relating to the remuneration of charity governors were raised on several occasions during consultation meetings and in written submissions. We were also advised that there was clear divergence of opinion as to whether remuneration of governors should or should not be allowed by Law. These views included:

⁹⁶ Howard Consulting, Written Submission to CMD, 30th April 2014

⁹⁷ Draft Charities Law 2nd stage consultation feedback report, May 2014

⁹⁸ Draft Charities Law 2nd stage consultation feedback report, May 2014

- the voluntary principle for charity governors is a key defining characteristic of charities and should be protected by 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 governors 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 to do so, should be trusted to make that decision.

9.10 In addition to these points, the Department advised that representatives of the Financial Services Industry were very clear that enforcing such restrictions would place Jersey at a disadvantage with other offshore jurisdictions and would potentially limit the growth of the philanthropic wealth management market in Jersey.⁹⁹

9.11 With regard to the remuneration of governors, Simon Howard responded:

“A more thorough and wide-ranging debate needs to take place, in my view, on the circumstances where as a matter of public policy it is acceptable and even beneficial in supporting charitable activity for persons to be able to receive remuneration. Charity and philanthropy globally is moving on from its strict honorary roots and many charities, even smaller ones, often engage in commercial activities or engage experienced and expert personnel to enable a charity to develop and succeed in its mission.”¹⁰⁰

9.12 As a result of the feedback received, the draft Law has been amended and the restrictions placed on the remuneration of governors have been removed. However, the draft Legislation now proposes administrative requirements on those charities that choose to pay their governors. For example, charities wishing to be on either the restricted section or the general section of the register would now have to declare to the Commissioner, upon application, that they pay their governors as well as the amount paid. With this information the Commissioner would determine whether the “private benefit” to the governor/s outweighs the “public benefit” delivered by the charity. If this is the case, the Commissioner can refuse a charity registration.

⁹⁹ P.108/2014

¹⁰⁰ Howard Consulting, Written Submission to CMD, 30th April 2014

- 9.13 In addition, it has been proposed that such information is made publicly available via the register to ensure public transparency. However, this provision would only apply to charities on the general section of the register, not the restricted section.
- 9.14 During the second consultation, queries were raised as to whether the Commissioner could be responsible for approving payment of governors in the first instance (determining whether “public benefit” outweighs “private benefit”).¹⁰¹ However, the Department advised that, as experience in England suggests, the Commissioner would most likely be inundated with requests, thus creating an administrative burden for both the charity and Commissioner.¹⁰²

KEY FINDING

9.15 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.

KEY FINDING

9.16 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.

¹⁰¹ Zillah Howard, Written Submission to CMD, 20th March 2014

¹⁰² Draft Charities Law 2nd stage consultation feedback report, May 2014

10. CHARITY TRIBUNAL

10.1 Part 8 of the draft Law provides for appeals to a Charity Tribunal. A Tribunal will be established to hear appeals against the decisions of the Commissioner. Members of the Tribunal will be appointed by the Chief Minister, having first sought the views of the Jersey Appointments Commission. Similar to the appointment of the Charity Commissioner, the Chief Minister must give the States 2 weeks' notice of their intention to appoint a Tribunal member. The Tribunal will comprise of between 4 and 8 members and, we have been advised, that those members will have the appropriate experience to "*safeguard the interests of the public and the charitable sector in Jersey.*"¹⁰³ The draft Law that went out for consultation in March this year did not specify a limit on the number of members that the tribunal could consist of. Rather, the draft Law only stated that the Minister must appoint at least 4 persons. Due to the feedback received at consultation meetings however, the draft Legislation was amended and specific boundaries were put in place.

Who can appeal to the Tribunal?

10.2 An applicant, a registered charity and a third party all have the right to appeal to the tribunal. However, each of these persons can only appeal against specific decisions made by the Commissioner. For instance, an appeal can only 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, issued a step notice, required the charity to change its name, refused permission for the charity to change its name, and refused to approve a proposed amendment to the charity's purposes or charity's registered public benefit statement.
- a third party may appeal against a decision of a Commissioner to register an applicant if they believe, at the time of application and the time of appeal, that the applicant did not meet the charity test or if they have an interest in the registered name.

10.3 Under the draft Law H.M. Attorney General may also appeal against any decision of the Commissioner. As it currently stands, H.M. Attorney General is responsible for representing the public under Jersey's Common Law. As a result, the draft Law is simply proposing to maintain the status quo with this provision.

¹⁰³ Draft Charities Law Consultation, Supporting papers, March 2014

Grounds of appeal

- 10.4 An appeal can be made to the Tribunal on the grounds that the Commissioner was wrong or unreasonable on its merits, the facts or the Law. The appellant would be able to submit new evidence to the Tribunal, which was not previously submitted to the Commissioner, in support of their appeal. 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.¹⁰⁴

Appeals to Court

- 10.5 If an appellant is not satisfied with the Tribunal's decision and believes the decision is unreasonable they can appeal to the Royal Court. On determining the appeal, the Court 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. The Court can also determine a date at which its decisions comes into effect, which can be a date which is before, on, or after the date of the original decision.
- 10.6 The Minister may by Order prescribe time limits within which appeals to the Tribunal or Court are to be brought. Furthermore the Minister may 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, if the Minister feels it is expedient for enabling appeals to be brought within any time limits.
- 10.7 It is important to recognise that parallels can be drawn from what is being proposed in the draft Law with the current situation. Presently, the Comptroller of Taxes is responsible for determining who receives charitable tax reliefs. The Comptroller's decision can be challenged by an organisation through the Tax Department's Commissioners of Appeal and if the appellant is not happy with the Commissioners of Appeal's decision they can appeal to the Royal Court.

¹⁰⁴ Draft Charities (Jersey) Law 201-

Commissioner's complaints process

10.8 During a public hearing with the Chief Minister, we were advised that there will also be a complaints process, established by the Commissioner, which will allow third parties to complain to the Commissioner in the first instance, before appealing to the Tribunal. The type of complaints made could be about a decision of the Commissioner or about how the Commissioner works.¹⁰⁵

Consultation responses

10.9 As we discussed in an earlier chapter, questions were raised during the consultation process as to how the Commissioner would be held to account. In response to such queries and in order to improve accountability and transparency of the Commissioner, the draft Law was amended to include a requirement of the Commissioner to prepare and publish a report on their activities in each calendar year. The report would be presented to the Chief Minister and then laid before the States. During consultation, similar concerns were raised about accountability of the Tribunal. As a result, the draft Law was also amended to include a requirement for the Tribunal to produce an annual report to be laid before the States.¹⁰⁶

KEY FINDING

10.10 To address issues concerning accountability, the Tribunal are now required to produce an annual report to be laid before the States.

10.11 In its written submission to the Chief Minister's Department, the Institute of Chartered Secretaries and Administrators raised a concern about the proposed appeals process and the limited provision for Third Party appeals to the Tribunal. For example, the Institute commented:

"There may be some benefit to adding to the criteria included in the appeals to the charity tribunal to cover instances where the Commissioner has not decided to take action. For example, a complaint regarding a charity may not be investigated by the Commissioner. The complainant may wish to challenge that decision because she feels that the charity's actions are questionable and significantly impact on the reputation of the sector."¹⁰⁷

¹⁰⁵ Chief Minister, Public Hearing, Transcript, 9th June 2014

¹⁰⁶ Draft Charities Law Consultation, Supporting papers, March 2014

¹⁰⁷ ICSA, Written Submission to CMD, 1st May 2014

10.12 The Department advised however that, whilst consideration was given to this issue, it was decided that the draft Law would not be amended to address this concern. The following reasons were provided for this decision:

“There is a real concern, however, about allowing complaints on these grounds, as it could result in vexations 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.”¹⁰⁸

¹⁰⁸ Draft Charities Law 2nd stage consultation feedback report, May 2014

11. ENTITLEMENT TO TAX EXEMPTIONS

Proposed Changes

11.1 The draft Charities Law proposes a number of changes to the following tax Laws:

- Income Tax (Jersey) Law 1961
- Goods and Services Tax (Jersey) Law 2007
- Goods and Services Tax (Jersey) Regulations 2007

11.2 The main change however is to Article 115 of the Income Tax Law, on which charitable reliefs from goods and services tax, stamp duty and land transaction tax mostly depend in turn. As we have previously mentioned in this report, only registered charities will be entitled to income tax exemptions and reliefs from other taxes (i.e. an organisation must apply to be a registered charity regardless of whether or not it was previously eligible for charitable tax reliefs).

11.3 Exemption from income tax (but no other tax reliefs) will also be available to unregistered charitable trusts and foundations providing they; only have charitable purposes (as defined under the draft Law); do not solicit donations from the general public; notify the Comptroller of Taxes that they intend to make use of the exemption before any income is received; and only make donations to registered charities or excepted foreign charities.

11.4 Furthermore, charitable trusts and foundations that were previously eligible for exemption from income tax under Article 115(a) of the Income Tax Law 1961 will retain the exemption providing; they were charities, as defined under Article 115(a), before the draft comes into force; they do not solicit donations from the public; and their income is applied to one of the following purposes:

- the advancement of education
- the relief of poverty
- the furtherance of religion
- a purpose beneficial to the whole community
- the service of any church or chapel or any building used solely for the purpose of divine worship¹⁰⁹

11.5 It is envisaged that the changes proposed to tax Laws within Article 41 of the draft charities Law may result in some organisations, which were previously entitled to charitable tax reliefs, not being eligible for exemptions. Furthermore, the proposed changes would mean that some entities may be entitled to some, but not all, of the

¹⁰⁹ Draft Charities (Jersey) Law 201-

charitable tax reliefs. According to the Department, “entitlement will largely be dependent on whether entities do, or do not, become registered charities.”¹¹⁰

Consultation responses

11.6 Many of the queries raised in regards to Article 41 of the draft Law were broached by representatives of the financial services sector. There was a concern, for example, that some of the provisions proposed within this Article could carry implications for the philanthropic wealth management market in Jersey.

11.7 The first draft Law that went out for consultation included a provision that meant that unregistered charitable trusts and foundations would only be eligible for income tax relief if, among other things, they applied their donations to registered charities only. In her response to the Department, Zillah Howard expressed a concern with regard to this proposal:

“Paragraph (ac) also requires that the income is applied to the making of donations to charities registered under the new Law (and does not allow the income simply to be used for charitable purposes in Jersey or to be distributed to charitable purposes outside Jersey). On my understanding, this requirement is of particular concern for the financial services industry: an international client wishing to establish a Jersey Law charitable trust or foundation is not likely to wish for the funds in that structure to be distributed to Jersey registered charities. In my experience, the typical objective is for funds to be distributed outside Jersey for purposes which are considered to be charitable under Jersey Law.”¹¹¹

11.8 Consideration was given to amending the Law to allow monies to be used for any charitable purpose, as opposed to just for donations, but the Department felt that this could potentially lead to organisations availing themselves of the exemption, where it is not intended they should. However, the draft Law has been amended to allow charitable trusts and foundations, which would receive tax exemptions under Article 115(ac) of the Income Tax Law, to donate their incomes to excepted foreign charities (see chapter 8) as well as Jersey registered charities.¹¹²

KEY FINDING

11.9 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

¹¹⁰ P.108/2014, p54

¹¹¹ Zillah Howard, Written Submission to CMD, 20th March 2014

¹¹² Draft Charities Law 2nd stage consultation feedback report, May 2014

apply their donations to excepted foreign charities as well as registered charities in Jersey.

11.10 It has also been questioned whether the proposed changes to Articles 115(ac) and (ad) of the Income Tax Law should be extended to include corporations as well as trusts and foundations.¹¹³ However, in the view of the Department, it was not considered appropriate to include corporations within the scope of these provisions. The Department provided the following explanation for this decision:

“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.”¹¹⁴

11.11 As we have previously stated, 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 under the draft Law. Currently, under the Income Tax Law 1961, some charitable trusts and foundations are exempt from all tax reliefs. However, this is very much dependent on their constitution and how they were first established.

11.12 In a written submission to the Department, Ogier has questioned why, under the draft Law, non-registered charities would only be exempt from income tax and not from all charitable tax reliefs:

“I note on page 29 that charitable trusts and foundations that are not registered charities will, in certain circumstances, continue to be able to enjoy exemption from income tax, but not relief from GST, stamp duty and Land Transaction Tax. Furthermore, they would not be able to benefit from the lump sum donation and deed of covenant schemes. Once more I query why such trusts and foundations (which, after all, will continue to meet the strict test for being a valid charity under the existing Law), should not be able to enjoy the full range of benefits?”¹¹⁵

11.13 However, it seems only right that exemption from all tax relief is only available to bona fide charities that provide a reasonable degree of public benefit. Charitable trusts and foundations like all other charitable organisations can choose to register and, as a result, benefit from full charitable tax reliefs. If, for whatever reason, a charitable trust and foundation does not register it should forego these advantages.

¹¹³ Richard Syvret, Written Submission to CMD, 25th April 2014

¹¹⁴ P.108/2014, p47

¹¹⁵ Ogier, Written Submission to CMD, 28th April 2014

KEY FINDING

11.14 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.

Transitional arrangements

Registration Period and Post-Registration Period – Subject to consultation, it is envisaged that the *Registration Period* will be 3 months and the *Post-Registration Period* will be 21 months.

Entities currently in receipt of charitable tax exemptions

- 11.15 In order for an entity to receive Charitable tax exemption it has to apply to be put on the charity register, regardless of whether it is currently in receipt of charitable tax reliefs or not. Entities have to apply with the *Registration Period*. If they do not apply within this period, entitlement to charitable tax reliefs will cease and the entity can no longer call itself a charity.
- 11.16 During the *Post-Registration Period* the Charity Commissioner will determine the application. Whilst the Commissioner is reviewing an entities application, it can continue to receive charitable tax reliefs, which it is already entitled to, and present itself as a charity. If the Commissioner puts an entity on the register it will continue to receive charitable tax reliefs. However, if the Commissioner determines that an entity does not sufficiently fulfil the criteria to be put 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*.
- 11.17 In this instance, an entity may appeal to the Charity Tribunal to review the decision of the Commissioner or re-apply to the Commissioner, if of course it is willing to make the changes necessary to pass the charity test.
- 11.18 If an entity wins its appeal to the Tribunal 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 the *Post-Registration Period*, the entitlement will be re-instated from a date specified by the Tribunal. If an entity re-applies to the Commissioner and the new application meets all the necessary criteria to be put on the register before the *Post-Registration Period*, entitlement to tax exemption will continue. If, however, the new

application is determined outside the *Post-Registration Period*, the entity will be entitled to tax relief from the date the Commissioner enters the entity on the register.¹¹⁶

New entities claiming charitable tax relief

11.19 If the Commissioner determines that a newly formed entity is a registered charity, the entity will receive charitable tax reliefs from the date in which the Commissioner places the entity on the register, as opposed to the date on which the entity submits its application.

¹¹⁶ P.108/2014

12. CONCLUSION

- 12.1 The introduction of a charities Law in Jersey has received much support from the general public and States Members alike. As it currently stands there is no regulatory body specifically established to oversee the creation and activities of charities which, by the nature of the work they undertake and the position they hold in the community, benefit from public trust and tax exemptions. To help ensure that the draft Charities Law delivers its overarching aims, the Chief Minister's Department undertook a thorough consultation process with representatives from both the finance services sector and voluntary and community sector.
- 12.2 During the consultation process a number of concerns and queries were raised about particular aspects of the draft Law and its proposals. There were concerns, for example, that the draft Law would impose an overly bureaucratic burden on small community-based charities. Meanwhile, concerns were expressed by the finance services sector that certain proposals contained within the draft Law could potentially limit the growth of the philanthropic wealth management market in Jersey. Following the second consultation, the Chief Minister's Department endeavoured to address all of the concerns and questions, either by amending the draft Law prior to lodging or by highlighting that matters will be addressed during the second phase of work.
- 12.3 The Panel found that 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. The majority of concerns raised throughout the consultation process were adequately addressed by the Department and we feel that there is no reason why the primary Legislation should not be adopted by the States. However, as with much Legislation the 'devil is in the detail' and until phase two is complete and the Regulations have been developed there is no way of knowing whether the Law will achieve its aims. The Chief Minister, however, 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 registration.

KEY FINDING

- 12.4 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.**

13. APPENDIX 1 - PANEL MEMBERSHIP, TERMS OF REFERENCE AND EVIDENCE CONSIDERED

13.1 The Corporate Services Scrutiny Panel comprised the following members:

Senator S C Ferguson, Chairman
Deputy J G Reed, Vice-Chairman
Connétable D W Mezbourian
Deputy R J Rondel

13.2 The following Terms of Reference were established for the review:

1. To consider the proposals contained within the Draft Charities (Jersey) Law 201- and the potential implications thereof.
2. To consider whether the draft Law will achieve its overarching aim:
“To support Jersey charities to flourish, by building public trust and confidence, in order that those charities are better placed to deliver their own aims and objectives and meet community need”
3. To report to the States Assembly on the work undertaken.

13.3 The following documents were considered by the Panel during its review:

- a) Draft Charities (Jersey) Law 201 – (lodged version)
- b) Draft Charities (Jersey) Law 201 – (consultation version)
- c) Draft Charities Law 2nd stage consultation feedback report
- d) Charities and Trustee Investment (Scotland) Act 2005
- e) The Charities Act 2011
- f) Written Responses submitted to the Chief Minister's Department for second consultation

13.4 The Panel held a number of Public Hearings:

1. Chairman of the Voluntary and Community Sector, Mr J. Hopley, 30th May 2014
2. Chairman of the Association of Jersey Charities, Mr. P. Callow, 3rd June 2014
3. Chief Minister, Senator I.J. Gorst, 9th June 2014

Transcripts of the hearings were made and are available on the Scrutiny website (www.scrutiny.gov.je)