

Chief Minister's Department  
**Consultation**

**Draft Charities Law**

20 March 2014

**Purpose of consultation**

To consult Islanders about the detail of a draft new Charities Law for Jersey.

**The consultation will close on 1 May 2014**

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**Summary**

In July and August 2013 the Chief Minister's Department consulted Islanders about the proposed development of a Charities Law for Jersey. That consultation focused on the broad principles of whether a law should be introduced, the scope of the law and the organisations it should apply to.

Based on the feedback received, we have developed a draft Charities Law. We now want to consult on the details of that draft Law in order to ensure that it achieves our 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.*

Alongside that the States wishes to 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

**Who should respond?**

We would like to hear from:

- members of the public
- voluntary & community sector organisations
- financial services organisations.

**What we would like to know?**

We would like to know whether you think:

- the draft Charities Law is appropriate for Jersey?
- anything is missing from the draft Law, or is included in the draft Law which should not be?

## How to respond to the consultation

You can attend a consultation event.

Date	Time	Venue
Wednesday, 2 April	9:00 – 10:30	Church House
Thursday 3 April	10.00 – 11.30	TBC (Finance industry consultation only)
Thursday 3 April	17:00-18:30	Concord Room*
Friday 4 April	8:00 – 9:30	Church House
Monday 7 April	15:00-16:30	Church House
Tuesday 8 April	17:00-18:30	Concord Room*
Thursday 10 April	12:00 – 13:30	Church House

### Concord Room\*

Chief Minister's Department  
Cyril Le Marquand House  
The Parade  
St Helier, JE4 8QT

### Church House

St Helier Parish Church  
St Helier  
Jersey JE2 3N

\*Please note, access to Cyril Le Marquand House is restricted after 17.30. Late comers will not be able to access the building after that time. Please email us in advance to let us know if you want to attend ([S.Macnair@gov.je](mailto:S.Macnair@gov.je)).

You can submit your comments:

- via our online facility ([www.gov.je/consult](http://www.gov.je/consult))
- by email or
- by posting your comments in writing

Write to: Charities Consultation  
Cyril Le Marquand House  
PO Box 140  
St Helier  
Jersey JE4 8QT

Email: [S.Macnair@gov.je](mailto:S.Macnair@gov.je)

### Your submission

If you are writing or emailing please provide the following information with your response:

- your name and contact details
- whether you are responding on behalf of a voluntary and community sector organisation, a financial services organisation, another company or organisation or as a member of the public.

Please note that consultation responses may be made public (sent to other interested parties on request, sent to the Scrutiny Office, quoted in a published report, reported in the media, published on [www.gov.je](http://www.gov.je), listed on a consultation summary etc.). You need to tell us if you:

- agree that your comments may be made public and attributed to you
- agree that your comments may be made public but not attributed (i.e. anonymous)
- do not want your comments made public.

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# SECTION 1: INTRODUCTION

## 1. Reading this paper alongside the draft Law

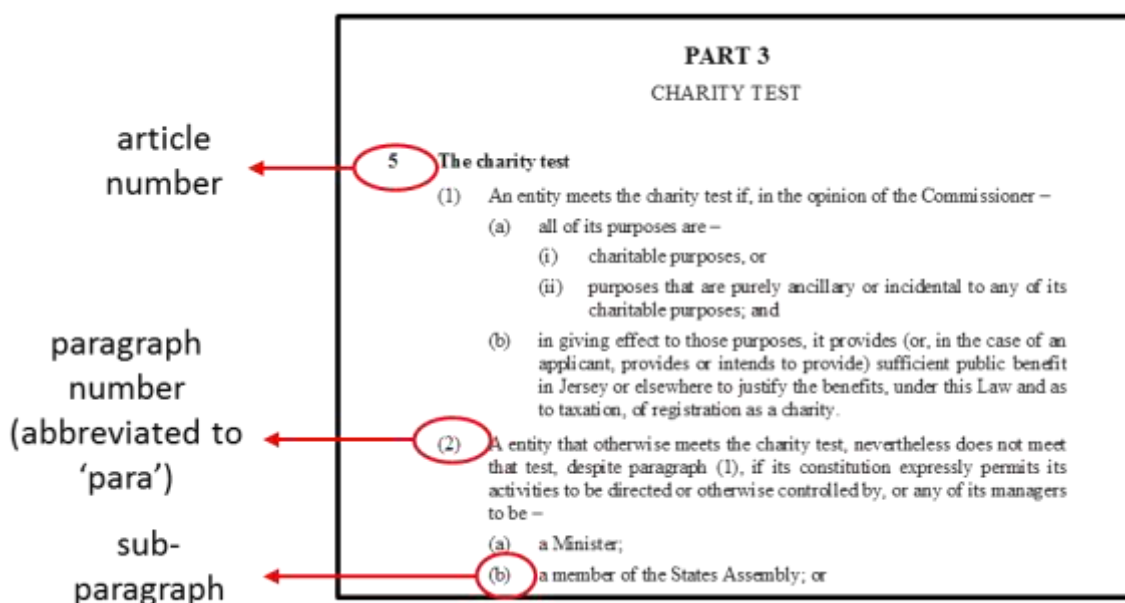
This supporting paper aims to explain the detail of the draft Charities Law and the effects of that draft Law. It can be read alone or alongside the draft Law, which is available from [www.gov.je/consult](http://www.gov.je/consult).

When reading this paper it is important to recognise that it is only designed to help people understand the effects of the draft Law. It is not a full or accurate interpretation of the details of the draft Law and should not be taken to be so.

Section 3 of this paper follows the structure of the draft Law which is divided into 9 parts, each part focusing on a different area, and two schedules, each providing more detailed information.

## 2. Reference numbers and brackets

The same reference numbers are used in this report, as in the draft Law, to help cross-referencing. For example: reference in this report to Art 5 (2) (b) means this information can be cross-referenced with Article 5, paragraph 2, sub-paragraph b, of the draft Law – as illustrated below.



Where square brackets [ ] are used, this means that the information included in those brackets either requires further consideration or is for illustrative purposes.

## 3. Note on Regulations and Orders

Throughout the draft Law reference is made to both "Regulations" and "Orders". Regulations and Orders provide for additional rules or processes to be introduced in support of the law.

A Regulation must be debated and adopted by the States Assembly before it can come into effect, whereas an Order is made by the Minister and is not debated by the States Assembly, unless a States Member calls for it to be debated.

The detail of what any Regulations and Orders will do is not set out in the draft Law, although some of parameters are. Therefore to help people understand the effect that proposed

Regulations and Orders may have, we have included an outline of the proposed content in this paper.

The proposed content of Regulations and Orders is shown in grey text boxes so as to indicate that it is additional information, which is not set out in detail in the actual law, and which will be subject to future development and consultation.

#### 4. Key terms used in the draft Law and supporting paper

Articles 1 and 2 of the draft Law interpret the words, expressions and terms used in the draft Law. Full details are not replicated in this supporting paper as they are set out the draft Law but, for the purposes of reading this paper only, the key terms used are:

Charity Test	This is the “test” that the Commissioner will use to decide whether an entity is a charity and should be put on the register. To pass the Charity Test an entity must: <ul style="list-style-type: none"> <li>• only have charitable purpose/s</li> <li>• must deliver public benefit</li> </ul>
Commissioner (Charity Commissioner)	An independent Charity Commissioner will be appointed. Their key functions will include determining which entities are registered charities and seeking to ensure that charity managers work in accordance with this draft Law.
Constitution	An entity must have a written constitution in order to apply to be on the charity register: Article 11 (1)
Entity	The term “entity” is used throughout this paper and is intended to include all structures (companies, foundations, organisations, trusts, bodies or associations) which are, or could be, registered charities.
Manager/s (charity manager/s)	The term “manager/s” or “charity manager/s” is used to describe the people who form the governing body or the people who manage or control the charity.  Depending on the legal structure and constitution, they are often commonly referred to as trustees or board members, committee members or council members.
Minister	The Chief Minister
Property	The term “property” includes the money, savings or assets of a charity, including its buildings.
Purpose (charitable purpose)	There are 16 different types of charitable purpose that a charity can have. A charity can have more than one charitable purpose: Article 6
Register (charity register)	This refers to the charity register that will be set up by the Commissioner. It will include information about all registered charities and will be available as an on-line register so the public can view it.
Registered charity	A registered charity is a charity which the Commissioner has put on the register.
Registered charitable purpose statement and registered public benefit statement.	The registered charitable purpose statement and registered public benefit statement must be provided by the charity and approved by the Commissioner. Both statements are included on the charity register: Article 8 (3)  A registered charity must apply its property in accordance with those statements and must not vary those statements without the

	<p>prior permission of the Commissioner: Article 13</p> <p>The Royal Court has the power to ensure that a registered charity (or a de-registered charity) applies its property in accordance with those statements: Article 14 (1) and 17 (9)</p>
Registration number	A registered charity will be given a registration number by the Commissioner. This number cannot be assigned or reassigned to any other charity: Articles 8 and 17
Required Steps Notice	The Commissioner will, in certain circumstances, be able to issue a required steps notice, telling the charity and its charity managers to take a specified action: Article 28. If they fail to do so, the Commissioner can deregister the charity: Article 16
Reportable matter	A reportable matter is a matter that must be reported to the Commissioner. Reportable matters are set out in Article 20 and include: misconduct; disqualification as a company director or charity manager in another jurisdiction; bankruptcy; unspent convictions.
Restricted section	<p>The charity register is divided into three sections (historic, general and restricted). Where a charity is entered onto the restricted section, limited information is put into the public domain about that charity.</p> <p>Only charities which met particular criteria can go on the restricted section of the registers: Articles 9 and 10.</p>
Tribunal (Charity Tribunal)	A Tribunal will be established to hear appeals against the decisions of the Commissioner. It will include at least four members who have the appropriate experience to safeguard the interests of the public and the charitable sector in Jersey.

## **SECTION 2: BACKGROUND**

### **1. Background**

In July and August 2013, the Chief Minister's Department consulted Islanders about the proposed development of a Charities Law for Jersey. That consultation focused on the broad principles of whether a law should be introduced, the scope of the law and the organisations it should apply to.

Over 240 people attended public meetings to give their views about the proposed Law, and 130 provided written responses. The feedback from that consultation clearly showed that the majority of people who responded were supportive of the introduction of a Charities Law in Jersey.

This feedback is set out in the Consultation Response Report that is available from [www.gov.je/consult](http://www.gov.je/consult). In addition, Appendix 4 of this supporting paper highlights some of the key issues that were raised during that consultation, and sets out the extent to which these are addressed in the draft Law.

This draft Law is intended to help us to achieve our overarching aims, in accordance with our key principles, which include:

#### **Overarching aims**

The ultimate aim of the Charities (Jersey) Law is to support Jersey charities to flourish in order that they are better placed to deliver their own aims and objectives and meet community need.

Alongside that, the States wishes to 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.

#### **Key principles**

The draft Law is intended to help protect public trust and confidence in charities *without* placing an unnecessary financial or bureaucratic burden on charities or on the public purse. The charity registration, and all associated processes, must therefore:

1. be proportionate
2. avoid doubt and uncertainty wherever possible
3. avoid costs to charities and the public, including high cost court action
4. be user friendly
5. reflect the capabilities of both large and small organisations.

As set out in our initial consultation, it is also proposed that the development and introduction of this draft Law forms phase one of two phased initiative to introduce, as some point in the future, a regulatory regime for charities.

The two phased approach has been taken to allow sufficient time to bed down the changes and to enable us to capture, through the Charities Register, information about the size, scale and scope of charities operating in Jersey. This information is critical to enabling us to consider what regulatory standards would be relevant in Jersey.

## **2. Next steps**

The consultation period on the draft Charities Law finishes on 1 May 2014. Dependent on the feedback received the draft Law may be amended prior to an updated version being lodged by 2 June 2014, in order for the States Assembly to debate the draft Law on 14 July 2014.

14 July 2014 is the last States sitting prior to the summer recess.

Assuming the draft Law is adopted by the States Assembly it will need to be sanctioned by Her Majesty's Privy Council. At that point work will commence on the development of the Charities register and the appointment of both the Commissioner and the Tribunal Members.

Only once those things are in place can an Appointed Day Act be brought to the States, setting out the when the draft Law will come into effect. At this stage it is not possible to state when that will be, although it will not be before mid-2015.



## **SECTION 3: CONTENTS AND EFFECT OF THE DRAFT LAW**

### **PART 1: INTERPRETATION**

#### **Article 1: Interpretation**

#### **Article 2: Definition of entity and related terms**

Articles 1 and 2 of the draft Law interpret the words, expressions and terms used in the draft Law. Full details are not replicated in this paper as they are set out the draft Law. Section 1.4 does however provide a guide to the key terms used in this paper.

## **PART 2 AND SCHEDULE 1: JERSEY CHARITY COMMISSIONER**

### **Article 3: Establishment of Jersey Charity Commissioner**

#### **Schedule 1: Jersey Charity Commissioner**

An independent Commissioner will be appointed for Jersey<sup>1</sup> (known as the Commissioner). The Commissioner will be a corporation sole.

This means they will have a legal existence that is separate from the States of Jersey. They 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.

Schedule 1 sets out details relating to the appointment of the Commissioner and their status.

### **Article 4: General functions of Commissioner**

The Commissioner will:

- determine if an entity passes the charity test (see Part 3)
- set up and manage the charity register (see Part 4)
- supervise compliance of charity managers with the law (see Part 5)
- seek to ensure the terms “charity”, “Jersey charity” and “charitable” are only used in accordance with the law (see Part 6)
- develop guidance in key issues, such as the charity test and duties of charity managers
- encourage and monitor compliance with this law
- work with others<sup>2</sup> to help ensure registered charities and other relevant agencies operate in accordance with the laws of Jersey, including laws relating to tax and financial services
- provide information and advice to the public, to the Minister and relevant stakeholders
- work with key agencies/individuals, either in Jersey or elsewhere, who have functions that are relevant to the Commissioner, for example the Attorney General and Comptroller of Taxes.

## **PART 3: CHARITY TEST**

### **Article 5: The charity test**

Under the draft Law, an entity will only be charity if, in the opinion of the Commissioner, it passes the charity test. It will 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.

In addition, the charity’s constitution cannot expressly permit a Minister or a States Member (or an equivalent in another jurisdiction) to act as a charity manager of the charity or to direct or control its activities, unless the Chief Minister has made an Order permitting it<sup>3</sup>.

This does not exclude Ministers and/or States Members from acting as a manager in their own private capacity<sup>4</sup>, only in their capacity as a Minister and/or States member.

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<sup>1</sup> The Commissioner will be remunerated by the States. It is anticipated that they will be contracted to work approximately 75 days, although in the first year of the law additional days may be required.

<sup>2</sup> For example the Attorney General, the Royal Court, the Bailiff, the Comptroller of Taxes and the Jersey Financial Services Commission.

<sup>3</sup> This Order making power may be required in relation to entities which historically have received States funding and, as a condition of the funding, a States member has sat as a manager of the entity.

**Note: Guidance on the Charity Test**

The Commissioner will be required to issue guidance on how they determine if an entity meets the charity test. This guidance must be taken into account not just by the Commissioner and charity managers, but also by Tribunal and the Court.

**Article 6: Charitable purposes**

Article 6 lists 16 different charitable purposes. A charity can only have charitable purposes, although it can have more than one. The draft Law specifically states that advancing a political party or promoting a candidate for election is not a charitable purpose.

The charitable purposes have been based on those adopted in Scotland and as set out in the Charities and Trustee Investment (Scotland) Act 2005.

**Article 7: Public benefit**

When considering if an entity passes the charity test, the Commissioner will need to determine if it provides public benefit to a degree that justifies registration.

The Commissioner cannot presume that an entity is delivering public benefit simply because its purposes are charitable purposes. Instead the Commissioner will need to consider a number of different factors including:

- 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 (e.g.: fees or charges)

It is proposed that the draft Law clearly states that appeals for a named individual/s will not pass the public benefit test (See Section 4).

Examples of the types of factor the Commissioner will consider with regard to public benefit are set out in Appendix 1.

**Note: Charitable purpose and public benefit statements**

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

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<sup>4</sup> Consideration was given as to whether restrictions on States members and ministers should also apply to Jurats, but it was agreed that restrictions should not apply.

## PART 4: CHARITY REGISTER

### Article 8 charity register

#### Article 9: Restricted section

#### Article 10: Public Access

The Commissioner must set up and maintain a register of charities. The register will have three different sections containing different information. Public access to the information will vary between the different sections.

Section	Entities included in this section	Information included on the register	Information in the public domain
<b>General section: Art 8</b>	A charity which does not meet the criteria to be on the restricted section	<ul style="list-style-type: none"> <li>• registration number</li> <li>• name of charity (and any previous names)</li> <li>• form of entity (e.g.: company; trust; foundation etc)</li> <li>• names of charity managers</li> <li>• address/es</li> <li>• registered charitable purpose statement and registered public benefit statement</li> <li>• dates of registration</li> <li>• if it is an externally organised religious charity: see Article 29</li> <li>• if any States Member/Minister is a charity manager or has control of the charity: see Article 5</li> <li>• if the charity has submitted its annual return: see Article 13 (7)</li> <li>• if a required steps notice has been issued: see Article 28</li> </ul>	<p>All information included on the register</p> <p>(except where under Article 10 (4) &amp; (5) the Commissioner considers that putting this information into the public domain could present a risk to people or property)</p>
<b>Restricted section Art 9 &amp;10</b>	A charity which does not solicit donations from the general public: Article 9 (2)	<ul style="list-style-type: none"> <li>• as above</li> <li>• explanation of why charity is on the restricted section of the register</li> </ul>	<ul style="list-style-type: none"> <li>• registration number</li> <li>• form of entity (e.g.: company; trust; foundation etc)</li> <li>• registered charitable purpose statement and registered public benefit statement</li> <li>• explanation of why charity is on the restricted section of the register</li> </ul>
<b>Historic section: Art 8 (5)</b>	Entities that were previously registered charities but have been de-registered.	<ul style="list-style-type: none"> <li>• registration number from when entity was a registered charity</li> <li>• mime (unless previously on the restricted section of the register)</li> <li>• reasons why it was de-registered</li> <li>• dates of registration and deregistration</li> </ul>	All information included on the register

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<sup>5</sup>.

The restricted section of the charity register will allow the public to access information about the purpose and public benefit of the charities that receive charitable tax reliefs - as these are the grounds on which those benefits are granted - whilst at the same time balancing the confidentiality or privacy of these arrangements.

Where the charity solicits money directly from the public however, it is deemed correct on policy grounds that the public are able to access the type of information included in the general section of the register including, for example, the names of the charity managers controlling that charity.

#### **Order relating to soliciting donations from the general public: Article 9 (2) & (3)**

The Minister will make an Order setting out what is meant by soliciting donations from the general public. It is envisaged that this will include marketing, fundraising or promotional activity in the public domain, that results in, or has as part of its purpose, the raising or soliciting of funds (whether through donations, fees or sales). For example:

- collecting tins; bucket donations; raffles
- sponsorship
- fundraising via legacies; direct debits or standing orders; lump sum donations
- sales (e.g.: cake sales; car washes etc.)
- membership fees
- ticket or event sales

This will be distinct from raising funds in a private manner which could include, for example soliciting activity that only takes place in a private domain, for example through investor club arrangements.

#### **Orders requiring additional information: Article 8**

The Minister may make Orders requiring additional information to be included on the register. It is envisaged that this may include:

- information about whether the charity has a “parent” charity or is a local branch of a national/international charity
- whether the charity pays its charity managers - which it is intended will be permitted in the case of work undertaken by a charity manager carrying on regulated financial services business or where the payment relates to the charity manager undertaking a role other than as a charity manager (see Article 19).

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<sup>5</sup> These private arrangements vary enormously but, for illustrative purposes, could include a charity set up by a private individual using their own money to support local children in need. This individual might not want people to know that they have the wealth to set up that charity or they might not want people contacting them and asking for help.

## Article 11: Application to register

Article 11 sets out information relating to which entities can apply to be on the register and the information they must provide on application (which is in addition to the information entered onto the register).

### **Note: Registration is voluntary.**

An entity does not have to register but, if it does not register, it cannot access all charitable tax reliefs and it cannot call itself a charity.

An entity<sup>6</sup> can apply if it wants to be a registered charity and receive the associated advantages of registration if it:

- has a written constitution (if an entity does not currently have a written constitution it must produce one before it applies. The Commissioner will provide draft constitutions to assist)
- it is a Jersey entity, or it carries out relevant activity in Jersey (relevant activity is activity extends beyond soliciting donations or raising in Jersey) and
- considers it meets the charity test, or will do upon registration.

### **Note: UK charities**

A charity which is established and entitled to call itself charity under UK<sup>7</sup> law and which is managed from the UK and which does not undertake any activity in Jersey, except fundraising activities, does not need to register in Jersey in order to receive the benefits associated with registration. See Article 23

The entity will need to provide information as part of its application, including:

- name of entity
- form of entity (e.g.: company; trust; foundation etc)
- names of charity managers
- address/es
- dates of registration
- if it is an externally organised religious charity (see Article 29)
- if any States member/minister is a charity manager or has control of the charity (see Article 5)
- copy of constitution
- registered charitable purpose statement
- registered public benefit statement
- copy of financial accounts, if any
- financial information as required by the Non-Profit Organisations (Jersey) Law 2008 (NPO Law) if being entered onto the restricted section of the register or financial information as required by the Minister if being entered onto the general section of the register
- any other information required by Regulations or by the Commissioner in order to determine the application

<sup>6</sup> Many charities are part of a grouping of organisations. Being part of a group is often key to a charity's identity, aims and activity. Where these charities operate as an affiliate or federal structure – i.e. they are individual bodies that are legally separate - they must register in their own right. Where the charities are “branches” or “projects” of a “main” charity, as opposed to their own separate legal body, and the “main” charity owns the property of its branches, they do not have to separately register. A “branch” of a parent charity which is not separately registered would not be able to receive the advantages associated with registration in its own right.

<sup>7</sup> Or any other country/jurisdiction the Minister chooses to recognise.

**Regulations requiring additional registration information: Article 11 (4)**

The draft Law allows for the States to make Regulations requiring other information to be provided if, at some point in the future, it is determined that additional information is needed.

The Commissioner must enter the entity onto the register if :

- it passes the Charity test
- its name is not undesirable (see Article 12)
- there are other grounds on which it should be refused registration.

On entry to the register the Commissioner will issue a registration number and a registration certificate.

**Regulations relating to charities that only have a single charity manager or family-only charity managers: Article 11 (7)**

The draft Law allows for the States to make Regulations that may allow an entity to be refused registration if it only has one charity manager (unless that charity manager conducts a regulated financial services business) or if a proportion of those charity managers are related to each other (e.g.; spouse/civil partner; living together as a spouse/civil partner; child; parent; grandchild; grandparent; brother; sister or step child or person being treated as if they were a child).

The aim is to help ensure that the public may have confidence in the management of registered charities. This confidence can be difficult to achieve where there is only one charity manager or a group of family-only charity managers.

The Charity Registration and Non-profit organisations (NPO) registration process<sup>8</sup> will be streamlined under this draft Law. An entity that is applying for registration as a charity, which is not already a registered non-profit organisation (NPO), will also need to provide as part of its application information required under the NPO law. The Commissioner will pass that information to the Jersey Financial Services Commission (JFSC) for the purposes of NPO registration.

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<sup>8</sup> As set out in the Non-Profit Organisations (Jersey) Law 2008

### **Article 12: Name of charity**

The Commissioner can refuse to enter an entity onto the charity register if its name is undesirable. This could include if the name is:

- the same as, or too similar to, another registered charity
- likely to mislead people or give the impression it is connected to another entity when it is not
- offensive.

A registered charity:

- can ask to change its registered name but cannot use any name other than its registered name
- may be required to change its registered name by the Commissioner if, after registration, a matter comes to light that means that the Commissioner would have refused the name on initial registration (for example; if it transpires after a period that there is long-standing company that trades under the same name).

Applicants and registered charities will have the right to appeal to the Tribunal if the Commissioner requires them to change their name (Article 34).

### **Article 13: Effects of registration**

When a charity is on the register:

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

A registered charity must, for example:

- submit an annual return
- tell the Commissioner about any of the following:
  - any changes to the information on the register
  - proposals to change its constitution
  - any reportable matters (see Article 20)
  - if it is likely to become bankrupt or cease to exist for any reason

#### **Orders relating to the information a registered charity must provide: Article 13 (6) and (8)**

The draft Law allows for the 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 charity register up-to-date or to provide additional information in order to help the Commissioner fulfil their functions.



#### **Article 14: Powers of the Court over a registered charity**

It is proposed that the Commissioner or Attorney General can apply to the Royal Court and request the Court intervenes where:

- there is misconduct in the administration of the charity or
- action is required to ensure the charity's property is used in accordance with its registered charitable purpose and public benefit statements.

The Court's powers will include, but not be limited to:

- stopping the charity using the terms "charity" or "charitable" or from soliciting public donations
- appointing a person to take over the management of the charity in place of its charity managers or making the administration of the charity subject to any supervision that the Court thinks is necessary
- suspending or removing a charity manager
- requiring anyone holding the charity's property not to part with that property
- limiting the payments a charity can make
- making a charity manager who has committed misconduct take steps to remedy that misconduct

#### **Article 15: Deregistration on application by the entity**

#### **Article 16: Deregistration in other cases**

#### **Article 17: Effects of deregistration**

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

- on the charity's request, if the Commissioner is satisfied that proper arrangements have been put in place to ensure the charity's property continues to be applied in accordance with its registered charitable purpose and public benefit statements; OR
- if the Commissioner is satisfied that the charity no longer meets the charity test or it no longer exists. In these circumstances the Commissioner will determine a "termination date" which could be a retrospective date which would apply in relation to entitlement to charitable tax reliefs; OR
- if the charity has failed to comply with a required steps notice (Article 28).

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

The Court has the same powers over a deregistered charity as it has over a registered charity in relation to protecting property and ensuring it is used in accordance with its *preserved statements*. The above mechanism ensures that any property donated to a registered Jersey Charity can only be lawfully applied to its registered charitable purpose/s.

## **PART 5: MANAGERS OF REGISTERED CHARITIES**

### **Article 18: General duties of managers of registered charities**

The duties of a charity manager of a registered charity include that they must seek, in good faith, to ensure that the charity:

- delivers its charitable purposes and public benefits and
- complies with the law.

In doing so, they must act with due diligence, as if they were a prudent person and to the best of their ability and skill.

They must not engage in misconduct, assist another charity manager to engage in misconduct or conceal misconduct. Misconduct being a contravention of this draft Law, of the charity's constitution or constitution law, or of a required steps notice issued by the Commissioner: Article 2 (8).

### **Article 19: Remuneration of managers of registered charities<sup>9</sup>**

It is a key principle of the draft Law that a charity manager cannot be paid to act as a charity manager.

It will not however preclude charity managers from being paid by the charity to undertake other tasks. The Commissioner will bring forward guidance setting out circumstances in which a charity manager can be paid to undertake other tasks or provide services to the charity, for example: providing building or catering services to the charity or undertaking legal or accountancy work on behalf of the charity.

The guidance will focus on helping ensure that, in paying its charity manager to provide services, the charity does not fall short of the public benefit element of the charity test (for example: a charity which paid all its charity managers to provide services might arguably be considered providing "private benefit" to the detriment of "public benefit").

Before any guidance is issued by the Commissioner in this regard it is intended that there will be consultation with both the voluntary and community sector and the financial services industry.

### **Regulations in relation to remuneration of charity managers**

The draft Law allows for the States, by Regulation, to prescribe circumstances in which a charity manager can be paid to act as a charity manager. It is proposed that this will include when the work done relates to a regulated financial services business (i.e. a sole trustee who is regulated under financial services laws).

### **Article 20: Reportable matters and acting as a manager**

Reportable matters are matters that must be reported to the Commissioner, either by an entity applying to be on the register or by a registered charity. They include that a charity manager::

- has engaged in misconduct that resulted in a required steps notice (see information about Article 18 above)
- is disqualified from acting as a charity manager under this draft Law or under UK law or is disqualified from being a company director
- is bankrupt or insolvent

<sup>9</sup> Restrictions on remuneration do not apply to charity patrons. This is entirely a matter for the charity although good practice would dictate that the constitution should set out whether a patron can be paid (a patron has a figurehead or championing role but does not have role in the governance, operation or management of the charity).

- has a conviction under this law, or an unspent conviction relating to deception under tax law or other laws pertinent to being a charity manager

Where there are no reportable matters charity managers will need to provide a declaration to the entity that there are no reportable matters pertaining to them, both on application for registration and as part of the charity's annual return.

Where there is a reportable matter, the charity manager must report it promptly to the Commissioner. The Commissioner will make inquiries to determine whether the charity manager is a fit and proper person to act as a charity manager, or may ask the Court to determine the matter (see Article 21 below). Having made their determination, the action that the Commissioner could take includes:

- refusing to register an applicant until the charity manager is removed
- permitting the charity manager to continue to act as a manager
- issuing a notice to a registered charity, either requiring removal of the charity manager or permitting the charity manager to continue as a charity manager of the charity.

#### **Article 21: Court Orders as to fitness of manager**

If the Court is asked to determine whether a charity manager is a fit and proper person, the action the Court could take includes issuing an Order:

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

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

#### **Note: Other restrictions on who can be a charity manager**

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

Single charity managers or family only charity managers: As set out in Article 11, Regulations will be brought forward with regard to single charity manager and family- only charity managers.

# PART 6: USES OF EXPRESSIONS “CHARITY”, “CHARITABLE” AND RELATED TERMS

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

## Article 22: Prohibition of unauthorized use of expression “charity” and related terms

### Article 24 Prohibition of unauthorized use of expression “Jersey charity”

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

The proposed effect is to prohibit:

- any entity, regardless of whether it is based in Jersey or elsewhere, from claiming to be “registered” in Jersey, unless it is actually registered in Jersey
- any Jersey based entity calling itself a “charity” unless it is registered as a charity in Jersey, regardless of where in the world it is making this claim
- a foreign based entity calling itself a “charity” in Jersey, unless is it either registered in Jersey or in another jurisdiction (see Article 23 below)
- 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:

- prohibits the entity from permitting someone else to misrepresent them and
- prohibits any person from misrepresenting the entity as a “charity” or a “Jersey charity” if they are doing so in order to mislead or to gain an advantage

## Article 23: Excepted foreign charities

It is proposed that a charity which is established, and entitled to call itself a charity, under UK law - or any other country that the Minister chooses to recognise by Order - can call itself a “charity” in Jersey, but cannot call itself a “Jersey charity” providing:

- it is managed from the country whose law entitles it to call itself a charity
- it does not undertake any activity in Jersey, except fundraising activity.

The effect of Article 23 is that if a UK charity is engaged in activities in Jersey which are not restricted to raising funds, it must register in Jersey for the purposes of transparency.

### Order and Regulation making powers under Article 23

It is proposed that the Minister has the power to make Orders:(i) recognising the charities of countries other than the UK and/or (ii) stating that a particular foreign charity can call itself a charity in Jersey even if it not established, and entitled to call itself a charity, under the law of another country recognised by the Minister.

It is also proposed that the States will have the power, by Regulation, to amend the restrictions or requirements with regard to excepted foreign charities.

## Article 25: Power to restrict use of term “charitable” in soliciting funds

Article 25 allows for Regulations to be made that help protect the term “charitable” when undertaking public fundraising activities. The aim is to help prevent people being misled or uncertain as to whether they are donating to a charity.

These Regulations will specify what constitutes soliciting donations (see information on Article 9 above).

**Article 26: Power to require registered charities to identify themselves as such**

Article 26 allows the Minister to make an Order setting out how charities should identify themselves, refer to their charity registration etc in public documents.

## **PART 7: INFORMATION AND ENFORCEMENT**

### **Article 27: Power to demand information**

The Commissioner will have the power to demand information from a charity, a de-registered charity or a charity manager, if the Commissioner needs that information to order to determine whether to serve a Required Steps Notice (See Article 28 below).

It will be an offence if a person knowingly provides false information.

### **Article 28: Required steps notice**

The Commissioner will issue a required steps notice to a charity if the Commission believes there is misconduct, or the charity no longer passes the charity test, or that a charity manager is unfit to manage.

The required steps notice will require action to be taken in a specified time frame. This action could include suspension, removal or replacement of the charity manager. If the charity fails to comply, the Commissioner can deregister the charity (Article 16).

### **Article 29: Required steps notices restricted in relation to managers of externally organised religious charities**

An externally organised religious charity is a charity whose purpose is the advancement of religion and which forms part of a larger entity that supervises its charity managers (for example: the Church of England).

The Commissioner cannot issue a required steps notice to an externally organised religious charity requiring the removal of its charity managers.

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 Laws in Scotland and in England & Wales.
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### **Article 30: Restricted information**

### **Article 31: Required disclosure of information**

### **Article 32: Permitted disclosure of information**

The Commissioner and others working to support the Commissioner will, in the course of their work, have access to information about individual charities and their charity managers. Articles 30, 31 and 32 set out the circumstances in which this information can be shared (for example, if there were concerns about financial issues such as money laundering) and when it cannot be shared (for example, a member of the Commissioner's staff disclosing information about a charity manager which is not public information, without the charity manager's consent).

## **PART 8 AND SCHEDULE 2: APPEALS TO THE CHARITY TRIBUNAL**

### **Article 33: Establishment of Charity Tribunal**

#### **Schedule 2: Charity Commissioner Tribunal**

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

### **Article 34: Persons who may appeal and decisions that may be appealed**

An appeal<sup>10</sup> can be made by:

- an applicant who has been refused registration or refused entry onto the restricted section of the register
- a registered charity if the Commissioner has deregistered that charity or issued a required steps notice or required the charity to change its name
- a third party if they believe the Commissioner has registered a charity which does not meet the charity test or if they have an interest in the registered name (for example, they have a longstanding company that trades under the same name).

### **Article 35: Grounds of appeal and powers of Tribunal in determining appeals**

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

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

### **Article 36: Appeals to Court**

#### **Article 37: Further provision as to appeals to tribunal or court**

An appellant who is not satisfied with the Tribunal's decision can then appeal to the Royal Court if they believe decision of the Tribunal was unreasonable. They will not however be able to submit new evidence.

The Court can overturn either the Commissioner's decision or the Tribunal's decision if it chooses to. The Court can also determine a date at which its decision comes into effect, which can be a date which is before, on, or after the date of the original decision.

#### **Note: Commissioner's complaints process**

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

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

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<sup>10</sup> In addition the Attorney General can appeal any decision made by the Commissioner.

## **PART 9: MISCELLANEOUS AND FINAL PROVISIONS**

### **Article 38: Offences by corporate and other bodies**

This article sets out that if an offence is committed under this draft Law by a corporate or other body – as opposed to by an individual person – the officers of that body are guilty of the offence if it is committed with their consent or connivance or attributable to their negligence.

### **Article 39: Service of notices**

### **Article 40: Regulations and Orders**

These are standard articles, which appear in many laws, and are about practical matters:

- Article 39 simply states that an Order will be developed to say how notices, such as required steps notices, are served (eg; by post or by hand)
- Article 40 states that, when making Regulations and Orders under the draft Law, the Minister or the States may include such transitional, consequential, incidental, supplementary or savings provisions as they think are necessary.

### **Article 41: Savings and transitional provisions**

This article sets out that:

- nothing in the draft Charities Law derogates from the powers that the Attorney General, the Bailiff or the Court already have in respect of charities and
- the States may bring forward other “saving provisions” to preserve existing powers
- the States can make any transitional arrangements they think are necessary to bring the Charities Law into effect (see information on Article 42 below and Appendix 2 as to how it is proposed that these arrangements will work in regard to tax exemptions for charities).

### **Article 42: Amendments of enactments in relation to exemption from liability for tax**

This Article sets out proposed changes to some of the tax laws that will be introduced alongside this draft Law. The proposed changes are described in Appendix 2 which sets out:

- the effect of those proposed changes
- how they will apply to entities that are currently in receipt of charitable tax reliefs
- the proposed time frame in which those changes will come into effect for those entities currently in receipt of charitable tax reliefs.

Article 42 provides for changes to tax laws and associated charitable tax reliefs. These charitable tax reliefs will be subject to a review by the Treasury.

### **Article 43: Amendments of Law relating to sharing of information**

Makes provision for the States, by Regulation, to enable other relevant bodies (for example: JFSC and the Comptroller of Taxes) to provide information to the Commissioner. Also see Article 31 and 32 which relate to the Commissioner’s power to share information with them.

### **Article 44: Consequential amendments to other enactments**

There are a number of other Laws in Jersey that make reference to “charity” or “charitable purposes”. This Article allows the States to bring forward Regulations, as part of this draft Law, which will amend those other Laws, where necessary, to ensure that when they refer to “charity” or “charitable purpose” it is in accordance with the definitions set out in this draft Law.



**Article 45: Citation and commencement**

This Article sets out that different parts this draft Law will come into force on different days. This is to enable work to commence on some areas of the draft Law, prior to all of the draft Law coming into force.

It is proposed that Parts 1 to 3 of this draft Law come into force as soon as the draft Law is registered with the Royal Court, thus allowing the Commissioner to be appointed and work to commence on development of public benefit guidance prior to the requirement to register coming into force (this being in Part 4 of the draft Law). Similarly it is proposed that Article 33 will come into force after registration, allowing the Tribunal to be set up and members recruited in advance of the full Law coming into force.

## **Section 4 : Effects of the draft Law on different types of entity**

### **1. General**

It is proposed that the law applies to both incorporated and unincorporated entities (full details in Article 2 of the draft law) including:

- trusts
- fidéicomis
- an incorporated 1862 association;
- a foundation;
- a body corporate established by enactment, by Act of the States, or by Royal Charter, in relation to Jersey;
- a company and bodies incorporated by any enactment other than the Companies (Jersey) Law 1991;
- a body incorporated under an Act of the United Kingdom Parliament or Order in Council, if extended to or applicable in Jersey;
- an unincorporated body or association of persons
- an entity that is similar to those above but is established under the law of a territory or country other than Jersey.

Any of those entities may apply to be a registered charity if they wish to and if they have a written constitution and are a Jersey entity or carry out relevant activity.

As set out in Article 42 and as explained below in Appendix 2, the draft Law will include changes to some tax laws and Regulations which, when taken together, will have an effect on entitlement to charitable tax reliefs, including for some entities, or types of entity, which are currently in receipt of tax reliefs.

The draft Law will also affect different entities in different ways depending on their purpose and the type of activity they are involved in. The impact on some of those key “groups” are explained below:

### **2. Appeals for named individuals or groups of individuals (Article 7)**

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

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

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

There is concern that fundraising appeals can be open to abuse, with the monies raised being used for different purposes, however laws relating to fraud etc deal with such eventualities.

### **3. Charity Shops**

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

#### **4. Cultural NPO**

Once the proposed changes to tax laws and Regulations come into effect, these changes will mean that non-profit cultural organisations, that receive funds wholly or mainly from the States, will not automatically continue to do so. They will need to apply to be a registered charity.

#### **5. Dons and charitable funds**

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

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

#### **6. Parent Teacher Association (PTA)**

PTA's will not be charities unless they are on the charity register. This will require them to demonstrate that they provide public benefit. A PTA that only benefits the children in the school, where school is not itself a charity, will need to demonstrate that the conditions associated with accessing that school are not so restrictive as to only benefit those can met those conditions.

#### **7. Private charitable arrangements**

These are entities that have charitable purposes but are established with private monies, as opposed to monies raised from the public. They usually take the form of charitable trust or foundations.

These entities can choose to register. If they become registered charities they will be entitled to all charitable tax reliefs. If they are on the restricted section of the register they will not however be able to solicit donations from the public.

If they choose not to register, and they meet the considerations set out in Article 42 including that they do not solicit donations from the public, they will be entitled to income tax relief only.

#### **8. Schools**

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

Non-States schools will not be charities unless they are on the charity register. In order to be a registered charity they will, in the opinion of the Commissioner, need to provide public benefit to a degree that justifies registration as a charity.

#### **9. Social enterprises**

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

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

# **APPENDIX 1: PUBLIC BENEFIT EXAMPLES**

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

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

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

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

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

- Public benefit v public disbenefit, for example:  
A charity which lobbies for wind energy supports a proposal to build wind farm in Jersey. The benefit to the wider public is wind energy; the disbenefit to residents in the vicinity is that the value of their properties may decline. In this case the Commissioner would doubtless decree public benefit is greater than disbenefit.

A charity promotes the right of women to choose to wear the hijab. This is a benefit for all women who may wish to wear the hijab. A charity campaigns for a policy change demanding all women should wear the hijab. This is a disbenefit to those who don't want to. In this case the Commissioner would doubtless decree the 2<sup>nd</sup> charity would not pass the public benefit test.

- Restrictive conditions, for example:

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

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

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

# **APPENDIX 2: TAX, CHARITABLE STATUS AND TRANSITIONAL ARRANGEMENTS**

## **1. Charitable tax relief and charitable status**

A number of entities in Jersey are currently entitled to a range of charitable tax reliefs, as set out below.

It is proposed that the draft Charities Law will include changes to some tax laws and Regulations (as set out in Article 42). Once all these provisions come into effect, these changes, taken together, will mean that some entities previously entitled to charitable tax reliefs may no longer be entitled to the reliefs, whilst other entities may be entitled to some, but not all, of the charitable tax reliefs. Entitlement to tax reliefs will partly be dependent on whether entities do, or do not, become registered charities.

These charitable tax reliefs, will be subject to a review by the Treasury, currently include:

<b>Law</b>	<b>Relief within that law</b>
Income Tax (Jersey) Law 1961	<ul style="list-style-type: none"><li>• Exemption from income tax</li><li>• Lump sum donation reclaim scheme</li><li>• Deed of Covenant scheme</li></ul>
GST Law and Regulations	<ul style="list-style-type: none"><li>• Exemption from the need to register for GST and to charge it on sales</li><li>• Repayment of GST incurred on purchases</li></ul>
Taxation (Land Transactions) (Jersey) Law 2009	<ul style="list-style-type: none"><li>• Reduced rates of Land Transaction Tax</li></ul>
Stamp Duties and Fees (Jersey) Law 1998	<ul style="list-style-type: none"><li>• Reduced rates of stamp duty</li></ul>

The basic rules are:

Exemption from income tax will be available to<sup>11</sup>:

- registered charities (An entity must apply to be a registered charity regardless of whether or not it was previously eligible for charitable tax relief).
- Charitable trusts and foundations that are not registered charities but which:
  - only have charitable purposes (as defined under the new draft Charities Law)
  - only distribute their property to registered Jersey charities and
  - do not solicit voluntary donations
  - notify the Comptroller of Taxes that they intend to make use of the exemption before any income is received.
- 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 in so far as their incomes applied to one of the following purposes:
  - the advancement of education,
  - the relief of poverty,
  - the furtherance of religion,

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

- a purpose beneficial to the whole community or
- the service of any church or chapel or any building used solely for the purpose of divine worship

And providing they:

- do not, and have never, solicited voluntary donations
- were charities under the definition under Article 115(a) before 1 January 2015<sup>12</sup>

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

## 2. Transitional arrangements for entities in receipt of charitable tax reliefs

The transitional arrangements below apply to entities that are currently in receipt of tax relief under Article 115(a) of the Income Tax Law:

### Existing charities wishing to become registered charities

If you want to become a registered charity and receive all charitable tax reliefs (exemption from income tax, the lump sum and deed of covenant schemes, GST relief etc) and have the right to call yourself a charity, you must apply to the Commissioner to be put on the charity register. The Commissioner will determine whether you meet the Charity Test.

The proposed process, subject to consultation is:

You must apply to be on the register within the *Registration Period*. If you have not applied within the *Registration Period*, regardless of the reason why you have not applied:

- your entitlement to charitable tax reliefs will stop
- you can no longer call yourself as charity, or use the term charity or charitable when soliciting donations<sup>13</sup>.

There will then be a period, known as the *Post-Registration Period*, which during which the Commissioner will determine your application. During the *Post-Registration Period*, you can continue to:

- receive charitable tax reliefs you were already entitled to (see note below on anti-avoidance)
- present yourself as a charity<sup>14</sup>.

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

- the Commissioner determines you are charity, you will be put on the register and will continue to receive charitable tax reliefs
- the Commissioner has not determined whether you are a charity by the end of the *Post-Registration Period*, you will not be put on the register and you will lose your

<sup>12</sup> It is not anticipated that the draft Charities Law will come into effect until some point after mid-2015. The date of 1st January 2015, which is before the Law comes into effect, is intended to provide certainty to charitable trust and incorporated bodies falling into this category, and to new structures created before the draft Charities Law comes into effect.

<sup>13</sup> You can continue to call yourself a charity/charitable through the *Registration Period* but only if you were so doing, on the day before the Law came into force.

<sup>14</sup> As above at 9

charitable tax reliefs and the right to present yourself as a charity from the end of the *Post-Registration Period*

If the Commissioner determines that you are not a charity you may either:

- a) appeal to the Charity Tribunal to review the decision of the Commissioner OR
- b) re-apply to the Commissioner but you can only re-apply if you are prepared to make the changes necessary to pass the Charity Test (this will usually involve changes to your constitution and/or charitable purposes and/or the public benefit you provide).

Appealing to the Tribunal:

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

Re-applying after making changes to pass the Charity Test:

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

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

**Note: Anti-avoidance**

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

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

### **3. Arrangements for new entities claiming charitable tax relief**

#### **Registered Charities**

If you are a newly formed entity and the Commissioner determines you are a registered charity, the start date for charitable tax reliefs will be the date on which the Commissioner determines your application and places you on the register, as opposed to the date on which you applied to be on the register.

#### **Entities that are not registered**

If you are a newly formed charitable trust or foundation which only has charitable purposes, does not solicit donations from the public and that only benefits registered charities in Jersey, you will be entitled to exemption from income tax, but no other charitable tax reliefs.

You do not need to apply to the Commissioner but you will need to notify the Comptroller of Taxes that you are eligible for this exemption and intend for it to apply to you. You must do this before you first receive any income. be entitled to this exemption.

### **4. Arrangements for deregistered charities**

#### **Optional deregistration**

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

As a de-registered charity you can claim any backdated charitable tax reliefs that you were entitled to prior to the date on the deregistration notice.

#### **Deregistration for failing to meet the Charity Test, or because the charity no longer exists**

If you are a charity that the Commissioner de-registers because you no longer meet the Charity Test, or because you no longer exist, the *Stop Date* for charitable tax relief will be the date specified by the Commissioner on the deregistration notice. This could be either:

- the date on which the Commissioner removes the charity from the register or
- an earlier date, if the Commissioner's investigation finds that the charity stopped being a charity at an earlier date (Article 17).

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

#### **Deregistered for misconduct**

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

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

#### **Guernsey and UK charities**

Currently under the Income Tax Law, charitable tax reliefs are available to UK and Guernsey charities. It is intended that, in due course, those charitable tax reliefs will only be available to UK and Guernsey charities that are registered in Jersey or are excepted foreign charities as defined in Article 23 of the draft Law.



## **APPENDIX 3: OFFENCES AND PENALTIES**

The draft Law makes it an offence to take certain actions, for example Article 22 makes it an offence to call an entity an “charity” if it is not a charity. Where there is an offence, there is also a penalty for committing that offence. Depending on the offence committed the penalty will vary and could include a term of imprisonment and/or a fine.

Throughout the draft Law, all the penalties are set out in square brackets [ ] indicating that they are subject to further review by the Minister and the Attorney General. For consultation purposes the draft Law sets out that no prison sentence will be over 2 years. Most fines are unlimited, although some are set at in the top two levels of the standard scale for fines<sup>15</sup> The relevant Articles include:

- Article 19: Remuneration of managers of registered charities  
The offence is to pay a charity manager to act as a charity manager, except in certain circumstances. A charity can however pay a charity manager to undertake other services.
- Article 20: Reportable matters and acting as manager  
The offence is to continue to act as charity manager of a registered charity, after reporting a reportable matter to the Commissioner, unless permitted to do so by either the Commissioner or the Court.
- Article 21: Court Orders as to fitness of manager  
The offence is for a person to act as a charity manager of a charity, or take part directly or indirectly in the management of a charity when the Court has disqualified them from doing so.
- Article 22: Prohibition of unauthorised use of the expression “charity”  
The offence is for an entity or an individual to use the expression “charity” when the law prohibits them from doing so.
- Article 24: Prohibition of unauthorised use of expression “Jersey charity”  
The offence is for an entity or an individual to use the expression “ Jersey charity” when the law prohibits them from doing so.
- Article 25: Power to restrict use of term “charitable” in soliciting funds  
It is envisaged that Regulations will be brought forward setting out the circumstances in which it will be an offence to use the term “charitable” when soliciting funds
- Article 27: Power to demand information  
There are two offences, to fail to provide information without reasonable excuse and to knowingly provide false information.
- Article 30: Restricted information  
The offence is, for a person who has received information under this law, to disclose that information in circumstances other than those that are permitted.

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<sup>15</sup> Top two levels of the Criminal Justice Law standard scale of fines currently are £2,000 and £5,000.

## **APPENDIX 4: 2013 CONSULTATION**

The 2013 consultation raised a number of key issues, which are detailed in the table below, along with details of the extent to which draft Law addresses them.

<b>Issue</b>	<b>Resolution</b>
<p>The need for differences of approach in the treatment of ‘public’ and ‘private’ charities</p> <p>(a “public” charity being a charity which fundraises from the public; a “private” charity being one that is established using “private” wealth and which does not fundraise from the public)</p>	<p>The information below is only intended as a brief description of the extent to which the draft Law addresses these issues.</p> <p>The draft Law provides for the charity register to have a general section and a restricted section.</p> <p>The general section will include “public” charities that fundraise from the public.</p> <p>The restricted section will include “private” charities that do not fundraise from the public.</p> <p>Charities on both the general and restricted section will be able to call themselves a charity and receive all associated charitable tax relief.</p> <p>In addition, amendments to the tax laws, as set out in Article 42, allows for “private” charitable structures that do not fundraise from the public, to choose not to register, but allows them to receive exemption from income tax.</p>
<p>Treatment of cross-border charities (eg: UK national charities operating in Jersey)</p>	<p>The draft Law allows for foreign charities to not to register where they are only undertaking fund raising activities in Jersey and where they are registered elsewhere.</p> <p>They can however register if they are undertaking other activities in Jersey, for example delivering services.</p>
<p><b>Issues relating to charitable purposes</b></p>	
<p>Advancement of religion</p>	<p>Some consultees questioned whether all Christian charities/institutions that advance faith should automatically be granted charitable status without having to demonstrate public benefit.</p> <p>The draft Law does not make this provision. All entities, including all faith groups, will be required to demonstrate they pass the charity test. It is not envisaged that this should in any way present a barrier to most faith groups as public benefit can be both be:</p> <ul style="list-style-type: none"> <li>• tangible (e.g.: relief of distress) or intangible (e.g.: recognition of benefits of social inclusion) and</li> <li>• direct (e.g.: to the individual who participates in worship) and indirect (e.g.: to the general public through improved social cohesion).</li> </ul> <p>The draft Law does however propose that the Commissioner cannot issue a required steps notice, requiring the removal of a charity manager, to an externally organised religious charity.</p>
<p>Advancement of human rights, conflict resolution or reconciliation</p>	<p>This charitable purpose includes:</p> <ol style="list-style-type: none"> <li>i) relieving the victims of human rights abuse, raising awareness of human rights, and securing the enforcement of human rights</li> </ol>

	<p>law</p> <ul style="list-style-type: none"> <li>ii) the resolution of international conflicts and relieving the suffering, poverty and distress arising through conflict on a national or international scale by identifying the causes of the conflict and seeking to resolve such a conflict</li> <li>iii) The promotion of restorative justice and mediation or reconciliation between persons, organisations, authorities or groups may also fall within this purpose.</li> </ul> <p>Some concern has been raised about iii) potentially opening the door to legal firms setting up charities to manage collaborative proceedings, in order to capitalise on charitable tax benefits. This eventuality is however protected against by the requirement for the charity to only have <u>charitable purposes</u>, therefore a charity can provide a collaborative proceedings service but cannot provide a full legal service for profit.</p>
<p>Issue relating to the Commissioner</p>	
<p>Appointment of a Commission, consisting of a number of Commissioners, as opposed to a single Commissioner.</p>	<p>Consideration was given to appointing a group of Commissioners as opposed to a single Commissioner.</p> <p>Decisions taken by a Commission would be collective decisions as opposed to decisions made by a sole individual. Setting up a Commission would, however, be a more expensive option with more Commissioners and more associated overhead costs. Not only would the costs be disproportionate to the number of charities in Jersey, it is not clear that it would result in better or less contentious decisions.</p> <p>The draft Law proposes the establishment of an Appeals Tribunal which will consist of a number of members. The Tribunal will be able to rehear or accept new evidence, thus ensuring collective review of the Commissioner's decisions.</p>
<p>Joint Commissioner with Guernsey</p>	<p>At present Guernsey does not have a charity registration system or a Charity Commissioner. Should Guernsey look to introduce these consideration will be given to joint working.</p>
<p>Role of Charity Commissioner being undertaken by, or as part of the Jersey Financial Services Commission (JFSC)</p>	<p>Consideration was given as to whether the Charity Commissioner function should be undertaken by the JFSC. This was not progressed due to key differences in function. The JFSC's role is to regulate entities as financial bodies, the Charity Commissioner's role is to have regard to how entities operate in relation to charitable purposes and public benefit.</p> <p>The draft Law does however allow for the Charity Commission and the JFSC to share information.</p>