



Corporate Services Scrutiny Panel

Draft Charities Law

MONDAY, 9th JUNE 2014

Panel:

Senator S.C. Ferguson (Chairman)
Deputy R.J. Rondel of St. Helier
Deputy J.G. Reed of St. Ouen
Connétable D.W. Mezbourian of St. Lawrence

Witnesses:

The Chief Minister
Assistant Chief Minister
Assistant Director Policy, Chief Minister's Department
Officer, Financial Services, Chief Minister's Department

[14:48]

Senator S.C. Ferguson (Chairman):

Welcome to the Corporate Services Scrutiny Panel reviewing the Draft Charities (Jersey) Law. For those of you who have not been before, we have a health warning about privileges and so forth. Have you both managed to read it?

Senator S.C. Ferguson:

Are you happy with how the law has progressed to date?

The Chief Minister:

Yes.

The Deputy of St. Ouen:

Why?

The Chief Minister:

Why am I happy?

The Deputy of St. Ouen:

Yes.

The Chief Minister:

Because after several years we now have a law lodged for debate, you are doing your review, and I am confident that the States are going to accept it.

The Deputy of St. Ouen:

Your confidence is based on what?

The Chief Minister:

On the consultation, the hard work of many in my department, the acceptance by the States in 2008 that a feasibility study should be done into the setting up of a charities commission and law, but just as importantly the desire of the voluntary and charity sector itself for this legislation.

Senator S.C. Ferguson:

All the charity sector and the financial services industry?

The Chief Minister:

When we look across generally, and we can only deal with those generalities, it is supported by the charities and voluntary sector and generally it is supported by the financial services industry. Inevitably in either of those 2 sectors you are going to have some who have concerns. I think I can sit here and say that the concerns that they have had were concerns that Paul and I had when we started down this road, that is that we want to enhance the charitable sector in Jersey, we want to enhance the amount of giving into that sector and we want to enhance the good that it does. So we did not want any legislation that would detract from that. We fundamentally believe that this

legislation and the reason that we set down this road was because appropriate legislation would do exactly that. If it was inappropriate, of course, there is always the potential that the reverse might happen. Officers that have been working on it knew and have known all along that they were our concerns, that we did not want to drive small charities out of existence. We wanted to make sure that it was appropriate for small charities because we know that they do good work but their resource level and bandwidth is not that great. We know that and we are concerned about that and have been all along.

Senator S.C. Ferguson:

Do you think that the voluntary sector and the finance sector have had sufficient opportunity to be involved in assisting with the development of the law?

The Chief Minister:

Yes. We have got to remember what was then back in 2009 and 2010 when I was more actively involved as a politician. I think it was the Trust Working Group had been working on this for a number of years and senior advocates and senior accountants, partners in firms, have been involved back from 2008 in its development. Some of those individuals are also very involved - I think you have had one of them to one of your hearings - in the charitable sector as well, so understood the need to try and get the balance and the compromise right.

The Deputy of St. Ouen:

We will touch on the objectives later, but obviously there are 2 very different sectors that have been involved in the development of the Charities Law. What difficulties, if any, have there been in trying to provide for both sectors?

The Chief Minister:

I do not see it like that. When I first started down this road getting the States support and, as I say, working with the then Trust Working Party from financial services, the initial idea was, of course, just to amend the Trust Law, I think it was, to change the way it referred to charities and perhaps put a new definition of charities in that law. We were considering that as a possible option for quite a long time and it became apparent to me, and it has always been my view from the start ... we knew that the international standard setters for financial services say things about charities and the voluntary sector. We knew that we had to do the N.P.O. (Non-Profit Organisation) legislation to comply with those standards. But I have, as an individual and as a politician, always been uncomfortable that we literally just created something to deal with the requirement of the international standard setters. I wanted to make sure that if we are going to legislate for charities, if we are going to deliver on the aims that we wanted to do as politicians, this law had to be about local charities and it had to be about enhancing the charitable sector and the good work of the

charitable sector in our community. So that has been right front and centre of the development of this law. At the same time as we have been doing that, we acknowledge and we recognise that there are charitable purpose vehicles being run by our institutions that are already here. We had to make sure that we did not equally do anything with this legislation that caused problems for them because they are already here and they have slightly different requirements when it comes to privacy that we needed to be able to take account of. I think that the compromise that we have reached here is very much focused on local charities and yet at the same time deals with the issue of, let us call them the international charity or the charitable sector that is dealt with by financial services. There is no doubt that the financial services sector believe that with such a law as we have got here there is a market opportunity for them in that arena, but the fundamental reason that I wanted to do this is because I believe our focus should be on local charities and not just on meeting the international standards.

The Deputy of St. Ouen:

It is interesting that you used the word “compromise” because that suggests difficulties and yet you seem to suggest that there have been no difficulties in addressing the specific needs of each sector as this law was being developed. Yet we know and we are aware through the responses, which you have currently provided to us, that concerns have been raised. There are still individuals that question whether or not the compromise is necessarily able to deliver the 2 objectives that you set.

The Chief Minister:

I do not think that the fact I used the word “compromise” indicates that there are difficulties that are insurmountable, but let me just address that question of individuals who are still dissatisfied. We have, at a departmental level, been approached by an individual on behalf of, I think, several small charitable organisations with concerns. The departmental officers have responded to those concerns in great detail and I have offered a meeting to consider those further in detail and I stand by that offer. As I have just said to you, I do not want this legislation to drive small charities out of existence because that would be counterproductive, but there is a way of helping, I believe, small charities to ensure that they are following best practice, which will give confidence to donors and confidence to those who are involved with them that they are more sustainable into the future than perhaps they might be now. That is one category of people who are concerned and they are right to raise those issues. We do not think that this is more onerous. Those small charities should currently be complying with the N.P.O. requirement at the J.F.S.C. (Jersey Financial Services Commission). They should currently be dealing with the Taxes Office as well. I would argue you could see this as simplifying that process because now you are getting to one process. We will continue to be mindful of that. You know that in the legislation there is an order-making power for the administering Minister that even having all that in mind, if small charities do find it difficult then

we will again reconsider whether we need to be simplifying it even more. So I think you can be satisfied about that. I have got to say there are perhaps some other observers or respondents that, when I read their responses, just do not want any legislation at all and that is not something that I think is appropriate.

[15:00]

In fact, some of those respondents think that the N.P.O. legislation is sufficient and we do not need anything else, and I have got to say that I do not agree with that point of view, for all the reasons that I have said.

The Deputy of St. Ouen:

One last question from me before Richard asks another one. Are you confident that the local charitable sector will not be adversely affected by this new law?

The Chief Minister:

I think I am, yes, because of the reasons that I have said. Even if my confidence is ill-founded, as I have just said there is an order-making power for the Minister to lighten the burden even more if we find that that is necessary. 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.

The Connétable of St. Lawrence:

How would it be recognised that the burden did need to be lightened?

The Chief Minister:

As I said, there is one particular individual approached us with concerns. We have responded to those now and we are waiting just to hear back from that individual to see whether they do want to come in, whether they have still got concerns or there are further concerns. Of course, it might be that we need to address them with an amendment prior to the debate, and I am quite happy to do that if we think they are well founded. As we sit here, we cannot see that they are well founded. It might be that when the law comes in, in light of experience one or 2 charities, something else comes up that they think that is going to be a problem in this instance or not. Despite all the consultation that we have done, so we think it is extremely unlikely, we would then, if we were asked and thought it appropriate, lighten the burden even more. I cannot think what that would be at this stage because, as I say, they currently should be complying with the N.P.O. registration, they currently should be complying with any requirements of the Taxes Office. We believe that in the first instance this will be simplifying that, but both Paul and I needed to put that backstop

position in the law because we do not know who is going to be sitting in these seats in the future. There has to be that mechanism there for a future Minister or for a future States to say to the Minister: "You can do it by law. This is what we are hearing. Go away and do it."

The Connétable of St. Lawrence:

It sounds as if the onus will be on the charity to raise the issue with the department rather than the department committing to any sort of review after a period of time.

The Chief Minister:

No, no, we will review it because this is just stage 1. By its very nature it will be a process, so we will be hearing and asking people how are they finding it. Part of this is about working with charities. As you know, we propose that the commissioner would have a pro forma constitution document as well. So there is going to be a lot of liaison because there has to be. While we do not necessarily at this point accept the concerns, we are concerned that in principle it might be onerous on small charities and we do not want it to be that.

Deputy R.J. Rondel:

You have partly answered the question I was going to put to you, but just to be clear, the individual example you gave represents a number of charities and, just to ask, did you consult back with him in writing and now you are waiting for further clarification as to his concerns?

The Chief Minister:

Yes, that is right, at the same time that we ...

Deputy R.J. Rondel:

Have you shared those with us? Is that one you have shared with us?

Assistant Director Policy, Chief Minister's Department:

The correspondence has been sent.

The Chief Minister:

So both your letter back has been provided to scrutiny as well?

Assistant Director Policy, Chief Minister's Department:

My letter has been provided.

The Chief Minister:

So you can have a look at that but, as I say, I checked with Ruth again, returning from being away, about whether a meeting had been set up, because I would be very keen to do that but it may be that it is not necessary.

Senator S.C. Ferguson:

What were the main concerns, as far as you were concerned, raised during the second consultation by the financial services sector and the voluntary sector and were there any raised that were unexpected?

The Chief Minister:

You hopefully will have seen the consultation document and the responses received. I have got to say, I tried to look through them again, travelling on Thursday night, and I am not sure that there are any that are surprising. I think they are along the lines that we would have expected and along the lines of the questions that you have already been asking so far this afternoon.

The Connétable of St. Lawrence:

I do not have sight of the response that was sent to the individual you are talking about, but certainly I think we can mention former Senator Jean Le Maistre and the comments that he made and one thing that particularly caught my attention is the registration process for parish churches. He has stated that churches will need to register individually as the majority of them benefit from the tax exemptions. I think what I am reading here are the points that he raised. Can you confirm whether or not the specific parish would be involved at all and would need to be included in the constitution of the body that registers?

The Chief Minister:

That is quite technical. We have sent along ... which you will be able to see afterwards but perhaps, Ruth, you would ...

The Connétable of St. Lawrence:

But are you able to ...

Assistant Director Policy, Chief Minister's Department:

Yes. We have had conversations with the Law Officers' Department, not just about the parish churches but about all the churches, and we have spent quite a long time talking to some of the key church groups, in particular the Methodist Church group. The situation with churches, regardless of what their denomination is and what their structure is, is that a church will be able to decide whether or not it wishes to become a registered charity, so it is a decision that the church

will make. It will make that decision based on whether or not it wants to derive the benefits of being a charity, those benefits being the right to call yourself a charity and present yourself as a charity and also the right to receive tax reliefs as well. One of the key tax reliefs is obviously the exemption from income tax which parish churches are entitled to anyway under a different part of the income tax law. Under the income tax law, there are a number of organisations that are exempt income tax. Registered charities will be one of those but parishes, parish churches linked to the parish and also States remain as is with income tax exemptions, so there are already arrangements in place. We believe that it is highly possible that quite a few of the churches will choose not to become registered charities. Those who do, though, we will be working with them and we are going to be working with the Law Officers, because we recognise there is some very unique structures there, to look at how they can navigate and negotiate the registration process. The way it works in the U.K. (United Kingdom) 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.

Deputy R.J. Rondel:

Is that the same in Scotland?

Assistant Director Policy, Chief Minister's Department:

It is the same in Scotland as well. We recognise that there is work to be done with each of the individual faith groups within the Island to look at what is required to support those individual groups to navigate the process. We are absolutely confident that this will not cause us any complexities or difficulties at all, and when I say "we" I mean we working within the charitable sector, so the churches themselves. I know that at the public consultation process we had quite a lot of church groups come to this public consultation process because they were concerned about the implications for that but with the direct dialogue we have had those concerns have largely fallen away.

The Connétable of St. Lawrence:

Can you confirm that you have had direct dialogue with the Dean on behalf of the Church of England?

Assistant Director Policy, Chief Minister's Department:

The Dean has been involved in the process through the States Members consultation. We have not spoken directly with the Dean but the Chief Minister has a meeting with the church leaders coming up quite shortly.

The Connétable of St. Lawrence:

When you say church leaders, who do you mean?

The Chief Minister:

Just that, the leader of the Anglican Church, the leader of the Catholic Church, the leader of the Methodist Church.

Senator S.C. Ferguson:

Baptists?

The Chief Minister:

Would you like me to have a look in my diary and tell you who?

Deputy R.J. Rondel:

As far as you are aware, most of their original concerns have been alleviated?

Assistant Director Policy, Chief Minister's Department:

Most of their original concerns have been alleviated.

Deputy R.J. Rondel:

What are the specific issues remaining outstanding, do you think?

Assistant Director Policy, Chief Minister's Department:

I think the main concern that the churches were expressing - and this is very understandable and this is the main concern that the small voluntary and community groups are expressing - was about them not understanding what the difference was going to be for them. So what happened was in the second stage of consultation when we went out and explained in more detail what the registration process would be, what the requirements would be with regard to the duties of what are now under the law called charity governors, they were a lot more comfortable with what we ...

Deputy R.J. Rondel:

So it was more about the understanding and the explanation?

Assistant Director Policy, Chief Minister's Department:

Yes, absolutely. It was about them not knowing, which is always a difficult place to be.

Deputy R.J. Rondel:

What about the second process with the regulations? Are there any more concerns there?

Senator S.C. Ferguson:

Rather than waste time, Chief Minister ...

The Chief Minister:

No, I am just emailing them to send it so that hopefully we will have it by the time we finish our meeting this afternoon.

Senator S.C. Ferguson:

He is just a slow typist.

Assistant Director Policy, Chief Minister's Department:

There were not particularly any concerns raised by the churches with regard to the regulation in phase 2, assuming that we move ahead to regulation in phase 2. That is in part because when we look at regulation in phase 2, one of the key issues is around whether or not we do or do not bring in standards with regard to annual accounts and accounting. Most of the churches, where they are part of a larger administrative structure, would already comply with those standards or any potential standards that we may bring in. So for the churches the potential regulation in phase 2 was not something that they were raising an issue about. It was more about the initial registration process and how do they do it because of their structures.

Senator S.C. Ferguson:

You are casting doubts on something that I feel very strongly about, about the bringing in of accounts and auditing accounts and things like that. You have just said that ... your comment was a bit sort of conditional.

The Chief Minister:

No, I do not think so. I would hope not. 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. I think the point that Ruth was making was

that the concerns from the church were about the initial registration. They already have governance in place, they already produce accounts and all those sorts of things.

Senator S.C. Ferguson:

The main churches will. What about the sort of small splinter groups like the evangelicals and so on up in St. Brelade and the one down in town and so on?

The Chief Minister:

I have no doubt that they produce accounts and have appropriate governance, and some of them so much so that they connect with U.K. larger organisations to give confidence about the governance that they have in place here.

The Deputy of St. Ouen:

I note that in the draft law it speaks of externally organised religious charities. I just wondered how you define externally organised religious charities.

Assistant Director Policy, Chief Minister's Department:

The law as lodged has been amended slightly in terms of the terminology, but one of the things that we want to recognise under the law, and this is about recognising the very distinct nature of churches and religious organisations, is that they do very often have very large governing bodies.

[15:15]

For example, if you look at the parish churches affiliated to the Church of England, the Church of England in the U.K. has an incredibly well defined governance structure which feeds down to the parish churches and the operation of the parish churches. What we are doing within the law where it comes to these churches is we will recognise that they have that governance structure already in place and we are amending the powers that the Charity Commissioner has over the governors of those organisations.

The Deputy of St. Ouen:

That is regardless of faith?

Assistant Director Policy, Chief Minister's Department:

Regardless of ...

Senator S.C. Ferguson:

Wait a minute, James.

The Deputy of St. Ouen:

From Islam or ...

Senator S.C. Ferguson:

No, the mosques and the synagogues are independent, I think, and I think some of the evangelicals are independent, therefore you have not got a governing body in the U.K. to rely on.

The Chief Minister:

That is right, for some of them do not.

Assistant Director Policy, Chief Minister's Department:

Yes. So it is where there is an appropriate governing body within the U.K., and those appropriate governing bodies are recognised within the English and Scottish charities law we will also recognise that. What that particular Article does is it does not take them outside the law. It changes the rights and the powers that the commissioner has over those governors, in that the commissioner cannot strike off or the commissioner cannot go to the court and tell that charity that it has to strike out one of its governors, because you could end up with the bizarre effect where you have the Jersey Charity Commissioner striking off the head of the Church of England. So we have recognised that there are some religious structures out there, with governance in place, and we have responded to that by changing some of the powers that the Charity Commissioner has with regard to those organisations.

The Deputy of St. Ouen:

Are you confident that with all of that we are moving towards the finance sector and some would argue the main reason for introducing the Charities Law is to deal with concerns raised by the I.M.F. (International Monetary Fund) and other groups?

The Chief Minister:

James, that is not fair. You might have that heard in this scrutiny room. I have not heard anybody say that, is the main reason why we are doing this law and I object to that, because it is not.

The Deputy of St. Ouen:

Right. Be very, very clear. Why then have you decided to focus on the financial sector and not just produce a law that supports and helps encourage local charities to flourish as per the original ... especially when you say that because of the fact you have introduced the finance sector, it is a compromise law?

The Chief Minister:

James, I have not heard anybody say that, and that is not the case. I would argue that with anyone who tries to say otherwise, that in developing the law the financial services sector, ever since I launched my proposition in principle to ask the States to do this work, have accepted that it was a positive thing and it was something that they could support. We have to be pragmatic, we have to be practical. We know that charitable structures are already administered by the finance centre in Jersey so we have to make the law work for them as well. That is exactly what we have done.

Senator S.C. Ferguson:

So we are really reaching a compromise because of the fact that we do not want to destroy the wealth management side of the financial services industry. The sort of things the F.A.T.F. (Financial Action Task Force) was getting upset about were the money laundering things, which is a different kettle of fish.

The Chief Minister:

I would argue very strongly the reverse of the point that James has just made. We did in the past introduce the N.P.O. legislation to deal with the I.M.F. requirements. I did not think that was right. I think that any charitable law should be dealing with ... 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 the process of doing that we also have to acknowledge that we do have an important economic sector in our community that administers charitable structures.

The Deputy of St. Ouen:

Who you have chosen to treat differently.

The Chief Minister:

Yes. Is that wrong?

The Deputy of St. Ouen:

Again, presumably that must be one of the compromises. On the one hand you are promoting openness and transparency, on the other you are having a section where actually it can be secret.

The Chief Minister:

I have been absolutely clear from the moment I walked in this room that there was compromise needed and I think it is appropriate. These individuals are private structures. They are not raising money from the public. If they were raising from the public then they go into a different part of the

register. That is important because the accountability and the openness is to allow members of the public to know that where they are putting their money there is appropriate governance and those charities are using the money for the purpose that we, as a community, all think is appropriate as a charitable purpose and they are using it for that purpose.

Senator S.C. Ferguson:

But there is the point that if these organisations are taking advantage of the dispensations that we are giving them in the various taxes and so on, is it right that they should not be publicly listed? If they are wanting to be listed as a charity, then there is a public benefit and there is a list of charities, foundations, what have you, in places like the U.K. and you know where you can write to to ask for money because there is a public benefit. We are in fact giving dispensations to these people but there is no public benefit as far as Jersey is concerned, apart from the income that is raised in the particular economic sector. It is a bit of a ...

The Chief Minister:

No, that is not correct, is it?

Senator S.C. Ferguson:

Well, explain.

The Chief Minister:

There will be a registration number. There will be a registered charitable purpose statement and a registered public benefit statement and at the same time there will be an explanation of why the charity is on the restricted section of the register. One of the things is that some of these individuals ...

Senator S.C. Ferguson:

Maybe I am missing something because I understood it was just a number. It has been expanded now, has it?

The Chief Minister:

Yes, it has always been the intention, has it not?

Assistant Director Policy, Chief Minister's Department:

It has always been ...

Officer, Financial Services, Chief Minister's Department

It has always been those provisions.

The Chief Minister:

That has not changed. You raise a good point about a potential recipient wanting to be able to write to an individual. That means you cannot, in this instance, do that but that is because some of these individuals want to be able to give to the voluntary sector and to charitable public benefit purposes but do not want anybody to know that that is what they are doing. We do not want to stop them from doing that. We want to encourage them because the public benefit is there. It is just that ...

Senator S.C. Ferguson:

There is not public benefit there. This is the whole point.

The Chief Minister:

Why is there not public benefit?

Senator S.C. Ferguson:

The public benefit means that the public can access them to ask for benefit.

The Chief Minister:

No.

Senator S.C. Ferguson:

Yes. This is how a foundation normally works.

The Chief Minister:

The public benefit means that they are benefiting those purposes that we, as a community, have agreed are in the public benefit.

Senator S.C. Ferguson:

In that case, I think you need to ...

The Chief Minister:

Some of these individuals do not want to have their name on the front of the *J.E.P.* (*Jersey Evening Post*). We have seen with some of our wealthy people who have moved to this 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 *J.E.P.* and we should accept that. We should welcome them because they are 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.

Senator S.C. Ferguson:

Yes, if they are going to take benefit from the public sector.

Deputy R.J. Rondel:

Have you finished?

Senator S.C. Ferguson:

I think we are finished on that one, yes.

The Chief Minister:

The particular debate?

Senator S.C. Ferguson:

There are a number of areas where I do not think we are going to agree.

The Chief Minister:

No, that is fine. If we are finished on that section, the church leaders are only the 3: Monsignor France, Superintendent Halls and the Dean.

Senator S.C. Ferguson:

What about the Baptists? Are they a standalone setup? I just asked because one knows about ... I am curious.

The Connétable of St. Lawrence:

Can I just follow up on that, please? When we spoke to someone from the Association of Jersey Charities last week, one of the very important issues for me that was raised was communication about the introduction of this law and about the impact it is going to have on particularly small charities. I think Senator Ferguson raises a valid point when she says that clearly you were meeting only with the 3 main church leaders over here, but generically how are you going to get the information about this law out into the voluntary sector, out into the public domain?

The Chief Minister:

Yes, that is a very good question and it is one that we have been considering with the Association of Jersey Charities and the ... remind me what the other body is now called.

Assistant Director Policy, Chief Minister's Department:

Jersey Voluntary and Community Partnership.

The Chief Minister:

We will be, with them, developing a strategy for doing just that, because it is very important. If concerns are being expressed by, let us call them, independent churches, whether they have got links to U.K. governing bodies or not, I have got no problem at all in meeting with the leaders of those churches as well.

Assistant Director Policy, Chief Minister's Department:

Just for information, there were representatives of the independent churches who came to the public meetings. We certainly had representatives from the Baptist churches there and also the Freedom churches and all the others. It is always complex to communicate particularly with independent small organisations but the message is starting to get out there and people were coming to the public meetings representing ...

Deputy R.J. Rondel:

I think the point the Constable of St. Lawrence made is valid because we need to get the communication right at the next stage.

Assistant Chief Minister:

I had that discussion last week with the voluntary and community organisations so they are very keen for ...

The Deputy of St. Ouen:

What actions are being taken?

Assistant Chief Minister:

We are working on a package with them and we will agree a way of getting those messages out. We are going to work with them to achieve that.

The Deputy of St. Ouen:

When will that be known?

Assistant Chief Minister:

How are we doing?

Assistant Director Policy, Chief Minister's Department:

Obviously at this stage it is about the law being debated, but 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 Association of

Jersey Charities and the Jersey Voluntary and Community Partnership. We will also work with Jersey financial services commission to extend our reach out for the not for profit register. We 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.

Senator S.C. Ferguson:

Good. A number of respondents from both the consultations have expressed concerns about the lack of clarity over the definition of public benefit. We have just had a discussion about it. You think one thing and I think another. Why have you not made an effort, with the assistance of the Attorney General, to define it?

Assistant Director Policy, Chief Minister's Department:

The definition of public benefit is extraordinarily complicated, as you have said, because it is partly based upon the notion of quantum and amount. There is no other charities law in any jurisdiction, we are not just talking about in England and Scotland, that puts a definitive definition of this is what is meant by public benefit, and that is because of the complexities of it. So what we are doing is we have learnt from some of the difficulties that they have had in the English law. In the English law there are no parameters within the law of public benefit. We have taken the Scottish model, which is a lot more successful and all the feedback is it is a lot more successful, and we have put some baseline parameters about the factors that will be considered within the law on public benefit. We are placing a requirement on the Charity Commissioner to develop the guidance on public benefit.

[15:30]

That guidance will be in place way before registration opens and I think that that is one of the really key points. People have been expressing concern because there was an assumption that the guidance would not be in place because the commissioner would not be in place until registration starts. There will be a much longer lead-in time. The commissioner will produce the guidance on public benefit and that guidance will be in consultation with the voluntary and community sector. The law places a requirement on the commissioner to consult the sector on the public benefit guidance and the Minister is also required to place that guidance, to lay that guidance before the States as well.

Senator S.C. Ferguson:

When are you expecting all this to happen by? It sounds as if it is going to take years.

Assistant Director Policy, Chief Minister's Department:

There will be quite a long lead-in time.

Senator S.C. Ferguson:

When are the regulations coming in?

Assistant Director Policy, Chief Minister's Department:

Assuming that the law is adopted and assuming it is passed by the Privy Council, we will start work on the regulations. We are envisaging, with a fair wind, that we will appoint the commissioner in the second quarter of 2015 with the possibility of opening the register towards the very end of 2015.

Senator S.C. Ferguson:

Yes, but when are the regulations coming in?

Assistant Director Policy, Chief Minister's Department:

The regulations will need to come in before the commissioner is in place or the regulations will need to have started to be developed before the commissioner is in place. There are quite a lot of regulations within phase 1 of the law and we have not scoped the timetable for all of those yet.

Deputy R.J. Rondel:

You mentioned there the Scottish law made a lot of adjustments, if you like, on the English law. Is there anything that you have learned from the Scottish law that we are changing from what they have got?

Assistant Director Policy, Chief Minister's Department:

Yes. There are a few key things that we have learnt from the Scottish law, the first of which is we are reflecting the charitable purposes that are in the Scottish law but we have made one difference, which is we have also provided the States with the power by regulations to amend, to add to those lists of charitable purposes if, as a community, we should decide that those should be extended in the future. That is one of the key differences in terms of if you look at the way that the Scottish law has played itself out and where charities have raised concerns, it has been part of charitable purposes in that particular definition. So we are future proofing to allow some flexibility around that.

The Deputy of St. Ouen:

Chief Minister, can you explain, if a definition of public benefit is so complex, why are on earth would you want to pass that responsibility over to one individual to determine rather than deal with it as a government?

The Chief Minister:

They will probably make a better job of it than we will.

The Deputy of St. Ouen:

What qualifications is this commissioner going to have that is going to give you confidence that one individual, who is going to be employed to undertake a task, hopefully at a relatively modest salary, is going to be able to have the experience and understanding to define public benefit?

The Chief Minister:

First of all, I would suspect that they would look at how it is done in other jurisdictions. They will, importantly, liaise with our own voluntary and community sector. Of course they will liaise with Ministers and I suspect they will liaise with States Members. They are the right body to co-ordinate that and ultimately come up with how the definition will work. As you have heard across the table this afternoon, Senator Ferguson and I have slightly differing views on how we might consider that and no doubt both of us will be in communication with the new commissioner supporting ...

The Deputy of St. Ouen:

So you want to just pass the problem over, kick it into the long grass and let someone else deal with it?

The Chief Minister:

Well, Deputy, I am not sure whether you are in favour of the law at all, so I would not say it was the long grass at all. I would say that the commissioner is going to get on and do the work. I have been trying to deliver this piece of legislation since 2008. I am not there yet and I think you will find the Charity Commissioner will be able to deliver it in considerably less time than we seem to have been able to do as the States.

Assistant Chief Minister:

May I just add. You are focusing on it being a single commissioner. Of course, there will be the ability for anybody who thinks that the commissioner's views are not correct to go to an appeal with the other body which we are going to be setting up as well.

Deputy R.J. Rondel:

Which other body is that, sorry?

Assistant Chief Minister:

What is the title we are using?

Assistant Director Policy, Chief Minister's Department:

The tribunal. We are setting up a tribunal with 4 to 8 members.

The Deputy of St. Ouen:

So they are going to have the final say on what public benefit is?

Assistant Chief Minister:

Yes, if there is a challenge.

The Deputy of St. Ouen:

Based on whose definition?

Assistant Director Policy, Chief Minister's Department:

The commissioner will produce guidance on public benefit. If you look at the guidance produced by the Scottish charity commissioner, it is quite easy to understand and quite easy to read guidance. I have got no doubt that there will be lots of similarity, because it is good common sense, between what the Scottish charity commissioner has produced and what our Charity Commissioner will produce in consultation with the voluntary and community sector. I think it is really key that that is recognised. It is not the commissioner going off and sitting in a darkened room, producing the guidance on their own. That guidance will be brought forward. The Charity Commissioner will then use the guidance to determine whether or not a charity passes the charities test and should be put on the charities register. The tribunal then have the right to overturn the decision of the commissioner if they believe that there are grounds to overturn the decision of the commissioner and then if the appeal goes to the court, the court similarly has a right to overturn the decision of both the tribunal and of the commissioner. We have spent quite a lot of time looking at appeals processes relating to charities in other jurisdictions. What we wanted to do is we wanted to produce something that was easy, that was not high cost but also ultimately allowed any person within the community to have a final route of appeal to the Royal Court. We believe that that is what we have managed to achieve with our process.

The Deputy of St. Ouen:

I just want to ask the Chief Minister briefly, given that guidance already exists in the form of the Scottish system, are you prepared to publish that guidance and make it available to States Members, and this panel indeed, prior to the debate so that we can get a better understanding of what may or could be defined as public benefit?

The Chief Minister:

I assume that is in the public domain already.

Assistant Director Policy, Chief Minister's Department:

It is.

The Chief Minister:

So I have no problem whatsoever. One of my highly paid staff I am sure will be able to go on to the internet, print it off and email it around to States Members.

Senator S.C. Ferguson:

Will the commissioner be also applying these sort of standards to the secret section?

Assistant Director Policy, Chief Minister's Department:

Yes, absolutely.

The Chief Minister:

Yes, that is the whole point.

Assistant Director Policy, Chief Minister's Department:

The Charity Commissioner will apply the guidance in exactly the same way to every applicant to the register regardless of whether or not they are applying to be on the general register or they are applying to be on the restricted part of the register. Access to the restricted part of the register is not something that the applicant determines. It is something that the Charity Commissioner determines. So if you apply to be on the restricted part of the register and the commissioner does not believe that you should be on the restricted part of the register, you will not be put on the restricted part of the register.

Deputy R.J. Rondel:

You mentioned about the tribunal. Did you mention 8 members? In here it has got at least 4.

Assistant Director Policy, Chief Minister's Department:

Yes. I think the draft of the law you have there is the consultation draft and the updated draft that has now been lodged says 4 to 8 members. We listened to the feedback. People were saying to us if you leave it open ended and you have 20 tribunal members you will not have a sufficient body of knowledge there. We had quite a few people who fed back to us and said: "You need to put some boundaries around it", so that is what the lodged version of the law does.

Deputy R.J. Rondel:

Again, is that the process in Scotland as well, following on with a tribunal?

Assistant Director Policy, Chief Minister's Department:

The appeals processes in Scotland and England are both slightly different because they have commissions rather than a commissioner and also their courts have different powers. The Court of Session in Scotland has different powers, so they are not directly parallel but there are similarities.

Deputy R.J. Rondel:

So you have had this Jerseyfied from advice through the Law Draftsman?

Assistant Director Policy, Chief Minister's Department:

Absolutely. We spoke to the Law Draftsman and the Law Officers. One of the other things, which obviously is not in the law because it is not a matter for the law, is the Charity Commissioner will have a complaints process as well. So in the first instance an applicant or a third party can just make a complaint to the commissioner saying: "I think you have made the wrong decision. Will you review that?" or they can go straight to the tribunal.

Deputy R.J. Rondel:

The draft law is intended ...

Senator S.C. Ferguson:

Just one moment.

The Connétable of St. Lawrence:

Sorry, while we are talking about the commissioner, I know that there was some concern that he was going to be a corporation sole and that too much power was going to be vested in one person. My question is, first of all, Chief Minister, who are you proposing to propose as commissioner?

The Chief Minister:

I am not proposing anyone. I do not have anyone in mind. The States needs to agree the legislation first.

The Connétable of St. Lawrence:

So when the legislation has been agreed, because you are confident that it is going to be, what is the next step?

The Chief Minister:

Well, perhaps I am not as confident as I was at the start of the hearing.

The Connétable of St. Lawrence:

What is the next step? I am assuming that your department will advertise.

The Chief Minister:

The regulations are next, so it is doing the regulations work and then in due course it will need to be advertised.

Senator S.C. Ferguson:

You are going to advertise fairly ...

The Connétable of St. Lawrence:

What is the process? How are we going to arrive at a commissioner and 4 tribunal members?

The Chief Minister:

It would be, in effect, a job description built on what the law and the regulations say will need to be developed. Then a person specification, also built on that, will need to be developed. This is such an important role that it will be one that needs to be dealt with in conjunction with the Appointments Commission and then we will go out and follow a recruitment process.

The Connétable of St. Lawrence:

Will it come to the States for approval?

The Chief Minister:

We have not got to the point of considering that. It is interesting I note from the other piece of legislation I have got before the States now that although States Members seem to say that ... am I right in ...

Deputy R.J. Rondel:

Under here it says you will present to the States a notice.

Assistant Director Policy, Chief Minister's Department:

In the schedule in the law the Jersey Appointments Commission will obviously be involved in running the appointments process. The Minister will notify the States of the outcome of the appointments process at least 2 weeks before appointing the person.

The Connétable of St. Lawrence:

Presumably there will be power of removal.

Assistant Director Policy, Chief Minister's Department:

There is the power of removal.

The Chief Minister:

Yes, there is.

Assistant Director Policy, Chief Minister's Department:

The circumstances under which the commissioner can be removed are set out within the law.

Deputy R.J. Rondel:

The draft law is intended to help protect public trust and confidence. Do you not feel that introducing the restricted section on the new register could contradict this aim?

The Chief Minister:

Not at all, for all the reasons that I have just said.

The Deputy of St. Ouen:

You have suggested that the public will not have access to the information on this restricted section.

The Chief Minister:

You did hear what I said about the access that would be in the public.

The Deputy of St. Ouen:

Yes, limited, very limited access.

The Chief Minister:

Well, it is not very limited access. It is not very limited. It is the registration number, it is the registered charitable purpose statement and the registered public benefit statement and also an explanation of why it is in the restricted section.

The Deputy of St. Ouen:

Just to be clear, are you saying that currently all of the charitable trusts that currently use the financial services of this Island will be ...

The Chief Minister:

And have the tax exemption.

The Deputy of St. Ouen:

... required to register?

The Chief Minister:

Deputy, you sound as though you are now coming at it from the other angle and you are indicating I should be more restrictive.

The Deputy of St. Ouen:

No. If you answer that simple question, I think that will clarify matters.

The Chief Minister:

I have answered that already.

The Deputy of St. Ouen:

There will be no exemptions? There will not be any of these so-called charitable trust organisations that will not be captured by this new law?

The Chief Minister:

There will be. If they wish to be registered as charities and avail themselves of the charitable tax benefits then they will need to go through this restricted process. If they do not wish to then obviously they will not need to.

The Deputy of St. Ouen:

At the moment, am I right in saying that currently our Tax Department does have a view and takes a view on whether or not some organisation, charitable trust in name, can access and does benefit from charitable status and exemption from tax?

[15:45]

The Chief Minister:

Yes.

The Deputy of St. Ouen:

Will that continue even once this law is introduced?

The Chief Minister:

This law will now govern that.

The Deputy of St. Ouen:

Will it still continue?

The Chief Minister:

Will what still continue?

The Deputy of St. Ouen:

That the Tax Department will still have the opportunity to provide tax benefits?

The Chief Minister:

No. This is what this law is about.

The Deputy of St. Ouen:

Good. Sorry, I am labouring the point, probably to help me clear my own mind about the matter. Are you saying that in future this law will cover all organisations that currently operate and utilise the financial services in this Island?

The Chief Minister:

Any organisation that wants to do the things that this law covers, so call itself a charity, avail itself of charitable tax relief, will need to comply with this legislation.

The Deputy of St. Ouen:

If they do not, they will not get the tax benefits, if they sit outside this?

The Chief Minister:

They will not be able to call themselves a charity. That is right, George?

Officer, Financial Services, Chief Minister's Department:

That is correct.

The Chief Minister:

They will not be able to avail themselves of the charitable reliefs, tax reliefs.

Senator S.C. Ferguson:

But if they are a company they will not paying income tax anyway.

The Chief Minister:

As you know, the historic ones ...

Senator S.C. Ferguson:

Corporation tax rather, I mean.

The Chief Minister:

... will need to be dealt with as well. There is nothing else to add to that, is there?

Officer, Financial Services, Chief Minister's Department:

I think it is important to make the point that there will be a situation to deal with charitable trusts that are currently in existence. We made a decision that from the date that this law is brought into force the treatment will be as under the law but in the past, as you will see from the relevant article of the law, which is 41, it sets in position the grandfathering provisions which are inserted into the income tax law.

The Deputy of St. Ouen:

I thought that is what your Assistant Minister had spoken about at our first briefing that we had on this. I just wanted to make sure that I had got the right story.

Deputy R.J. Rondel:

Do charity laws in other jurisdictions have the provision for a restricted section?

Assistant Director Policy, Chief Minister's Department:

No, they do not. If you look at the U.K., the Scottish and the English laws, no, they do not but that is also because they do not have charitable trusts and foundations that follow the same legal structures. They do have trusts and foundations but they are a different legal structure. So we are dealing with a slightly different starting base.

Deputy R.J. Rondel:

But are there any other jurisdictions similar to Jersey?

Officer, Financial Services, Chief Minister's Department:

I can probably assist in relation to the financial services side. In Switzerland the Code Civil deals with charitable foundations and there is no register as such of charitable foundations at all let alone restricted parts. In fact, Switzerland keep a line that is even far more ... sorry far less information available. There are other jurisdictions that approach it from the financial services side but none that approach it from the charities law.

Deputy R.J. Rondel:

Okay, thank you.

The Deputy of St. Ouen:

I have one more question on this particular subject. Who will be able to scrutinise and look at the determination of the Charity Commissioner in relation to the restricted section?

The Chief Minister:

The tribunal if someone appeals ... does not like the decision ...

The Deputy of St. Ouen:

No, generally I am talking about. Not appeals, I am talking about general scrutiny.

The Chief Minister:

There is ...

Assistant Director Policy, Chief Minister's Department:

Okay, the -- obviously the tribunal in the event that there is an appeal but also the law requires both the Charity Commissioner and the tribunal to produce an annual report that is laid before the States. Now, that annual report will not deal with specific cases around individual restricted registration charities but will provide an overview of information about numbers of applicants, the numbers that were determined and placed on the register, the key reasons as to why applicants were not placed in the register. So the information about how the commissioner and the tribunal are operating and an overview of their decisions will be within the public domain.

The Deputy of St. Ouen:

Right, I am talking about ... okay, let me rephrase the question. Given that the Chief Minister has been determined to be the Minister with overall responsibility or oversight of this commissioner and

Charities Law, presumably a scrutiny panel, this scrutiny panel, would be able to call in and review and look at the way the commissioner is operating and how he is determining matters with regard to the restricted section.

The Chief Minister:

Could you decide to do a scrutiny panel review looking at the operation of the Charities Law, I do not see why you could not. During that you would obviously need to consider how the commissioner was fulfilling his or her obligations under the law.

The Deputy of St. Ouen:

Will there be any internal safeguards or controls in place?

The Chief Minister:

For those on the restricted register you, as would normally be expected, you would be handling confidential information, you would handle it in the same way that you normally do.

The Deputy of St. Ouen:

Will there be any ... sorry, to interrupt, will there be any internal controls within your department that will seek to ensure that the commissioner is operating above the law and appropriately?

The Chief Minister:

Well, within the law.

The Deputy of St. Ouen:

Sorry, within.

The Chief Minister:

We do not want them operating above the law.

Officer, Financial Services, Chief Minister's Department:

I think it may be of some assistance to the panel to note that in Article 42 of the law there is specific provision for the States to make regulations for exchanging information from the commissioner. Now, that is a regulation making power but the intention at the moment is that that regulation making power will be used in due course to allow for information to be exchanged between regularly bodies and also law enforcement authorities. That will allow those bodies to access the restricted part of the register, which of course is a critical part of preventing anti-money laundering and countering terrorism. Also in that you will note there is also a specific ... in fact this is an enactment related to taxation which would extend as well to TIAS (Tax Information Exchange

Agreements), for example. So you might find foreign enforcement bodies making requests into the Charities Commissioner. So there will be some oversight from external bodies and if the Charities Commissioner was not acting to the letter of the law you could expect probably to hear from those foreign enforcement bodies.

The Deputy of St. Ouen:

Right, I am pleased you made that clear because this is ... we are talking about the restricted section here which is likely to be those involved in the finance services sector.

Senator S.C. Ferguson:

Right, let us go ahead.

Deputy R.J. Rondel:

I know we have spoken a little bit about the small organisations but are you confident there will be no adverse effect in this law on those smaller charities and organisations?

The Chief Minister:

I do not think I can add anything to what I said at the start of our conversation this afternoon. Paul I do not know if you wish to ...

Assistant Chief Minister:

Well, I think there needs to be a realisation that this law will require some small organisations to make application and to set about publishing their charitable purposes and it will be reviewed by a commissioner. For by far the majority of organisations there will be no problem at all. There may be the odd one, perhaps a charity which is run by a husband and wife or something like, which may need to change the way they do things in future because if they are going to be looking at raising funds from the general public, the general public needs to have a reassurance that those monies are being used properly.

Deputy R.J. Rondel:

Will they be asked to produce accounts, audited or otherwise?

Assistant Chief Minister:

We know the process we are going through with that so that will be something that will come at a later stage, certainly.

Senator S.C. Ferguson:

Do you think it is going to encourage consolidation of ... I mean there are a number of charities, as we well know, that are really dealing with things that are very closely related and there might be a considerable advantage if they combined their efforts.

Assistant Chief Minister:

That would no doubt be a decision for them to make really but the ... I do not necessarily think the law will encourage it but it certainly will be a decision for each organisation to make.

Senator S.C. Ferguson:

Yes, I know that, I am just saying do you think from your point of view, working in the sector, do you think the law will encourage more people to join resources?

Assistant Chief Minister:

I think it will encourage organisations to be a bit more organised in perhaps putting their things in ... I am not going to agree that it is going to bring people together, organisations together and you are going to see some joining of organisations, I do not see that.

The Chief Minister:

No. I think it is a very good questions and one might hope that that was going to be a result of the legislation. But if you look at the experience in the U.K. I can think of 2 charities that I have worked with in the same town, virtually the same street, doing virtually the thing in a developing country and I have had conversations with them about ... as a donor to ... wearing another hat entirely, not a personal thing as donors to those charities it would given me much more confidence if you 2 joined together so that I was not worrying all the time about: "Well, you are doing this, you are doing that, you are doing it here in this town in Zambia and you are doing it in another town, why do you not just join together the whole job lot because you are trying to do the same thing. But they will not. So I am not so ... we might wish for it but I am not sure it will.

Assistant Director Policy, Chief Minister's Department:

If I could just add to that. One of the aspirations that we have for phase 2 of the law is to look at introducing charity reorganisation schemes which essentially would be the powers of the commissioner to approve charities to reorganise themselves without having to revert to the court for approval. We do know that the fact that there is lots of very small charities out there that their hands are tied by their original constitution. They can only get that changed by reverting to the court.

Senator S.C. Ferguson:

That is expensive, yes.

Assistant Director Policy, Chief Minister's Department:

They perceive that as being too difficult. We know it is something we would like to do and we will certainly look at that in phase 2 of the law to make it easier for those myriad of very small organisations who want to effect change, very possibly just to hand over their assets or to merge with another organisation, to so do.

Deputy R.J. Rondel:

I think you have probably seen my next question somehow. Concerns have been raised about phase 2, are there any other additional things you are looking at changing? Any amendments which might be proposed in that phase?

Assistant Director Policy, Chief Minister's Department:

In phase 2 the 2 key things that we will be looking at is regulatory standards relating to charities so, for example, the production of annual accounts. The second key thing we will be looking at is the reorganisations of charities. The third thing that we would also be looking at, and it has been touched upon, is actually a review of how it is going to date and whether or not we do need to amend that to respond to the needs of the sector. So those are the key element of the phase 2.

Deputy R.J. Rondel:

Will you be carrying out the same sort of public consultation process as you have done with this?

Assistant Director Policy, Chief Minister's Department:

Absolutely, and we will do as we develop all the regulations that fall under this law as well. We have not stopped the consultation process because we have now lodged the law, we will continue to do that as we develop the guidance on all the regulations. We have made a very public commitment to the sector to do that.

Deputy R.J. Rondel:

Great, thank you. We have touched on ...

The Chief Minister:

Could I just check, Chairman, were you expecting me to leave at 4.00 p.m.?

Senator S.C. Ferguson:

Are you now so riveted you are staying with us?

The Chief Minister:

No, I do need to leave unfortunately. So if there is any other question that you want to just ask me and Paul will handle in my absence.

Senator S.C. Ferguson:

No, we were told that the Minister had to go.

Deputy R.J. Rondel:

We have only got one more question.

The Chief Minister:

You will not believe it if I say I would rather stay here with you. **[Laughter]**

Senator S.C. Ferguson:

If you need to go, Minister, that is fine.

The Chief Minister:

Are you sure you have not got anything else? All right, thank you very much indeed. We are very grateful for your review of this law because I think it is only going to enhance it. It is helping to raise its public profile as well, which is important.

The Deputy of St. Ouen:

We are pleased to report that those we have spoken to have been happy with the way the consultation process has taken place with regards to the development of this law and we believe it could be used perhaps as a model for other matters that are brought forward.

Assistant Chief Minister:

Well, if you say that publicly that would be marvellous.

Senator S.C. Ferguson:

They have also said that it is nice because it ticks a FATF box.

The Chief Minister:

It does, and we admit that but that has not been the driving force and it is important to us that we continue to operate on that model because we know there are still some people with concerns, as I said right at the start and we would like to be able to be satisfied that we have even those people's concerns addressed and they are now satisfied. But thank you very much indeed.

The Deputy of St. Ouen:

Thank you.

Assistant Chief Minister:

Do you want me to attempt to answer your final question?

[16:00]

Deputy R.J. Rondel:

Well, it is in 4 parts. No, I think we have touched about the publicity but are you happy that there has been enough publicity so far or what publicity are you are going to produce?

Assistant Chief Minister:

I think we recognise that once the law is approved hopefully that we need to step up the process of getting the message out of what is required of organisations. As you have become aware, we are really pleased the way that the voluntary community of organisations themselves are getting rallied behind this and are prepared to help us to get the message out to their membership really.

Deputy R.J. Rondel:

Will you be using various media tools and even things like Facebook and Twitter and things like that?

Assistant Director Policy, Chief Minister's Department:

Yes, we will look at using electronic media and we will do good old poster campaigns, which are usually quite successful. So we have not done a communications campaign to that extent to date but certainly, as we look forward to the introduction and the opening of registration, we will certainly be doing that.

Assistant Chief Minister:

We know it is a priority.

Deputy R.J. Rondel:

Now, do you believe the draft law will deliver its overarching aims to support Jersey charities to flourish in order that they are better placed to deliver their own aims and objectives and meet the community need?

Assistant Chief Minister:

That is certainly the aim, that is what we want to achieve. From the responses of the consultation I cannot ... other than the outliers, the generality of it all, I think it will achieve that.

Deputy R.J. Rondel:

One of the others is to support the growth of charitable trusts and foundations in Jersey enabling the Island to position itself as a centre of excellence for philanthropy and wealth management.

Assistant Chief Minister:

The feedback we are getting from the finance section of our community is that they see that there is an opportunity for that and we can only go by what they are saying to us as ... and you are closer to them than I am.

Officer, Financial Services, Chief Minister's Department:

Absolutely, we are getting very strong messages.

Senator S.C. Ferguson:

Now, just out of interest, what is the quantum of the sort of philanthropic wealth management organisations or the philanthropic charity trusts and foundations?

Officer, Financial Services, Chief Minister's Department:

You will be aware that McKinsey carried out an in-depth study into the financial services review last year.

Senator S.C. Ferguson:

You mean the one that is dead secret?

Finance Industry Development, Chief Minister's Department:

Well, I may be able to tell you something here then from the report that you might not know.

Senator S.C. Ferguson:

Yes, please.

Officer, Financial Services, Chief Minister's Department:

Part of that was looking at philanthropy and indeed a working group was set up to advance that strand that came out of the McKinsey review. McKinsey, a world leading group of economists, were not able to quantify the philanthropic wealth management sector worldwide. All they were

able to say is that philanthropy is growing faster than it ever has before. Philanthropy in financial services is now a buzz word. It is something which ...

Senator S.C. Ferguson:

Yes, well hang on a minute, I do not care about the world market. How big is our market? How many have we got and how much?

Officer, Financial Services, Chief Minister's Department:

The position that we are looking at is not how much we have at the moment, it is how much could be out there in the future.

Senator S.C. Ferguson:

Okay, yes, I can ... if it is a multi-billion pound market and we only get 5 per cent of it, it will do us very nicely, yes, fine. How many have we got and how much?

Officer, Financial Services, Chief Minister's Department:

We are not able to quantify directly how much but in profit wealth management we do, but we do know that our wealth management industry is ...

Senator S.C. Ferguson:

Yes, I agree with that but how much is genuinely philanthropic.

Officer, Financial Services, Chief Minister's Department:

As I say, because of client confidentiality it is not possible for us to know that information. All we know is that the value of the wealth management industry to the Island is extremely large and inside that wealth management industry a proportion of that, and we are told a growing proportion of that, will make up philanthropic wealth management.

Senator S.C. Ferguson:

Well, yes, but ...

Deputy R.J. Rondel:

Are there any other jurisdictions that measure?

Officer, Financial Services, Chief Minister's Department:

Not at the moment, no.

Senator S.C. Ferguson:

Because most philanthropists like to be known for their philanthropy, like Carnegie.

Officer, Financial Services, Chief Minister's Department:

I do not agree.

Deputy R.J. Rondel:

She just loves saying the word. [Laughter]

Officer, Financial Services, Chief Minister's Department:

The ones that wanted to be known are the ones you are able to name to me but the ones that do not want to be known you would never know about respectively because they may well never reach the public domain. There are a huge number of those. You only need to spend a relatively short amount of time with those who advise on a daily basis on wealth management, they have regular clients who do not want their name in the public domain. They certainly do not want to find themselves on the front of the *J.E.P.*

Senator S.C. Ferguson:

No, on the wealth management, yes, I do question whether all the philanthropy that is talked about being done in secret is totally philanthropy. I have got to the age, you see, where I am a cynic, and one does know that ... I have seen cases that come up with the Charity Commissioners in the U.K. which are charitable trust alleged and turn out to be, you know, sort of 10 per cent of their income is in charity and the other 90 per cent is in the private plane, the boat and everything else. So forgive me if I am a little cynical.

Assistant Chief Minister:

From my point of view, from being involved over a number of charities, true charities, in Jersey, I know that there are a lot of people who live in this Island who do give privately to organisations and they do it without any ... they do not look for any recognition about it. They just get on and do it and they really benefit an Island community. I know from firsthand knowledge of that.

The Deputy of St. Ouen:

I do not think anyone is going to argue with that, but we are looking at something slightly different. Well we believe we are looking at something quite different. We are looking at the secondary aim and the development of philanthropic wealth management but I want to ask how will we know we have become a centre of excellence unless we are determined to identify outcomes.

Assistant Chief Minister:

Something like the funding?

Officer, Financial Services, Chief Minister's Department:

We are starting to look at that now because since McKinsey identified this as an area we can tailor our questions to the financial services industry, when the Statistics Unit, for example, do their annual reviews of output and they can ask how much of your work in the private wealth management arena is made up of philanthropic wealth management. We are hoping that we will see a growth in that area.

The Deputy of St. Ouen:

So you will be monitoring it?

Officer, Financial Services, Chief Minister's Department:

Going forward. Now that it is a specific aim going forward, it will be being monitored more closely, yes.

The Deputy of St. Ouen:

All right, and will that information be made publicly available.

Assistant Director Policy, Chief Minister's Department:

Yes, through the restricted section of the register in the sense that at the moment one of the reasons we cannot answer the question is because there is no collation of the information. What the restricted section of the register does for the first time, for philanthropic structures that pass the charities test, there will be a list of them and that does not exist at the moment. So in terms of transparency, taking this a step forward, without a doubt the restricted part of the register does that. It is not for information in the public domain in the same way as the general part of the register but it does take us a very significant step forward.

Senator S.C. Ferguson:

Because family(?) officers in wealth management have been recommended to the industry by people working in those areas for some time, why is it only just coming now? Because McKinsey have told them? That is a load of rubbish.

Officer, Financial Services, Chief Minister's Department:

We have always had a focus on philanthropy. The specific more directed focus has come out of the McKinsey report and I think it has been accepted from the whole McKinsey work that the

conclusions are very valuable but it does sometimes take a work of that calibre to allow efforts to be directed. I think that is what we are seeing now.

Deputy R.J. Rondel:

Is there a danger we could lose some of that business because they have to be on a register, albeit restricted?

Assistant Director Policy, Chief Minister's Department:

Well, in our consultation what we have done is listened very closely to ... very carefully to concerns the financial services industry have echoed and without a doubt there has been a certain amount of concern raised about that. What you have to do is you have to apply a certain amount of intelligence as to how much of it is a real issue and how much of it is just about shroud waving and about it being a change process. The reason why we developed this notion of the restricted part of the register was to enable us to take a really concrete step forward in terms of recognising and being able to count, and very importantly being able to put our fingers on those organisations that receive all those charitable tax reliefs without damaging their privacy. Which we have continually been told by the financial services sector is that privacy is of absolute paramount importance. So we feel very confident that we are moving in the right direction.

Deputy R.J. Rondel:

Or they could just go to Guernsey.

Officer, Financial Services, Chief Minister's Department:

Just to add briefly to what Ruth has said, which I agree with fully, all the research into philanthropic wealth management suggests people want to flock to places which are well regulated, which have a register, which have a modern laws of charities. This is absolutely everything that this law is doing and indeed one of the reasons the financial services community support this so much is because it is bringing in the concept of a register, we are talking about regulation in due course, these are things that philanthropists feel comfortable with because, of course, they will be managing potentially billions of pounds worth of money going to good causes and they want to make sure that is being done correctly. That is what this law is doing.

The Deputy of St. Ouen:

One final question. What will happen to those organisations that choose not to register under the Charities Law? We are talking local charities here.

Assistant Chief Minister:

Well, they will not benefit from getting any tax benefits.

The Deputy of St. Ouen:

So they will find themselves worse off than before?

Assistant Director Policy, Chief Minister's Department:

Potentially. There are ...

The Deputy of St. Ouen:

Sorry, just to stop you there because I want to just explore this a bit further. If they are potentially going to be worse off then how do you meet the aim that you set yourself which is to support Jersey charities financially in order that they are better placed to deliver their own aims and objectives? Their own, not our own. We are not setting their agenda and yet you are suggesting that there is going to be a negative impact to some of those organisations which could have knock on effects to those that those companies support on the Island.

Assistant Chief Minister:

There needs to be a balance with those organisations who are going to benefit from being a registered and recognised charity. They are going to be in a position where the public are going to be aware that they are a registered charity, the commissioner has approved the public benefits, we know that they are going to be carrying out good works within the Island.

The Deputy of St. Ouen:

Assistant Minister, I hate to challenge you but to my knowledge I have heard and seen very little about the public raising concerns about any local charity on this Island ...

Assistant Chief Minister:

Have you not?

The Deputy of St. Ouen:

... and the benefits that are derived from them. Yet you are saying that this is such a significant issue and the public demand ... they want greater accountability and transparency. Yes, great, it is nice to have but equally the public want these charities to continue their good work and flourish and continue to offer and meet the needs, which are quite wide and varied, that currently are not met necessarily by government or others.

Assistant Chief Minister:

You are right, obviously there is a need for organisations to flourish and they can flourish by registering and giving the public the ... they are being endorsed that they are a well run organisation.

Senator S.C. Ferguson:

They do not want to be totally tied up with red tape. This is something that a lot of unofficial comment has been made to us, that we will need to keep the regulation to a minimum because of the smaller charities who will just curl up and die.

Assistant Chief Minister:

That is what we have done. That is what this law is doing. The current N.P.O. registration is all going to be rolled into one. The requirements in this first phase is no more onerous than what is currently being asked for them.

The Deputy of St. Ouen:

In the first phase. You qualify your statement, which is quite interesting, because the fear of all of our local charities and those that we have spoken to is: "Yeah, okay, we support the aims and objectives but the devil is going to be in the detail." It is the second phase and the regulations that are going to be brought in that potentially could have a significant impact on many or some of our local organisations.

Assistant Chief Minister:

That is not the intention of making it too onerous for them at all. The support that we have had from the voluntary and community organisations, and as I say there are a few outliers out there who are putting up signals, but the majority by far, the organisations, the leaders of all those organisations are very, very supportive of us and cannot wait for this to happen. They really are very keen for it to happen as soon as possible.

The Deputy of St. Ouen:

Again, I think you are being perhaps limited in the way that you are describing it because I would suggest that you are right in that all the organisations do support the introduction of primary law in phase 1. Their concerns, and I would suggest that includes people heading up the voluntary and community sector and others, all are focused on what phase 2 will include.

[16:15]

Assistant Chief Minister:

I think earlier on you commented and congratulated the department on the consultation process of the first round.

Deputy R.J. Rondel:

You picked up on that well, Assistant Minister.

Assistant Chief Minister:

I am sure you will be making that public. I am sure we will do it in a very similar fashion going forward, for the second round, the consultation process will as good, if not better, than what we have currently had.

Senator S.C. Ferguson:

It would perhaps be helpful, I think, for some of the smaller charities if the first draft of the regulations was available before the registration date.

Assistant Chief Minister:

How does that fit?

Assistant Director Policy, Chief Minister's Department:

The first draft of the regulations, as in the regulations in phase 2 relating to the regulatory standards? That is something that we could certainly go away and look at. I do not know whether we would be able to achieve that within our timeframes but I think that what we would be able to do is prior to registration commencing we will have a whole series of other pieces of consultation relating to the public benefit guidance and relating to the regulations under this law. So we will be having a continuous ongoing dialogue and, certainly as part of that dialogue, we can create some comfort and some surety around our thinking with regard to regulatory standards in phase 2. I think that there is a difference between ... some of the people who have submitted written responses did not come to the public meetings so at the public meetings when we were asked the question around annual accounts within phase 2 we could stand there and say: "We have not got that far yet but we can assure you that we will be looking appropriate break points for organisations." One of the things we have said the whole way along the line, the reason for doing this law in 2 phases, is so that we can gather information from the sector in phase 1 so we can make sure we get it right in phase 2. We do not want to get it wrong in phase 2, we want to get it right for our whole voluntary and community sector. There are more small organisations operating here than big players and we recognise that, and that is where we are focusing. So without a doubt there is commitment to take it forward in the best way for the voluntary and community sector. We appreciate that in the meantime, of course, that creates some uncertainty and that is very difficult to live with.

Senator S.C. Ferguson:

Right. Richard, anything else?

Deputy R.J. Rondel:

No, thank you.

Senator S.C. Ferguson:

James? Deirdre? Anything else you would like to add?

Assistant Chief Minister:

No, are we fitting in with your timescale? Are you happy with ...

Senator S.C. Ferguson:

We are never happy with timescales.

The Deputy of St. Ouen:

It is a very tough timescale that we are working to and we are trying to complete the work in the time allowed.

Assistant Chief Minister:

I appreciate that.

The Deputy of St. Ouen:

However, I mean obviously it ...

Deputy R.J. Rondel:

It is about the public consultation, is it not?

Assistant Chief Minister:

All right, yes. Okay. Good.

Senator S.C. Ferguson:

Thank you very much.

Assistant Chief Minister:

Thank you very much indeed.

Senator S.C. Ferguson:

The public meeting is closed.

[16:18]