

**Chief Minister's Department**

***Charities Law and Regulation***

**Consultation Response Report**

## Executive Summary

The Charities Law and Charities Regulation public consultation was launched on 8 July 2013 and ran for an eight week period until 30 August 2013.

The aim of the consultation was to seek Islanders' views on proposals for a charities law and regulatory framework in Jersey.

The consultation paper (Appendix 1) set out proposals for a two phase approach to the law which is designed to promote public trust and confidence in charities operating in Jersey.

Phase one provides for the introduction of a new law and focuses on four main areas:

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

Phase two provides for regulatory standards for charities to be introduced at a later date following consultation.

Over 240 people attended consultation meetings to give their views on the proposals. In addition to this over 130 people responded to the consultation survey or provided written responses outlining their views.

The feedback mainly focused on the key areas outlined in the consultation document: the definition, the registration process, the commissioner, trustee duties, and regulation. Other issues that emerged are set out in the report.

Overall the results and feedback from the consultation show that the majority of people who responded are supportive of the introduction of a charities law in Jersey and for the future introduction of charities regulation.

The over-arching theme that emerged from the consultation was the potential need for differences of approach in the treatment of 'public' and 'private' charities. The concern being, how does the law provide transparency and build public trust in charities, whilst not putting in place controls that hinder the ability of the Island to market itself as a centre of excellence for philanthropic wealth management?

Other issues that emerged more generally included; the treatment of cross-border charities (UK national charities operating in Jersey); the potential for joint working with Guernsey; the Commissioner being part of or linked to the Jersey Financial Services Commission; the interface between the proposed new law and the Income Tax law; and concerns about the consultation timescales for the draft law.

This feedback will be used to inform the drafting of a Charities Law for Jersey and any key policy decisions relating to it.

## Introduction

### The consultation

The consultation ran for an eight week period and was open to all members. People were able to respond via an online survey (referred to as the main survey throughout this document in order to distinguish it from a bespoke financial services industry survey) or invited to comment in writing by letter or email. (The main survey questions can be found at the end of Appendix 1).

A series of meetings were also arranged to discuss the proposals in more depth. (Appendix 2)

Voluntary and community organisations were highlighted as key stakeholders in the consultation process and were contacted by letter and email, through the Association of Jersey Charities and the Jersey Financial Services Commission

In total, over 370 people engaged with or responded to the consultation, which included members of the public, voluntary and community sector organisations, financial services sector representatives and States Members. (A full breakdown can be found in Appendix 3). The Charities Law consultation page on the [www.gov.je](http://www.gov.je) website, received 780 page views, of which 637 were unique page views.

At the close of the consultation period there were 82 main surveys completed by both individual members of the public and on behalf of organisations, the majority of which were voluntary and community organisations such as ACET Jersey, Jersey Cheshire Home and Jersey Citizen's Advice Bureau.

In addition to this 33 written responses have been received from individuals and organisations.

### Financial Services Industry

A consultation meeting with representatives from Jersey's financial services sector was held on 18 July 2013. Further to this meeting a bespoke financial services sector on-line survey was also developed. (Appendix 4)

22 responses to the financial services survey were received, however only 15 of the 22 were completed with the remaining 7 incomplete for reasons unknown. All results are based on the completed surveys and any feedback gathered from written correspondence or meetings.

The Charities Law consultation is not a demographically robust sample. People chose to take part and therefore the views expressed cannot be taken as representative of the views of Islanders or all organisations as a whole. However, every effort was made to engage with as wide a range of people as possible in order to try and capture the diversity of views.

## **The Report**

This report summarises the feedback received in response to the consultation across all engagement methods.

This report is not intended to provide a complete list of each individual response. Its purpose is to set out the key points that emerged, which will help inform the development of the draft law.

The report is structured in the following ways:

### **Section 1: Findings - Main Consultation**

The main survey results are analysed before feedback from the written correspondence and public meetings is presented. Both sections follow the same structure of the key areas of the consultation survey: definition of charity; registration; the commissioner; trustees; and regulation. Any other themes that emerged are presented at the end of this section.

### **Section 2: Findings - Financial Services Sector**

The results from the financial services sector survey and any comments received in written correspondence are presented.

### **Section 3: Conclusions**

This section draws together conclusions based on the results and feedback from the main consultation and the financial services sector.

### **Section 4: Next Steps**

The next stages of the project are outlined, including a timetable of key milestones for the project.

## Section 1: Findings - Main Consultation

### Analysis – main survey

The information presented below is an analysis of the results and findings from the main consultation survey. It provides statistical information in relation to the closed survey questions. In addition to this, themes and comments have been presented from the open question sections of the survey with quotes presented for information.

### Definition

Survey Questions	Yes	No	Don't know
Do you think the legal definition of a charity should be updated?	96 %	0%	4%
Do you agree with the proposed list of charitable purposes?	89%	9%	2%
Do you think there is anything missing from the proposed list?	14%	74%	12%
Are there things included on the proposed list that should not be?	9%	79%	12%

Of the 7 people who commented on the list of charitable purposes<sup>3</sup> stated that the advancement of religion should not be included as a charitable purpose and 2 challenged the inclusion of sport as a charitable purpose.

Of the comments received concerning the proposals for a new definition, a few focused on the public benefit element, with calls for more clarity to be provided as to what it actually means. In addition, concerns were raised that public benefit could be used politically to exclude legitimate charities.

*“Public benefit needs further clarification and it should include specific members of the public.” (PS 1)*

*“There needs to be certainty as to what is meant by public benefit and I am concerned that the law is not clear enough in this regard.” (OS 48)*

*“The public benefit test could be engaged politically to prevent legitimate charities.” (OS 51)*

### Registration

Survey Questions	Yes	No	Don't know
Do you think a charities register should be set up in Jersey?	98%	1%	1%
Do you think an organisation should register as a charity in Jersey if it wants to - Receive charitable tax exemptions?	98%	0%	2%
Do you think an organisation should register as a charity in Jersey if it wants to - Call itself a charity?	94%	1%	5%

<b>Do you think an organisation should register as a charity in Jersey if it wants to - Make public appeals for charitable donations?</b>	<b>95%</b>	1%	4%
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As can be seen from the results above the majority of people were in favour of a charities register and of the requirement to register in order to accrue the proposed benefits of being a charity in Jersey.

<b>Survey Questions</b>	Yes	No	Don't know
<b>Are there any types of charities or organisations that you think should be on the charities register but on a confidential basis?</b>	40%	<b>44%</b>	16%

Comments specifically relating to this question suggest that the law should be applied differently depending on whether an organisation is a public charity or a private charity. Others argue that it should apply to all charities, with no exemptions. The quotes below reflect the diversity of some of the comments made.

*“Some charities exist to hold funds donated by a specific person or family and to be distributed to other registered charities...in such cases the private charitable trust should not be visible on the public register, and in particular its accounts must not be made public although they must be submitted for review by the Tax Office.” (OS 37)*

*“Names of trustees should be made public as they are the ones responsible and accountable. In the case of an organisation that was likely to produce such strong feeling the trustees might feel endangered then the motives of that organisation need to be looked at very carefully as to whether they do truly fulfil the requirements of a charity, in which case all the more important that there is accountability.” (OS 57)*

*“All charities should have a public face as they should be approachable for accountability.” (OS 58)*

*“I think there should be a robust test to qualify that the with-holding of charitable data is appropriate – there will be cases where there is genuine need to limit the disclosures made but this should not be seen as a soft option.” (OS 81)*

*“Perhaps (there could be confidential registration) if an organisation or trust is established to support causes for a specific individual, family or otherwise, however such an approach should probably be associated with a robust registration process so information is held and accessible by relevant States bodies such as JFSC, Police, JFCU etc.” (OS 77)*

*“We must be careful not to deter philanthropic giving by requiring public disclosure of too much information regarding what are private charities and not public charities.” (OS 88)*

*“It is a necessary starting point as no one is yet certain what is out there.” (OS 87)*

*“Registration would keep all charities regulated and under the same ‘umbrella’” (OS 66)*

*“It would seem that the registration of charities, as proposed, is fair.” (OS 50)*

Survey Questions	Yes	No	Don't know
Do you think that the proposed information needed to register is appropriate?	89%	9%	2%
Do you think the information that would be made publicly available via the register is appropriate?	89%	10%	1%

The main area of concern for those not in agreement with the information requirements appears to revolve around the issue of the publication and auditing of accounts. The quotes below reflect some of the comments made.

*“Assume accounts would not have to be audited – an unnecessary expense. I strongly disagree with making the accounts a public document; particularly if details of donations are to be included.” (OS 21)*

*“...in certain respects, such as the provision of accounts, which must be audited, there would be duplication of effort.” (OS 12)*

*“Accounts should not have to be audited unless income from the public exceeds a set amount...” (OS 43)*

*“I don't think the charities should have to display their account information to the general public...having the accounts available to all could be a disadvantage to the charity...” (OS 16)*

Survey Questions	Yes	No	Don't know
Do you think there should be a single registration process (which would automatically align the charities registration with the Taxes Office and Jersey Financial Services Commission registration processes)?	96%	1%	3%

## Charities Commissioner

Survey Question	Yes	No	Don't know
Do you think a Charities Commissioner should be appointed?	84%	12%	4%
Do you agree that a charities commissioner should be completely independent of the States of Jersey or any other organisation Jersey?	99%	1%	0%

A number of people provided further comment on the issue of independence, with many emphasising the importance of this and some acknowledging the potential difficulty of achieving it.

*“Achieving true and transparent independence is crucial but may be very difficult to achieve.” (OS 44)*

*“The Commissioner should be a Jersey resident who is completely independent of and has no connection with any governing body in the Island.” (OS 47)*

*“Independence is difficult to achieve in a small island where the pool of people come into regular contact whilst wearing different hats.” (OS87)*

Survey Question	Yes	No	Don't know
<b>Do you think a commissioner should have the power to: Decide whether or not an organisation is a charity?</b>	<b>87%</b>	10%	3%
<b>Do you think a commissioner should have the power to: Investigate and remove an organisation from the register if it no longer meets the criteria?</b>	<b>91%</b>	8%	1%

Other points raised in the open question were focused on the cost of the appointment, with some believing the role should be voluntary.

*“Concerns over the cost of this appointment...” (OS 21)*

*“As this is a charities commissioner I would not want to see an excessive salary paid for this role, in fact preference would be for this to be a pro bono position.” (OS 74)*

*“Who is going to pay the wages, unless it is done on a voluntary basis...” (OS61)*

*“I think the Commissioner should not add another level of bureaucracy and the post should be an honorary position...” (OS 35)*

Other comments received suggested that rather than an individual commissioner there should be a board or committee.

*“The concern is that the appointment of a charities commissioner would grant too much power to one person. Decisions which are proposed to be the responsibility of the charities commissioner should be referred to a board of persons.” (PS 7)*

*“Rather than one person, would suggest a small group to avoid bias and to offer a more ‘rounded’ approach.” (OS 57)*

*“A committee would be more appropriate where a majority needs to win before any judgements are made.” (OS 61)*

## **Appeals Process**

The consultation survey provided an opportunity for people to comment on the proposed appeals process. 21 people provided comments on the process with most respondents supporting the approach.

*“Process is good as it avoids having to go to court.” (PS 5)*

*“The staged appeals process, which should allow resolution short of going to court is welcomed...” (OS 83)*

A couple of people questioned the need for a 3 stage process, suggesting that a one or two stage process would be preferable.

*“Is a three stage appeal really necessary? A one or two stage appeal at most is preferable.” (OS 56)*



*“I would propose having only one appeal (if any), say to an Appeal Panel, prior to an appeal to the Royal Court. It would be time-consuming and costly to allow multiple appeals below Royal Court level.” (OS29)*

Other comments made related to practical issues of the process such as ensuring that timescales are identified for the process, as well as ensuring that the costs associated with an appeal were not prohibitive for charities.

## Trustees

Survey Questions	Yes	No	Don't know
<b>Do you think that the duties and responsibilities of charity trustees should be set out in law?</b>	<b>80%</b>	17%	3%
<b>Do you agree with the proposed basic duties and responsibilities for charity trustees?</b>	<b>91%</b>	5%	4%
<b>Do you think there should be restrictions on who can act as a charity trustee?</b>	<b>90%</b>	9%	1%

Respondents' who expressed concern about outlining duties and responsibilities of trustees within the law, did so on the basis that the issue was covered by other existing pieces of legislation.

*“These are generally established in the Trusts (Jersey) Law 1984 and could be reiterated or cross referenced but not reinvented.” (OS 43)*

In the open question section there were a few comments which related to the remuneration of charity trustees, with a couple of people strongly opposed to any kind of payment for trustees, some people suggesting that the payment of professional or corporate trustees should be allowed and others arguing that paying an honorarium to trustees for services provided should be permitted.

*“I think there may need to be some provision for Trustees to be able to receive some remuneration because professional trustees or corporate trustees will need to be able to charge fees providing these are pre-defined at the outset of appointment of such professional trustees.” (OS 35)*

Survey Question	Yes	No	Don't know
<b>Do you think there should be regulations to ensure charities are not run by a single person or members of the same family?</b>	<b>74%</b>	19%	7%

Analysis of the comments received in the open question about single trustees showed that there was general agreement that single trustees should not be allowed, although the use of sole corporate trustees was felt to be acceptable.

*“In general a charity should not be under the sole control of one person.” (OS 77)*

*“Professional trustees should be able to act as sole Trustee.” (OS 72)*

A certain number of respondents were of the opinion that the use of members of the same family as trustees was not problematic. However, the majority of responses

were unclear as to people's opinions about members of the same family being the only trustees of a charity.

## Regulation

Survey Question	Yes	No	Don't know
<b>Do you think that charities should be regulated?</b>	<b>81%</b>	10%	9%

Of those who agreed that charities should be regulated the main reason given was to ensure that public trust and confidence was protected and promoted.

*“Regulating charities increases the public’s confidence in donating both money and time.” (PS 7)*

Other reasons given included: helping people to understand what a charity is; ensuring transparency and good governance within organisations; making sure money is being correctly applied and stopping any potential abuse of charities.

*“At present, it is not known if any abuse takes place, but from a position of ignorance rather than knowledge.” (OS 83)*

Despite the majority of people believing that charities should be regulated, quite a few people also stated that any regulation introduced should be proportionate and not be too burdensome for charities.

Of those who did not think charities should be regulated the main reason given was that it would mean more red tape for charities and be too onerous for them, particularly smaller charities.

*“Regulation will inevitably lead to more controls (even if claimed to be light touch) and when additional admin requirements are placed on a charity this can become burdensome and the purpose of charity switches focus to meeting a regulator’s requirements.” (OS 26)*

*“Some regulation might not be unreasonable but, and this is a big but, there are many small worthy charities for whom compliance with red tape will be a step too far and they will simply decide not to operate.” (OS 29)*

Survey Question	Yes	No	Don't know
<b>Do you think charities should provide members of the public with information about how they spend their money?</b>	<b>86%</b>	7%	7%

Of the comments received a few of the responses stated that the publication of information should only apply to certain organisations, namely those that raise money from the public.

*“Charities providing the public with information about how they spend their money should only apply to charities which receive money from the public.” (PS 1)*

*“...certain private charitable trusts must be exempted from any such publicity. Private individuals are not going to use Jersey Trust Companies to run their charitable trusts if they have to publish their finances!” (OS 37)*

*“Some information could be made available to the public if the charity solicits public donations.” (OS 72)*

*“Some charities are created for very specific reasons and forcing them to produce and annual report (presumably this also includes a set of annual accounts) may not be in their best interests so exemptions should be available...” (OS 35)*

Survey Question	Yes	No	Don't know
Do you think charities should publish an annual report?	76%	13%	11%

Of those who agreed reasons cited were linked to promoting trust and confidence.

*“Charities have a responsibility to report back to the public on how the donated money and goods have been used.” (OS 57)*

Many of those who commented thought that having to publish an annual report would be an unnecessary administrative burden for smaller charities. Some of the responses suggested that the reporting requirement should only be for organisations of a certain income level.

*“It is important that small charities are not unduly burdened by regulation or the need to comply e.g. annual report publication.” (PS 4)*

*“We propose regulating an annual report for charities with an income over £20,000 per annum.” (PS 7)*

*“The publishing of an annual report should only apply to those of a certain size of assets and annual income, say £100,000 - £200,000.” (PS 2)*

*“Most charities will publish an annual report but I am of the view that that should not be a requirement as, again, it may be a burden for smaller charities with one or two busy volunteers doing most of the work.” (OS 26)*

## **Analysis - Public Meetings & Written Correspondence**

This section reviews the responses from the public meetings and written correspondence (letters and emails) sent in response to the consultation.

In total 33 letters and emails were received and 9 public meetings were held, reaching 166 people.

The feedback received during the public meetings and in written correspondence (letters and emails) tended to be focused around the five main areas outlined in the consultation document and survey namely; definition, registration, the commissioner, trustees and regulation. The analysis will be structured in this way with any additional themes discussed at the end.

## Definition

17 of the 31 responses commented on the proposed definition of charity. Overall people were supportive of the proposed new definition and felt that this was needed in Jersey.

*“A new definition is needed, the current legal definition is out of date and too narrow.” (WC 13)*

*“The need for a modern and comprehensive definition of charity backed up by a full and explicit explanation of what is charitable purpose is long overdue.” (WC 14)*

*“I am strongly in favour of the early adoption of a modern definition of ‘charity’.” (WC 17)*

*“It appears that charity law in Jersey has been based on many statutes that influenced charity law in Britain and as such needs to be updated to reflect modern society.” (WC 19)*

*“The Salvation Army agrees that Jersey needs an up-to-date modern definition of charity.” (WC 23)*

One response argued that there was not enough information provided to explain the reasons for the introduction of a new law.

*“The consultation does not give sufficient analysis of what the perceived deficiencies of the current definition are, or of the problems this has caused or how a change in the definition would solve these.” (WC 27)*

Of the responses received on this aspect of the law, the majority related to the public benefit element of the definition and the need for more clarity on the issue. These concerns were also reflected in feedback at the public meetings.

*“The meaning of ‘for the public benefit’ is highly complex to determine... The question arises as to whether a Jersey Charities Commissioner will be able, in turn, to produce definitive guidance on what constitutes ‘public benefit’ in Jersey – under Jersey law.” (WC 3)*

*“Careful thought however is required as to whether Jersey needs to consider implementing a set of guiding principles in this context to avoid the difficulties experienced in the UK...” (WC 7)*

*“I think that, insofar as any requirement for public benefit is to exist, it is of key importance that the requirement should be clear and simple so that it can readily be determined whether or not the requirement is satisfied.” (WC 8)*

*“An adequate description of public benefit is not provided. This is the most important part of the proposed change and needs the most explanation.” (WC 27)*

*“What is the distinction between private or public benefit? Either the definition needs to be wider or replaced with another definition.” (WC24)*

*“What by definition is public benefit?” (WC 12)*

Of the 17 responses received about the definition, 11 commented on the proposed list of charitable purposes. Most were satisfied with the list as presented in the consultation document.

*"I agree broadly with the list of proposed charitable purposes based on the Scottish Law definition..." (WC 7)*

*"In general terms, the list would appear appropriate, although I would have slight reservations to the extent that it will effectively be a closed list." (WC 8)*

*"I do not think anything material is missing from the proposed list of charitable purposes." (WC 17)*

A couple of people at both the public meetings and in their written correspondence questioned the omission of the armed forces from the list of charitable purposes.

*"Within the Charities Act 2011, charitable purposes include the promotion of the efficiency of the armed forces...perhaps something similar would be appropriate within the proposed legislation in Jersey?" (WC 19)*

*"List of charitable purposes would seem complete until you consider those that affect the armed services –why omit them?" (WC 12)*

## **Registration**

Most of the feedback relating to the registration proposals was generated by written correspondence. This issue was rarely discussed at the public meetings although a few people did ask whether there would be a registration fee for charities. No fee is envisaged.

There were 13 responses which provided feedback on the registration process. Overall the comments received were supportive of the concept of a charities register on the island.

*"In order to develop and maintain public confidence for charities registered in Jersey, we feel there is an urgent need for a public and searchable Charities Register to be set up in Jersey." (WC 28)*

*"A charities register would improve transparency and increase public trust." (WC 13)*

*"We agree there should be a public Charities Register for all charities operating in Jersey." (WC 23)*

There was mixed opinion as to whom the registration should apply to. Some felt that all charities should have to register with the commissioner and their information be made publicly available.

*"We cannot see why any charity would require that the information about itself and its officers should not be made available on a public register, apart from the use of service address. (Alarm bells should ring if this is requested.)" (WC 28)*

*"All organisations that have exclusively charitable purposes and meet the public benefit test should be entered onto the public register. We are unaware of any circumstances which would merit the registration of a charity being kept out of the public domain." (WC 19)*

*"Transparency is paramount to ensure public trust and confidence. We can see no justification for any registered charity not to appear publicly on the charities register or for any such registered charity information not to appear in the public domain." (WC 16)*

*“Fully supportive of a full registration process for all charities, inclusive of ‘private’ charities, if appropriately managed, thus enabling proper regulation and oversight to be introduced.” (WC 14)*

Others felt that certain organisations should be exempt from registration and from having their information in the public domain. This was motivated by various reasons including being a ‘private’ charity (ie. established with private monies) or the nature of an organisation’s work being sensitive.

*“In principle I have no objection to a charities register...careful consideration needs to be given as to whether the registration regime and attendant disclosure requirements should apply to private charities.” (WC 7)*

*“The only information about a charity that should be allowed to be confidential is a charity trustee’s contact details and/or their name where there is a valid reason for not naming them on the register.” (WC 13)*

*“The existence of a charities register is a beneficial development but clear carve outs should be allowed for commercial charitable orphan type charitable structured which do not solicit funds from the public.” (WC17)*

*“There may be rare cases in which confidentiality is appropriate...cases in which publication of names would breach Data Protection or Official Secrets requirements.” (WC 27)*

A few of the written responses commented on the proposed one-stop registration process, all were in favour of this option.

*“A single registration process would be an advantage.” (WC 23)*

*“Agree with the streamlined registration process, reducing red tape has to be a priority and this makes perfect sense.” (WC 18)*

*“The proposal for a single registration process for the Commissioner, the Tax Office and the JFSC is refreshing...” (WC 14)*

## **Appeals**

A few of the written responses received touched upon the proposed appeals process and were generally in favour of the approach being suggested for Jersey.

*“The attempt to restrict cost, both to the organisation launching an appeal or indeed to the public purse through an appeal on the part of the Commissioner, is appreciated.” (WC 14)*

*“The appeals process appears to be an appropriate ‘stepped’ approach.” (WC 28)*

*“Appeals process seems eminently sensible...” (WC 9)*

*“The staged appeals process, which would allow resolution short of going to court is welcomed, as is the inclusion of the JVCP and lay members for stage 1.” (OS 83)*

One person who commented did not agree with the suggested approach, particularly with the inclusion of representatives from the charity sector.

*“The proposed appeals process is too complex and too lax. The regulator should have a wide discretion to decide things and then an avenue of appeal should go straight to an ‘independent’ expert; please do not create an appeals process that*

*includes charity 'representatives' – a recipe for poor regulation against public interest if ever there was one, but also very poor governance from the point of view of principle.” (WC 21)*

Other comments about the process suggested that time limits should be set out for the process and that any mechanism put in place must be robust and cost effective.

## **The Charity Commissioner**

The proposals for the Charity Commissioner were the second most commented on in the written correspondence received, with 19 of the 33 people commenting on them.

Five of those who responded expressed their support for the establishment of a commissioner.

*“I completely support all the proposals.” (WC 9)*

*“The appointment of an ‘independent’ commissioner would in our opinion be an essential part of this proposition...” (WC 14)*

*“The Institute endorses the proposal to appoint a charities commissioner .” (WC 19)*

*“We would welcome the establishment of an independent charities commissioner.” (WC 23)*

*“A charity commissioner should be appointed to help promote public confidence in Jersey charities.” (WC 28)*

Others were supportive but only if the benefits outweighed the costs. Two people were of the view that a commissioner was not needed.

*“We don’t like the creation of another body to regulate rather than channelling through the AJC.” (WC 10)*

*“In my view there is no necessity to have an independent commissioner with the associated budget and support required.” (WC 31)*

There were a few comments relating to the proposed role and associated ‘power’ of the Commissioner in determining charitable status, with some people feeling that the Commissioner had too much power and a suggestion that responsibility for any decisions should lie with a number of Commissioners or be decided by law. In contrast to this position another response stated that it was appropriate for the Commissioner to determine charitable status.

*“We do not consider that a sole commissioner should decide whether or not any organisation qualifies as a registered charity. This should clearly be a collective decision of commissioners.” (WC 16)*

*“The commissioner does need the power to decide if they will register an organisation as a charity or not.” (WC 28)*

A key area attracting a lot of comment was the independence of the Commissioner. Respondents who commented on this aspect agreed that a Commissioner should be independent, although some acknowledged the practical difficulties of this being achieved due to the ‘smallness’ of Jersey and the fact that the States of Jersey would likely fund the position.

*“Independence here is the key and the role should be as far as possible free of influence by all concerned especially Government.”*

Feedback from the public meetings was focused on the cost of establishing a Commissioner, who the Commissioner would be and also whether consideration had been given to having a joint Commissioner with Guernsey.

## Trustees

Ten people provided comment on the proposals for charity trustees with a mix of opinions being expressed on a number of the areas including the single and family only trustees, trustee remuneration and the duties and responsibilities of charity trustees.

Whilst people tended to agree with the proposed duties for charity trustees, opinion was divided as to whether these should be contained within the new legislation. Those arguing against this approach felt that charity trustees' duties were already laid out in other pieces of legislation. This mirrors the views of those who responded to the survey on this issue.

*"The general duties and responsibilities of charity trustees should be set out in law and be supplemented with further detail in guidance for trustees." (WC 13)*

*"I am not aware of the need for there to be additional duties and responsibilities beyond those already in place, within the confines of a chosen structure or within the current regulatory environment." (WC 8)*

*"Law shouldn't restate the duties of trustees already in law but should set out additional that may arise because an entity is charitable." (WC 3)*

*"For the benefit of trustees and potential trustees, it would be advantageous to have the duties and responsibilities of trustees established in law, and preferably a single piece of legislation. Where other legislation imposes duties on charity trustees, these should be included in charities law for convenience." (WC19)*

*"The answer has to be that the new law will be supplemental to the existing Trusts (jersey) Law 1984 as amended and that the trustees shall be subject to both laws, except where there might be a conflict between the laws, when the Charity Law would prevail." (WC 24)*

Another issue raised in some of the responses was that of no single or family only trustees being permitted under the new law. Of the few people who commented some were in favour of this position as they reasoned that this would guarantee organisations' independence and transparency. During the public meetings a number of people asked whether the law was going to allow a certain percentage of family members to be trustees of an organisation.

*"Control should not be exclusively by the same family. We would not want to deter the Bill & Melinda Gates foundation from re-domiciling in to Jersey simply because the Gates family have significant influence." (WC 17)*

*"Need to ensure that trustees are independent and act as such." (WC 9)*

However, others argued that this should be allowed particularly in cases of 'private' charity structures where there is a regulated corporate trustee.

*"I am not sure that there should be regulations to ensure that charities are not run by a single person or members of the same family." (WC 8)*



*"I am in favour of single trustee charities where that trustee is a corporate entity regulated by the JFSC." (WC 9)*

Only a couple of people made reference to the remuneration of charity trustees in the written correspondence received. Both individuals agreed that in principle trustees should not be remunerated for their role, however, they did suggest that payment for expenses or professional services should be allowed. One respondent argued that in future larger charities should potentially be allowed to offer payment in order to attract high quality trustees.

At the public meetings the issue was also raised with a key concern about the impact on organisations who pay trustees an 'honorarium'. This type of payment is currently offered by charities to trustees for the services they provide, often in relation to the Treasury role. It was argued that prohibiting such a payment would make it much more difficult than it currently is for organisations to attract trustees to these roles.

*"I agree that no trustees or committee members should be entitled to any pay although some minor expenses could be paid." (WC 5)*

*"We also generally agree that trustees in this context should not be remunerated except where they are providing specific professional services to the body." (WC 14)*

Other issues raised included whether trustees would be required to undertake a CRB checks as well as what the consequences were in the event that a trustee failed in their duties under the law. It was argued that unless the law had 'teeth' it would be ineffective.

## **Regulation**

The issue of regulation was the most discussed in the written correspondence with 21 out of 31 people providing comment on the matter. 10 of the 21 responses were in agreement with the principle of regulating charities so as to provide some oversight and accountability within the sector, although many also emphasised the need for a mechanism that was proportionate and light touch.

Again, as echoed in the survey responses to regulation, as well as in relation to other aspects of the proposals, many also suggested that consideration be given to the introduction of regulatory thresholds so as not to unduly burden smaller charities. There was also feedback to suggest that there should potentially be exemptions for 'private' charities.

*"We like the principle of regulating charities more efficiently and keeping an eye on reserves to make sure they are not excessive unless justified." (WC 10)*

*"Regulation must be introduced. The regulations should apply to all charities but the degree or regulation may be less for small charity..." (WC 9)*

*"Where an organisation, established as a charity, wishes to benefit from the public purse, (in the form of tax exemptions) individuals or foundations in the form of benefits in kind, it is only appropriate that certain standards of public accountability are met." (WC 19)*

*"In principle charities should be regulated as they benefit from the public purse in the form of tax exemptions and from public trust and confidence...Any regulation should, however be proportionate, equitable, fair, and targeted on those areas of greatest risk." (WC19)*

*“Regulation should be proportionate and cognisant of reliance on unpaid volunteers.” (WC 25)*

*“Fully appreciate that regulation must be an essential part of the process...the degree of regulation may well be less for smaller charities and indeed for private charities currently regulated by the JFSC.” (WC 14)*

Of those who commented specifically on the potential reporting requirements some concerns were raised about the accounts and the level of audit required.

*“There should be a requirement for accounts in respect of every charity no matter how small.” (WC 5)*

*“Concerned with the audit of accounts.” (WC11) - check actual wording*

*“Accounts for charities must be published in a prescribed model form for charities. We recommend the SORP model...” (WC 16)*

*“Charities must be obliged to disclose their accounts but an annual report can be burdensome and costly with little interest from the public in annual reports.” (WC 13)*

*“I think we should adopt in full the accounting and financial requirements of the English Charities Commission but the thresholds should be looked at so there is a lighter touch in Jersey.” (WC 22)*

*“I consider that all charities should produce public accounts albeit in different formats.” (WC 20)*

*“Publicly available accounts must be a precondition of any sensible regulatory regime so that the public (that is donors) can see what’s what.” (WC 21)*

Whilst the majority of responses accepted and welcomed some level of regulatory oversight for charities, a couple of the respondents were concerned that regulation could lead to excessive red tape and, therefore, negatively impact on their ability to carry out their charitable work.

*“We are very concerned that any further regulation might increase our costs and divert money away from our charitable purposes.” (WC 15)*

*“We will not support red tape for the sake of red tape and would suggest that if new regulations are applied then the States should look to reduce red tape elsewhere.” (WC 18)*

## **Other key issues:**

### **Cross-border charities**

The issue of cross-border charities (national charities with branches or operations in Jersey) was raised in relation to the registration and regulation aspects of the proposals. Questions and concerns voiced at the public meetings included: implications if an organisation’s over-arching body is in the UK; the relationship with UK regulators and where control lies; fundraising by UK charities in Jersey; and recognition of a Jersey charities number in other jurisdictions. Some of the other comments received are reflected in the quotes below.

*“UK charities should only be allowed to fundraise in the Island if their objectives state that funds will be used for the benefit of people in Jersey.” (PS 2- registration)*

*“I believe charities registered elsewhere should also register in Jersey and be subject to exactly the same rule. They will benefit from tax exemptions and from using Jersey’s ‘brand’; why should they not.” (OS 86)*

*“Some thought should be given to how local charities might seek protection from potentially predatory National HQs that see Jersey as ‘rich pickings’ for fundraising. Almost seek to establish a Kite Mark that confirms ‘all monies raised remain in Jersey.’” (OS 28 – definition)*

*“As a fundraising branch of a national charity, my accounts would show a large amount of income, but minimal expenditure as the fundraising is passed on to the main charity in the UK. Local accounts would be meaningless but could adversely affect fundraising.” (OS 21 – regulation)*

*“We would particularly welcome efforts to harmonise the proposed legal and regulatory framework with wider UK laws and regulations of charities...in doing so, CMD would enable UK-wide charities to thrive in the States of Jersey, and to deliver public benefit.” (WC 23 – general)*

*“Is an accord being considered with the Charities Commissioner in the UK to allow charities in Jersey to apply for funding under the UK tax agreements?” (OS 9 – regulation)*

## **Working with Guernsey**

Many people who attended the public meetings felt that the development of the law and establishment of a commissioner presented a good opportunity for joint working with Guernsey. This was also reflected in a number of the comments received.

*“The public register should be extended to the whole of the Channel Islands during the process rather than having a separate register for Jersey and Guernsey.” (WC 28 – registration)*

*“Can the commissioner role be shared with Guernsey?” (WC 18 – commissioner)*

*“It might be possible for the role of Charities Commissioner to be shared with Guernsey as is the case of the Data Protection Commissioner.” (WC 24 – commissioner)*

*“If Guernsey are considering a similar law, it would make sense for there to be a Channel Islands Charities Commissioner.” (OS 83 – commissioner)*

*“Could the Charities Commissioner post be shared with Guernsey? This would be more efficient.” (PS 15 – general)*

*“I strongly believe that this should be a pan-Channel Island initiative and there should be identical legislation in Jersey and Guernsey with one Commissioner and secretariat.” (OS 23 – commissioner)*

## **Commissioner at the JFSC**

A number of responses and feedback received suggested that the Charity Commissioner should be linked to the Jersey Financial Services Commission (JFSC).

*“...we feel it could be more efficient for regulation of charities to be undertaken by a department within the JFSC. This would enable regulation to be co-ordinated.” (FS 16)*

*“The JSFC should provide the seat for the Charity Commissioner. The regulator in the Island seems the most natural, sensible home for the Charity Commissioner. The public will generally anticipate the JFSC to be the regulator and the skills as in human resource management support and the revenue or potentially even the mechanism to raise further revenue (if absolutely critical) are most likely to be found there.” (WC 17)*

*“The obvious home for the regulator is the Jersey Financial Services Commission...” (WC 21)*

*“Charity commission should be a small section within the JFSC who already have specialists in-house covering most if not all of the monitoring and registration roles required, plus expertise of all the legal structures likely to be used by charitable operations.” (OS 72)*

## **Tax**

A number of questions and issues were raised at the public meetings and in the written correspondence about the interface of the new law with the Income Tax Law.

*“The document proposes that registration will be required if tax exemption is to be obtained and that tax exemption will not be granted without registration. This is undesirable inasmuch as taxation is a matter of Law and the Tax Law has subjected the Comptroller of Taxes to an appeals process appropriate to taxation matters.” (WC 3)*

*“For those organisations that may be non-profit but choose for whatever reason not to register, or don’t qualify as charities, it would be really useful to make sure their status is equally clear. They will still have to register as NPOs but it is unclear from the consultation what their tax status will be. Obviously they will not be able to reclaim tax on donations or GST, but will they be otherwise exempt from tax on their income?” (WC 22)*

## **Consultation**

A number of people, particularly at the public meetings, raised concerns about the proposed time frames for consultation on the draft law being far too short.

*“The proposed consultation period following law drafting – according to your proposed timetable – is far too short...the explanations offered...are irrelevant.” (WC 12 – general)*

## Section 2: Findings - Financial Services Sector

### Analysis

A consultation meeting was held on 18 July 2013 for representatives of Jersey's financial services sector. Further to that meeting, a bespoke financial services survey was posted online.

There were 22 responses to that survey, however, only 15 of the 22 were completed with the remaining 7 incomplete for reasons unknown. The results presented in the following analysis are therefore based on those 15 completed surveys along with written correspondence received as part of the main public consultation.

The over-arching theme that emerged from those responding from a financial services perspective was that there should be a difference of approach in how "public" and some "private" charities are treated under the proposed law. This stance is most notable in relation to the issues of registration, the restrictions on trustees and future regulation.

### Charitable structures

Respondents were asked to comment on whether there were any charitable structures, other than those listed below, which should be considered in the development of the law:

- public charities (charities that raise money from the public)
- private charities in the form of local charitable trusts set up for local charitable giving (established using private wealth)
- private charities in the form of trust with a non-resident settlor and a regulated trustee (established using private wealth)
- orphan / charitable purpose structures.

The response to this question was mixed. 6 out of the 15 people who responded stated that there were other charitable structures that should be considered, 5 stated there weren't any other structures which should be considered, with the remaining 4 responding as unsure.

Additional structures included:

- Structures with wide 'philanthropic' long term intentions (i.e. initially established for the purpose of investment but at a later point in time (after settlor death) providing philanthropic purposes.
- Non-charitable purpose trusts (if the Law is to change we need to consider how certain structures that once fell outside the realm of charitable may now be considered charitable)
- Private charities (such as for the arts) which later may be subject to public donations
- Incorporated Associations
- Associations and *Fideicommiss* under the *Loi (1862) sur les tenures en fideicommiss et l'incorporation des associations*

## Registration

Survey Question	Yes	No	Don't know
<b>Do you think the structures set out in question 3 above should all be required to register in order to call themselves charities and receive the associated tax benefits?</b>	<b>67%</b>	<b>33%</b>	<b>0%</b>

Of those who agreed it was felt that registration was necessary if an organisation was to benefit from the public purse in the form of tax exemptions.

*"I think if they wish to benefit from the public purse then they should be registered in the manner set out above. However, I believe there should be a similar register for charities which do not wish to benefit from the public purse but nevertheless fulfil the criteria for being a charity. The information publicly available for these charities should be more limited."* (FS 20)

*"If an organisation wants to have the benefit of a tax exemption then they must register in order to call themselves a Charity. This is necessary for public confidence and clarity as to what public donations and public money (i.e. foregone tax revenue) are being used for."* (FS 21)

Of those who disagreed, the reasons given tended to focus on the concern that for private charities registration could be detrimental to people continuing their philanthropic work.

*"No doubt there are numerous individuals on the Island that are involved in good causes but do not wish to expose themselves to publicity; It would be a shame to dissuade these people from continuing their philanthropic work, or deny them access to tax benefits. I think that the full extent of charitable work and donations made both in Jersey and other parts of the world, needs to be evaluated in depth – however, at this time I am not confident that there is a reliable way to evaluate the scope of charitable work involved in the Island."* (FS 6)

*"Registration should be voluntary e.g. for public awareness. It would not be appropriate for orphan structures and all private charitable trusts where the settlor is the only donor to register"* (FS 11)

*"It is imperative that clients who wish to set up private charities which will not seek public funding can establish charities which are Charitable under Jersey law but which do not need to be on a public register. If the charity is administered by a regulated entity this should be sufficient; it might be the regulated entity should be required to make a private filing with the Registrar to ensure the charity is not being used for illegal purposes."* (FS 12)

These issues were also raised in some of the written responses received.

*"The existence of a public Charities Register is a beneficial development but clear carve outs should be allowed for commercial orphan type charitable structures which do not solicit donations from the public. Charities soliciting donations for the public and who donate to end uses at their discretion should be registered and lightly regulated, so as not to discourage greater benevolence and wider participation by volunteers in the community who may be put off by excessive red tape. "*

Survey Question	Yes	No	Don't know
<b>Do you think the proposed requirement for information on the register to be in the public domain, including trustee's names, should extend to all structures set out in question 3 above?</b>	33%	<b>60%</b>	7%

The concerns of those who opposed this proposal revolved around the potential adoption of a regime that would be different to that applied to other vehicles engaging in these activities, where there is no 'registration in relation to trusts'.

*"private trusts where no public funds are being raised and orphan structures should not be included." (FS 11)*

*"A charitable trust is not necessarily a charity and the usual rules relating to trusts being unregistered should apply. It is the status as a charity that needs to be registered not the fact that a charitable trust structure is being used." (FS 5)*

Other issues raised were in relation confidentiality, anonymity and the potential impact that the loss of this could have on people engaging in or continuing with their philanthropic work.

*"There would also be the problem with Trustees and other named individuals receiving requests for financial assistance from anyone with access to the public website." (FS 6)*

*"It is imperative that clients who wish to set up private charities which will not seek public funding can establish charities which are charitable under Jersey law but which do not need to be on a public register. If the charity is administered by a regulated entity this should be sufficient; it might be the regulated entity should be required to make private filing with the Registrar to ensure the charity is not being used for illegal purposes." (FS 12)*

*"It should be sufficient for the future charity commission to hold this information. They will need it to monitor the operation of the charity that has been registered. The names and addresses of the trustees should not be made public." (FS 16)*

*"Where a private charitable trust or foundation has been established for charitable purposes and is not intended to raise money from the public or take advantage of tax exemptions, many settlors or founders would not wish such information to be publically available and may prefer anonymity. In order to provide flexibility for settlors and founders of such structures for Jersey to continue to be an attractive jurisdiction for that reason, it should not be an absolute requirement that all structures for charitable purposes must be registered." (FS 19)*

*"I think if they wish to benefit from the public purse they should be registered...If there is no benefit from the public purse then I believe less information needs to be made available to the public." (FS 20)*

Of the comments made by those who answered yes to information being in the public domain, there was still the suggestion of a difference of approach for public and private charities.

*"If any organisation/structure is to get a tax exemption then the names of the Trustees should be in the public domain for accountability and public confidence"*

*purposes. However, where a private charitable trust or foundation has been established for charitable purposes and it is not intended to raise money from the public or take advantage of any tax exemptions, many settlors or founders may not wish such information to be made publicly available and may prefer anonymity. In order to provide flexibility for settlors and founders of such structures and for Jersey to continue to be an attractive jurisdiction there should perhaps be different reporting requirements for different structure types.” (FS 21)*

The arguments above were also echoed in the written correspondence received.

*“In principle I have no objection to a charities register, in particular for public charities which raise money from the public. However, very careful consideration needs to be given as to whether the registration requirements and attendant disclosure requirements should apply to private charities. Problems will be caused if the charities regime is markedly different from the other supervisory regimes which already exist in the island for Jersey domiciled vehicles which engage in philanthropy or quasi-charitable activities. There is no central register of trusts and neither trusts, private companies, nor foundations have to file their accounts in Jersey. The question has to be asked in relation to private charities which are administered within the finance sector in Jersey as to what is deficient in the current arrangements for oversight and supervision which would necessitate the overlay of additional requirements under a charities law regime and if those deficiencies can be identified and are assessed as material then any remedial overlay process will need to be crafted so as not to fetter or undermine the ability of the island to develop itself as a centre of excellence for philanthropy administration.”*

*“To the extent that a system of registration and regulation is considered necessary for those situations where a charity wishes to seek donations and/or volunteers from the public, the proposed legislation should introduce such a system (with the regulations being light touch and proportionate) which is confined to such situations. If there were to be an exception to the principle of “no registration in relation to trusts” within such narrow confines, then the hope would be that this would be considered to be manageable and not so damaging to Jersey’s trust industry.” (WC 8)*

## Regulation

Survey Question	Yes	No	Don't know
<b>Do you think charities regulation should apply to all charities on the register including those structures set out in question 3 above?</b>	<b>50%</b>	<b>29%</b>	<b>21%</b>

There were mixed views from those responding as to whether or not regulation should apply to all charities. 50% of the 14 people who responded to this question felt that regulation should apply to all charities. Of those who provided further comment on the matter both were of the view that the process should not be too costly or onerous to organisations.

*“Provided the cost of meeting the regulation requirements will be affordable and achievable for low income trusts, otherwise de minimus figures should be used.” (FS 19)*

*“Yes, but with limitations on reporting/filing requirements. Being present on the register should be a benefit to the fund-raiser not an onerous expensive and restrictive process.” (FS 2)*



Of the people who did not think that regulation should apply to all charities, only one provided any further comment on the matter, suggesting that those structures which do not benefit from the 'public purse' should not fall into the regulatory net.

*"I think that there will need to be a difference in treatment between different structures but not where there is benefit from the public purse. Orphaned structures in particular will need to have a lighter touch applied to them." (FS 20)*

The comments received from those who answered 'don't know' stated that an answer for or against the proposals was dependent on the scope of regulation to be applied.

Survey Question	Yes	No	Don't know
<b>Do you think charities with a sole professional trustee should be exempt from charities regulation?</b>	29%	<b>64%</b>	7%

Reasons given by those who answered 'no' focused on the requirement for transparency.

A couple of the responses also suggested that whilst sole professional trustees shouldn't be totally exempt from regulation, the regulatory requirements could possibly be reduced for this type of trustee due to them already being regulated under the Financial Services law.

*"In the interests of international transparency for the island as a whole I feel it would be detrimental to our intentions were a situation to arise where a structure subject to international review were seen to be in any way flouting regulation (irrespective that the service provider is already regulated under the relevant financial regulations)" (FS 2)*

*"Not if they intend to benefit from the public purse. Also they need to be scrutinised so some form of registration needs to take place." (FS 20)*

*"All charities should be included, however, the previous comments about not publicising names on the website applies. This can be taken as two separate issues. It is fair to say that a charity with a sole professional trustee should be in safer hands than most charities run by well meaning members of the public." (FS 6)*

*"However, if the professional trustee is itself regulated under the Financial Services Law there may be scope for an exemption or reduction in the regulatory requirements." (FS 21)*

The main reason given by those who supported such an exemption was that professional trustees would already be regulated under the Financial Services Jersey Law and so any additional regulation would be burdensome.

*"If the professional Trustee is regulated then it would be administratively burdensome for it to undergo two levels of regulation, which may be assessed under two sets of regulations. (FS 16)*

*"Provided that the professional trustee is itself regulated under the Financial Services Law." (FS 19)*

*“Insofar as the question of regulation in this context is concerned, my initial view is that it would be consistent with a proportionate and light-touch approach not to introduce any further regulatory measures for those structures which are already subject to financial services business regulation in Jersey.”*

## Trustees

Survey Question	Yes	No	Don't know
<b>Do you think sole trustee or family only trustees should be permitted for some structures?</b>	<b>62%</b>	<b>15%</b>	<b>23%</b>

The results show that the majority of people agreed that both types of trustees should be allowed for some charitable structures, namely those trusts or structures that have professional corporate trustees. This was also expressed in the comments received.

*“It is difficult to appreciate what this question is aimed at; is there a concern that sole trustees or family only trustees may be susceptible to fraud or mismanagement? There are a number of family charities that are operated effectively, but each case would have to be taken on its merits – is it proposed to have a vetting process to test the appropriateness of trustees?” (FS 6)*

*“It would depend on the source of funding and whether the public is contributing etc.” (FS 11)*

*“Re the family, for flexibility Re sole trustee, you see this all the time with family trusts” (FS 12)*

*“a single trustee should be acceptable when it is a regulated trust company” (FS 16)*

*“In order to keep Jersey as an attractive jurisdiction for families establishing charitable trusts and to maintain flexibility in charitable structures.” (FS 19)*

*“In order to keep Jersey as an attractive jurisdiction for families establishing charitable trusts and to maintain flexibility in charitable structures. The regulatory requirements, where there is no professional trustee, can be more strict to ensure proper adherence to charities law.” (FS 21)*

Comments from the written responses received echoed the views of those answering the survey. In addition it was suggested that any move away from this position would result in a significant loss in business in this area that would be undesirable for the ambitions of the jurisdiction in expanding its philanthropic private wealth management offering.

*“I am not sure that there should be regulations to ensure that charities are not run by a single person or members of the same family. At present, within the financial services industry, a charitable trust will often have one corporate trustee, whether that is a professional service provider’s corporate trustee, or a private trust company. I am not aware of any need or desire to move away from that position.”*

*“Control should not exclusively be by the same family. We would not want to deter the Bill & Melissa Gates Foundation from redomiciling to Jersey simply because the Gates family have significant influence.”*

Survey Question	Yes	No	Don't know
<b>Do you think the proposal that trustees of charities should not be remunerated is appropriate for all charitable structures?</b>	8%	<b>84%</b>	8%

As the survey results show, this question attracted a strong negative response. The main reasons put forward by many was that the current position in the Trusts (Jersey) Law 1984 provided for the remuneration of trustees and that no good reason had been put forward as to why charities should be different in this regard.

*“The Trust law states that trustees are entitled to be remunerated for their services. If the charities law says otherwise then we have a conflict of legislation and bring needless complication to the forum. Professional trustees provide a significant role and if they are paid for that role that is a decision to be taken by the persons founding/ overseeing the charity. It should not be restricted by legislation that would no doubt rule out all virtually all large-value international charities from locating a holding structure in Jersey. The law must be enabling, not restrictive.” (FS 2)*

*“There is a case for professional trustees, and depending on the work load it is right they should be paid.” (FS 6)*

*“why should these structures be different to any other trust” (FS 12)*

*“Well run charities require competent trustees often with specialist administrative skills. Some of those trustees will be lost if they cannot be remunerated. Trustee remuneration could be capped at say no more than 5% of charity income or 1% of the value of trust assets?” (FS 16)*

*“To attract individuals who are professionals and appropriately qualified to act as trustees and support any “lay” trustees it may be necessary to permit remuneration. In addition, in respect of charitable trusts or foundations (whether public or private) which are administered by professional service providers, the service providers should be able to charge for such services, including the provision of professional trustees if this is what the settlor/client wants.” (FS 19)*

*“Professional trustees will help maintain and promote good regulation and well run charities, given their own high levels of regulation. The input these professionals offer is valuable and if they are not able to charge for this service then it will not be possible to run a well respected, regulated charities industry on the scale envisaged by this consultation. This will be to the detriment of the Island and the charitable sector.” (FS 21)*

It was also suggested by some that, should this position be put forward, it would become difficult to find suitable and professional trustees to act in these roles.

*“Some charities are very complex and without remuneration would struggle always to find appropriate trustees.”*

## **General Comments**

Of the few people who provided general comments, one response brought into consideration whether the way of defining public/private charitable trusts may be

approached in a similar method to the model used in the funds industry as a 'private' fund with restrictions, for example, on the maximum number of investors/donors as 50.

Another response stated that consideration should be given to commercial enterprises of charities, clarity as to the registration process, reserves policy and *de minimis* limits for regulation and registration.

*"I would like to see considerable thought put into how we define a 'public' charity. For example, a structure formed that obtains donations from a number of wealthy donors or corporate donors should not be deemed public. Perhaps a threshold of 50 donors must be breached before it becomes 'public'. For example, I am currently working with a client seeking to form a structure in Jersey into which he will contribute the initial funding. It is the intention that in the long term as the structure becomes established he may seek donations from persons/businesses known to him, and after his death the circle of contributors may widen further. In this instance privacy is key. He does not wish to be connected with his charitable donations and would be loathed to see it become public lest it be construed he is seeking personal recognition. As philanthropy has become increasingly popular the islands existing finance infrastructure must be able to take advantage of such structures (earning revenues for legal/tax/accounting/banking/investments) whilst at the same time meeting the personal wishes of the donor."*

*"If there is to be a reserves policy this should be based on a proportion of the overall value of the charitable fund and not a set level in order to avoid the scenario of a charity not being able to make donations or undertake charitable activities because the value of their fund has dropped."*

*"Consideration should be given to a de minimis limit for regulation and registration - for example if the charity has income levels lower than £5,000 per annum. Failure to introduce such a limit could threaten small worthwhile charities as overheads will extinguish their ability to operate."*

## Section 3: Conclusions

It is clear from the response to the consultation that there are very significant levels of support for the development of a Charities Law for Jersey, and for the future introduction of regulation. The devil however will be in the detail. It is clear from the consultation responses that there is a balance to be struck between a legal framework that supports charities to flourish, and one which hinders or deters their growth.

From a policy perspective it is also very clear that this Law must be good for our voluntary and community sector (VCS) whilst also avoiding any potential negative impact on our financial services industry (FSI); particularly with regard to our existing and future philanthropic and charitable trusts market.

Whilst the needs of these two sectors are, to a large extent, complimentary, they are also perceived as having the potential to be diametrically opposed to one another. This tension was played out throughout the consultation process and, in broadest terms reflected a divergence of opinion between those whose position was informed from a VCS perspective and those whose position was informed from an FSI perspective.

Whilst a modern definition of charities is welcomed by both, there were notable differences on opinion with regard to the other key developments.

The consultation demonstrated that there is a strong level of support for the development of a charities registration system, but it raises the questions about the need for all charitable structures to be registered. Much is said about the difference between “public” and “private” charities. A “public” charity being one which raises funds from the public and a “private” charity being one which does not raise funds from the public but which is established using private monies only, whether by an individual, a family, or an organisation.

On one hand it is argued that a private individual and/or organisation using private monies to establish a “private” charity should be able to access charitable tax benefits without a requirement to register (after all, they wish to give their money to charity why should they not be entitled to tax benefits? And if they wish their private charitable donation to remain anonymous, why should their information be publically available?)

On the other hand it is argued that where public monies are provided - in the form of tax benefits that are only available to charities - the public has a right to know which organisations are receiving these benefits and that “private” charities should not be treated differently from “public” charities.

These arguments follow through into the issue of regulation, as a future potential follow on from registration. Why should “private” charities be exempt from regulation but public charities be subjected to it? Whilst some “private” charities may be regulated entities because they have a trustee who is subject to financial services regulation, that regulation is potentially different from that which is driven from a charities regulation perspective.

The Charities Laws in England & Wales and Scotland apply to both “private” and “public” charities and it is argued that the same principle should be applied in Jersey – i.e. from a reputational point of view all charities should be publicly register and appropriately regulated as charities and not simply as financial structures. The counter argument, however, remains that Jersey cannot be compared with England & Wales and Scotland because our Foundations and Trusts Laws are so very different. The very reason that some individuals choose to establish Jersey

Charitable Trusts or Foundations is that there are no requirements for registration or regulation. Altering this arrangement could potentially damage the ability to grow the philanthropic and charitable trusts and foundations market in Jersey; a situation which in a globally competitive market would be far from desirable.

It is very clear, therefore, that the Law must be supportive and helpful to charities, but must not be harmful to the financial services sector.

Other emerging issues to be given further consideration include:

- The treatment of cross-border charities under the new law
- The short timescales for the consultation on the draft law
- The possibility of joint working with Guernsey, in particular a joint commissioner
- The commissioner being part of the JFSC
- The interface between the new law and the tax system

## Section 4: Next Steps

### Law drafting and consultation

The feedback gathered during this consultation will be used to inform the development of a draft Charities Law for Jersey

During the law drafting process two working groups will provide further comment and feedback on the law. One working group will consist of individuals from the financial services sector and is being co-ordinated by Jersey Finance Limited. The other working group will consist of individuals from the voluntary and community sector and is being co-ordinated by the Jersey Voluntary and Community Partnership.

The proposed timetable for the development of the Law is set out below, although it is possible that this could be subject to change if, during the development of the draft Law and subsequent consultation, additional issues arise.

#### Proposed timetable for development of the Law:

<b>Development of draft Law</b>	<b>September to December 2013</b>
<b>Public consultation on draft Law (8 week consultation)</b>	8 January 2014 to 5 March 2014
<b>Law to be lodge for States Debate</b>	April 2014
<b>Debate</b>	June 2014

## Charities Law and Charities Regulation

### Purpose of consultation

Charities play a unique and important role in our community, undertaking vital work that is supported through the generosity of Islanders. We want to consult Islanders about the proposed development of a legal and regulatory framework that supports charities to grow and flourish, whilst protecting public trust and confidence

**The consultation will close on 30 August 2013**

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### Summary

The Chief Minister's Department are consulting all Islanders about whether we need to develop a Charities Law for Jersey. The Law:

- would define what makes a charity a charity
- set out what charitable purpose is and put in place a requirement for all charities to deliver public benefit
- make it a requirement for all charities to be included on a public register.

In addition, we are consulting on whether it should provide for the future introduction of light-touch, proportionate regulation.

The consultation is not about the detail of the law - Islanders will have an opportunity to comment on that in the near future – but on whether a law should be introduced based on the principles outlined in this report.

Similarly if it is decided that the law should allow for the future introduction of regulation, Islanders will also be consulted on the details of that regulation; which organisations it applies to and what elements of their work should be regulated.

### 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:

- Jersey needs an up-to-date modern definition of charity, and if anything is missing from our proposed definition?
- whether you think there should be a public Charities Register, who should be on that Register and the information they need to provide?
- whether there should be an independent Charities Commissioner
- whether the proposed Charities Law should allow for future proportionate regulation of Charities?



## How to respond to the consultation

You can attend a consultation event.

Date	Time	Venue
Monday 15 July	1pm – 3pm	Concord Room*
Tuesday 16 July	5.30pm – 7.30pm	Church House
Wednesday 17 July	9am – 11am	Church House
Thursday 18 July	10am – 11.30am	TBC (note: this presentation is for financial services industry professionals who have an interest in charitable and philanthropic clients or structures.  Jersey Finance members should register by e-mailing <a href="mailto:hannah.talbot@jerseyfinance.je">hannah.talbot@jerseyfinance.je</a> )
Thursday 18 July	5.30pm – 7.30pm	Church House
Friday 19 July	1pm – 3pm	Church House
Monday 22 July	12pm – 2pm	Concord Room*
Tuesday 23 July	5pm – 6.30pm	Church House
Wednesday 24 July	9am – 11am	Church House
Thursday 25 July	5.30pm – 7.30pm	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

\*there is limited room at this venue, so please email us in advance to let us know if you want to attend ([charities@gov.je](mailto:charities@gov.je))

### You can submit your comments:

- by emailing
- by posting your comments in writing
- by completing the online survey ([www.gov.je/consult](http://www.gov.je/consult))

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

Email: [charities@gov.je](mailto:charities@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.

# Charities Law and Charities Regulation

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## **1. Background**

The framework within which charities currently operate in Jersey can arguably be considered as outdated, insufficient in parts and in need of improvement. Indeed the current definition of “charity” as set out in 1961 Income Tax Law<sup>1</sup> is drawn from the 1601 Statute of Elizabeth and is interpreted to exclude major areas of bona fide charitable activity, for example community sporting activity.

That definition also does not make the delivery of public benefit a requirement for all charities, thus a charity can operate in a field which is considered charitable but potentially not benefit the wider public.

In addition, there is currently no regulatory body specifically established to oversee the establishment and activities of charities, which by the nature of work they undertake and position they hold in the community, receive public trust and other benefits such as tax exemptions.

In 2009 the Jersey Law Commission recommended the establishment of a charities regulator and an updated charities law which included a public benefit test stating that:

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

The financial services sector have also stated that the lack of modern definition does not assist in growing the philanthropic and charitable trusts and foundations market in Jersey<sup>2</sup>.

Perhaps most importantly however, concerns have been raised by charities and other organisations operating in the voluntary and community sector who have identified:

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<sup>1</sup> Under the Income Tax Law organisations that meet the outdated definition of charity included in that law can apply for certain tax exemptions.

<sup>2</sup> The Trusts Law Steering Group reported that the lack of modern definition of charity did not assist in encouraging high net worth individuals to establish charitable foundations in Jersey.

- the need for a Charities Law that includes an up-to-date definition of charity and enables charities to more readily identify themselves and their intents and purpose to the public
- the need to consider regulation in a wider context of protecting and building public trust in order to support the sector to flourish and to be better placed to meet community need
- the positive impact that regulation, and associated independent official recognition, could have on fundraising<sup>3</sup> and volunteering
- the need to safeguard against any potential abuses of charitable status and ensure there is an effective mechanism to identify and deal with any potential abuse.

## **2. Trust and confidence**

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

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

Indeed it is widely perceived that charities have a “covenant of trust” with the public which requires protection because without it they would fail in their key aims and objectives. They would do so as a result of losing their ability to:

- influence public opinion and create positive social and behavioural change
- encourage individuals to participate in their activities and service provision, thus failing to reach key stakeholders
- raise funds from the public.

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<sup>3</sup> Currently a number of Jersey Charities quote their AJC membership number in lieu of a charities number on funding application forms. This is because funders expect to see a charities registration number.

### **3. Proposed approach**

It is proposed that a Charities Law is developed which sets out a modern, fit-for-purpose definition of Charity and Charitable Purposes, and which further promotes public trust and confidence in charities.

This would support the introduction of a proportionate, supportive regulatory regime which protects public trust and confidence in charities *without* placing an unnecessary financial or bureaucratic burden on the sector.

#### **PHASE 1: Charities Law and Public Register**

We would introduce a new law with an up-to-date definition of charity and a public register:

- 1) To develop a new law which defines a charity and charitable purpose and also puts in place a “charities test”. To pass the charities test an organisation can only deliver charitable purposes and it must deliver public benefit.

See Section 5 for an outline of key elements of the proposed law.

- 2) To set up a publicly accessible Charities Register and to place a requirement on charities to register if they wish to receive a Jersey charities number and associated tax exemptions.
- 3) To set out what a charity must do to register including the information they must provide.  
See Section 5 for more information about the Charities Register.
- 4) To establish the role of the Charities Commissioner and give the Commissioner powers as described in Section 5.
- 5) There will be no registration fee but all charities must register regardless of whether they have already been granted “charitable status” by the Taxes Office.
- 6) The Income Tax Law will also be amended to align with the new definition of charity.
- 7) To create a ‘one-stop’ registration process, automatically aligning the charities registration process, the Taxes Office charities registration process<sup>4</sup> and the Jersey Financial Services Commission’s Non-profit organisations registration process.

#### **PHASE 2: Charities Regulation**

We would introduce regulatory standards:

- 1) To develop a proportionate, light touch regulatory framework for charities based on full and detailed consultation with charities and the public.
- 2) To amend the Charities Law, or bring in powers under the Law, that require charities to meet those regulatory requirements.

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<sup>4</sup> Whilst charities will no longer need to apply separately to the Taxes Office for tax exemptions, the Comptroller of Taxes will retain statutory responsibility for granting of tax exemptions.

**The benefits of a phased approach include:**

1. Enabling us to capture, through the Public Charities Register, information about the size, scale and scope of charities operating in Jersey. This information that is critical to enabling us to consider what regulatory standards would be relevant in Jersey.

At present this information is not available from the Non-Profit Organisations register administered by the Jersey Financial Service Commission, the Taxes Office or the Association of Jersey Charities. We will, however, be able to get it from the Public Charities Register, and we therefore need the Register to be set up before we can scope full regulation.

2. Allowing sufficient time for charities, particularly small charities, to adjust to the changes. We will support this change by pro-actively contacting organisations currently on the Taxes Office “charities list” and helping them through the registration process. This will include a transfer period during which organisations currently on the Taxes Office “charities list” can continue to receive tax exemptions prior to being placed on the Public Charities Register.

3. Providing a significant lead in time from adoption of the new Law to registration, and then from registration to regulation, will allow the Charities Commissioner to develop user friendly guidance on charitable purpose and public benefit.

4. Bringing in a modern fit-for-purpose definition of charity in Phase 1 will support our financial services industry in a more timely fashion, by creating potential to grow the charitable trusts market ahead of regulation in Phase 2.



#### 4. Timeframe (proposed)

2013	July	Phase 1	Consultation: Principles of law and regulation	Phase 2			
	Aug						
	Sept						
	Oct		Law drafting				
	Nov		Consultation: The draft Law  (Important note: due to time constraints this consultant period will be curtailed)				
	Dec		Law lodged				
2014	Jan						
	Feb				Law debated by States		
	Mar						
	Quarter 2 – Quarter 3				Develop Charities Register  Develop charitable purposes & public benefit guidance		Consultation: Charities Regulation
	Quarter 4						
2015	Quarter 1				Law in force and commencement of registration process		Amending Charities Law or bring in powers to allow for regulation

During Phase 2 we will also be giving consideration to the development of two other key initiatives intended to support charities. These include:

##### **A Compact between the voluntary & community sector and the States of Jersey**

A Compact is a jointly owned agreement that sets out the ways in which the States and the voluntary & community sector will work together. The scope of the Compact may, for example, include:

- 1) principles of engagement (the right of Sector to be a critical voice whilst not impacting on funding relationships, and vice versa)
- 2) dispute resolution
- 3) funding relationship
- 4) consultation processes and involvement in policy development.

The aim of the Compact would be to:

- build trust and confidence between the State and the sector
- support greater transparency and a more equitable relationship between the States and voluntary & community sector.

##### **A States of Jersey Employee volunteering scheme**

This scheme could potentially include supporting States of Jersey employees to undertake secondments or pro-bono work in charities. It may involve enabling some employees to undertake a regular volunteering activity through a time-match scheme (subject to considerations relating to uninterrupted provision of services).

The aim of the scheme would be to support charities through increased access to potential volunteers and support the skills development of States employees.

**We will be seeking your views on these two initiatives during 2014.**

## **5. Key elements of a Charities Law**

A Charities test would be included:

A body is a charity if:

- a. it only delivers charitable purposes and;
- b. it provides public benefit in Jersey or elsewhere

Charitable purposes would be defined:

Those purposes<sup>5</sup> are –

- a. the prevention or relief of poverty;
- b. the advancement of education;
- c. the advancement of religion;
- d. the advancement of health;
- e. the saving of lives;
- f. the advancement of citizenship or community development;
- g. the advancement of the arts, heritage, culture or science;
- h. the advancement of public participation in sport;
- i. the provision of recreational facilities, or the organisation of recreational activities, with the object of improving the conditions of life for the persons for whom the facilities or activities are primarily intended;
- j. the advancement of human rights, conflict resolution or reconciliation;
- k. the promotion of religious or racial harmony;
- l. the promotion of equality and diversity;
- m. the advancement of environmental protection or improvement;
- n. the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage;
- o. the advancement of animal welfare; and
- p. any other purpose that may reasonably be regarded as analogous to any of the preceding purposes.

Public benefit: A charity must demonstrate it provides, or intends to provide public benefit. In demonstrating public benefit consideration must be given to:

- a. any benefit gained by members of that body or others, other than as members of the public
- b. any disbenefit to the public
- c. where benefit is restricted to a section of the public, whether conditions associated with gaining benefit (e.g. membership fees or charges) is restrictive.

A charity will not meet the charities test if:

- a. its constitution allows it to distribute property for a purpose that is not charitable
- b. its constitution expressly permits a States Minister or a Minister of the Crown to direct or control its activities<sup>67</sup>
- c. one of its purposes is to advance a political party.

Entry onto the Register: A body must register if it is:

- a. to accrue any benefits that may be available to it in Jersey (e.g. tax exemptions)
- b. to call itself a charity in Jersey

Charity trustees: A charity trustee must act in the interest of the charity including:

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<sup>5</sup> Consideration needs to be given to charities that: expound extremist views/incite hate crime etc. and whether Jersey has legal framework to manage these situations OR charities set up purely as offshoots of commercial organisations as a tax device

<sup>6</sup> Consideration needs to be given to organisations in Jersey that are perceived to be charitable but have a Quango type status.

<sup>7</sup> Note: this does not exclude any States Member acting as a trustee/board member in their personal capacity.

- a. ensuring the charity acts in a manner consistent with its purpose
- b. cannot be remunerated
- c. can be disqualified from being a trustee if convicted of an offence involving dishonesty; bankrupt; removed as a trustee by the England or Scottish Charities Commission

Information to be submitted to the Charities Commissioner:

- a. Copy of establishing document
- b. Accounts, to the extent to which these are available
- c. Application form setting out extent to which:
  - all purposes are charitable
  - public benefit delivered
  - organisation is run by fit and proper persons: this cannot be a single individual nor members of a family, a charity must have appropriately established body of trustees or board (Note: "trustee" will need to be defined for the purposes of the Charities Law)

Information to be put into public domain:

- a. Name of charity
- b. Names of trustees, subject to exemptions
- c. Operating address
- d. Description of aims and objectives of the charity
- e. Establishing document (if made a requirement of full regulation)
- f. Accounts (if made a requirement of full regulation)

Requirement to inform Commissioner in the event of:

- a. Any changes to information held on Register (name; address etc.)
- b. Cease to exist
- c. Change of charitable purpose or change to establishing document
- d. Cease to deliver public benefit
- e. Merge with another organisation
- f. If any persons running the charity are no longer fit and proper

What charities will be provided with on registration:

- a. a Jersey charity number
- b. right to accrue tax benefits

Circumstances in which a charity will not be put on the Register

The Commissioner will not put a charity on the Register if the Commissioner deems:

- a. it does not pass the charities test
- b. it is not run by fit and proper people
- c. it fails to comply with regulatory standards (Note: only once full regulation introduced in Phase 2)

In the event that it is taken off the Register:

- a. Its Jersey charity number shall be removed
- b. It will be unable to accrue tax benefits
- c. It will not be able to call itself a Charity in Jersey
- d. It will have to pay back any tax benefit it has received if it provided false information on registration or failed to provide timely information.

An appeals process:

- a. Stage 1 Appeal: Appeal Panel (Representatives of Jersey Voluntary and Community Partnership; 2 x lay members)
- b. Stage 2 Appeal: Independent review by qualified expert (possibly UK or Scottish Charities Commissioner)
- c. Royal Court Appeal



### Which organisations need to be on the Register

Any organisation that:

- a. calls itself a charity in Jersey
- b. wants to accrue benefits made available to it in Jersey (for example tax exemptions)

### What about charities that are registered in other jurisdictions

Any organisation that wants to operate/fundraise in Jersey as a charity must be registered in Jersey including:

- a. those who want to receive tax exemptions in Jersey<sup>8</sup>
- b. those who are not entitled to receive tax exemptions but still wish to call themselves a charity in Jersey. This will be subject to exemptions related to extent of activity, ownership of property etc. A charity that is registered elsewhere but exempted registration in Jersey will need to make it clear that it is registered in another jurisdiction and not in Jersey (i.e. it cannot call itself a Jersey charity)<sup>9</sup>

## **6. The Charities Commissioner**

The Commissioner would be independent of the States of Jersey or any other organisation.

The powers and responsibilities of the Commissioner will include:

1. setting up a public Register of Jersey charities
2. developing and issuing guidance to organisations on issues related to the charities test including delivery of public benefit
3. determining which organisations pass the charities test and can be placed on the register
4. issuing charities on the Register with a Jersey Charities number
5. investigating charities and removing them from the Register if they no longer pass the charities test
6. working with the Comptroller of Taxes to claw back tax benefit paid to an organisation on the Register which should not have been on the Register (where that organisation has provided false information/failed to provide timely information)
7. issuing guidance on regulatory standards and holding charities to account for compliance with those standards
8. investigating charities that do not meet regulatory standards and removing them from the Register (as set out in Section 5 an appeals process will be put in place).

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<sup>8</sup> In the first instance tax exemptions for charities that are also registered elsewhere will only apply to charities registered and regulated in the UK and Guernsey although consider will potentially be given to the Comptroller of Taxes extending to organisations registered in other jurisdictions if the Charities Commissioner deems that jurisdiction's regulation to be sufficient for the purposes of ensuring public trust and confidence.

<sup>9</sup> Pending clarification: If the charity has a presence in Jersey and directly fundraises in Jersey it will need to be registered as it is operating in Jersey but, if the charity has not presence in Jersey but someone else fundraises on its behalf it does not need to register (i.e. donating to an individual who is undertaking a sponsored run from a charity based elsewhere).

## **7. Strengths, Weaknesses, Opportunities and Threats**

Like all initiatives the proposed a new Charities Law and Regulation brings potential benefits and also some potential downsides. These are summarised below:

### **Strengths**

A modern definition of charity will help support:

- public trust and confidence
- charitable organisations - including those who do not meet the current definition but would meet the new definition
- the financial services industry.

Phased introduction of regulation enables:

- public scrutiny of the Charities Register from Phase 1, and therefore in a shorter timeframe
- full regulation to be based on an assessment of information about the sector gained from the Public Register.

An Independent Charities Commissioner would determine which organisations were charitable, as opposed to the Taxes Office.

### **Weaknesses**

New definition of charity will potentially result in increased numbers of charities claiming tax exemptions. The Taxes Office estimate revenue loss of approx. £500k to £600k per year (with periodic spikes to an estimated max £1m per year).

A two phased approach takes longer and is more complex to communicate.

### **Opportunities**

Introducing proportional light-touch regulation which will build public confidence without placing unnecessary burden on sector.

Financial services industry estimates potential growth in charitable trusts market would generate additional tax revenue of up to £1.26 million re-occurring after 10 years.

### **Threats (in brackets: mitigating action)**

“Red tape” squeezing out innovation and difference in the sector/cost of regulation and compliance to charities (regulation will be light-touch; charities will be supported to meet standards; regulatory requirements unlikely to require charities to incur costs they do not already incur).

Potential for organisations currently receiving tax exemptions to fail the public benefit test and hence lose access to tax exemptions (very few instances likely to occur, where they do consideration will be given to allowing grace period in which an organisation can restructure its finances).

## **8. Question & Answers**

### **The Charities Test**

#### **What is the charities test?**

The charities test will be set out in the proposed law. It is the “test” that the Commissioner will use to determine if an organisation is a charity. It consists of two elements:

1. that the organisation only delivers charitable purposes
2. that it provides public benefit in Jersey or elsewhere.

#### **Could an organisation do charitable work and non-charitable work?**

No. A charity will only be able to undertake work that is charitable i.e. meets the definition of charitable purpose as set out in Section 5 above. An organisation can however deliver one or more charitable purposes.

#### **What is meant by public benefit?**

Section 5 provides some guidance to public benefit. In essence an organisation must be able to demonstrate that it provides benefit to the public, as opposed to just members (although that does not exclude benefits being provided to members). For example; a golf club that charges membership fees which are beyond the financial means of most people and which does not provide significant public benefits, would not be considered a charity.

The Charities Commissioner would develop detailed guidance on public benefit during 2014.

### **Organisations that will most likely be considered charities**

#### **Are schools charities?**

Ultimately it is for the Charities Commissioner to decide whether an organisation is a charity.

However, it is proposed that any organisation that has its activities controlled by a States Minister is not a charity. A Parent Teachers Association would however most probably be a charity.

#### **Are churches/religious institutions charities?**

Most churches and religious institutions will pass the charities test, but consideration will be given on a case-by-case basis to some non-mainstream institutions which may provide very limited public benefit. If regulation should be introduced in Phase 2 consideration will be given to which regulatory elements are applicable.

#### **Are Sport clubs or groups charities?**

The extent to which a club or group is a charity will depend on part as to whether it delivers benefits to the public or just its members. The Charity Commissioner will develop detailed guidance during 2014.

### **Organisations on the Charities Register**

#### **Can an organisation call itself a charity but not be on the Charities Register?**

No. It is proposed that any organisation that wants to operate as a charity or call itself a charity in Jersey will need to be on the Charities Register. There will be special rules that apply for organisations that are registered elsewhere.

#### **Could an organisation not be on the Charities Register but still receive charitable tax exemptions?**

No. To receive charitable tax exemptions an organisation would need to be on the Charities Register.

### **Will all organisations have to appear on the Charities Register?**

All organisations will need to be on the Register, however we are giving consideration as to whether, in some cases, information about a particular organisation on the Register might not be placed in the public domain.

### **Charities Register and tax exemptions**

#### **Will organisations have to register separately to the Taxes Office for tax exemptions and/or to the Jersey Financial Services Commission for the Non-Profit Register?**

No. It is intended that we introduce a one-step process that will allow joint registration with the Charities Commissioner, the Taxes Office and the Jersey Financial Services Commission. Obviously Non-Profit Organisations that are not charities will still need to register with the Jersey Financial Services Commission.

#### **Will the Charities Commissioner therefore determine who is eligible for tax exemptions?**

The Charities Commissioner will determine which organisations are charities, but the Comptroller of Taxes will ultimately still hold the power to determine who does or does not get tax exemptions.

#### **Will organisations that have already been granted tax exemptions by the Taxes Office be automatically allowed to keep those tax exemptions?**

Not if Charities Commissioner does not deem them a charity. An organisation might for example have applied to the Taxes Office at a point in time when they were undertaking charitable work but their activities may subsequently have changed to the extent they are no longer a charity.

In the event that this should happen consideration will be given to a grace period which will allow an organisation to reconfigure its objectives and/or finances.

#### **Can a new charity accrue tax benefits from the moment it is placed on the Register?**

A charity can accrue tax benefits from the day it is approved by the Commissioner for inclusion on the Register, not from the day on which it applies to be on the Register.

#### **Can a charity placed on the Register receive backdated tax relief?**

A charity which was on the Taxes Office's "charities list" currently has the ability to backdate their claim for tax relief within certain time limits. This will be maintained for those moving to the Charities Register from the Taxes Office's "charities list".

A new charity, which had not previously been on the Taxes Office's charities list, cannot make back dated claims at the point of registration (i.e. sports clubs and other organisations which had not previously been entitled to charity tax exemptions will not be able to backdate tax relief on becoming a charity).

Once a new charity is on the Charities Register however it can receive backdated tax relief, within the time limits set in the Income Tax Law, but only as far back as to the date of registration.

#### **Are there plans to change tax exemptions for charities?**

Not at this stage, other than some consideration may be given to placing some limits on GST reclaim for large capital builds.

## **Regulation**

### **Why can't we move to full regulation straight away?**

In order to consider what regulatory standards are relevant for Jersey we need to know more about charities that operate here e.g. how many there are, what they do, what their income is.

This information is not currently available, in its totality, from either the Non-Profit Organisations Register; the Taxes Office or from the Association of Jersey Charities. We will be able to get it from the Charities Register however, so we need the Register to be set up before we can scope full regulation.

### **What might regulation include?**

We need to decide that in consultation with the public and in light of the information that we will be able to get from the Charities Register. Regulatory standards vary from place to place; there are for example some significant differences between England and Scotland.

Whatever we do it must be right for Jersey and it must be proportionate. We want to create a regulatory regime which benefits charities and protects public trust and confidence, but which does not place an unnecessary financial or bureaucratic burden on them.

Regulation might include:

- a requirement on all charities to submit annual accounts
- standards to which those accounts must adhere, for example a requirement to enable the public to see how much of their donations goes to running costs as opposed to the delivery of charitable purposes
- a requirement for all charities to have a reserves policy; stating how much money they can hold in reserve and why
- standards about governance for charities including who can be a trustee; how many trustees etc.

## **Charity trustees**

### **What is meant by trustees and what are their responsibilities under the proposed law?**

In Jersey, as in other jurisdictions, members of the board or committee who are responsible for the governance of a charity may be called a trustee, a board member, a committee member or sometimes given a completely different title. The title is not of prime importance, albeit a clear definition will need to be set out in law. What is essential however is that very clear guidance is developed to ensure that all trustees/board members understand their responsibilities and the impact that this proposed law may have on those responsibilities. This guidance will be produced.

### **What is meant by a "fit and proper person" (Section 5)?**

In essence a trustee must be a 'fit and proper person' to run a charity. Those who would not be considered as "fit and proper" would, subject to safeguards include, those who had committed tax fraud or those who had been convicted for relevant criminal activity.

### **What about charities run by a single trustee?**

It is proposed that no charity should be run by a single person or only by members of a family. A charity should have an appropriately established body of trustees. This does not exclude members of the same family being trustees but other non-family members should be trustees as well.

## **Appeals**

### **Will there be an appeals process to challenge decisions made by the Charities Commissioner?**

Yes. See Section 5. An independent appointments process will be established for members of appeals panels.

## **9. Consultation questions**

Below are some questions that we would be interested in knowing the answer to. You might also have additional comments or questions you would like to raise.

### **Definition of a charity**

1. Do you think the legal definition of charity should be updated?
2. Do you agree with the proposed list of charitable purposes?
3. Do you think there is anything missing from the proposed list?
4. Are there things included on the proposed list that should not be?
5. Do you think it should be a requirement that charities provide 'public benefit'?

### **Registration process**

1. Do you think a charities register should be set up in Jersey?
2. Do you think an organisation should register as a charity in Jersey if it wants to:
  - a. Receive charitable tax exemptions?
  - b. Call itself a charity?
  - c. Make public appeals for charitable donations?
3. Do you think that the proposed information needed to register is appropriate?
4. Do you think that the proposed information to be made publicly available via the register is appropriate?
5. Are there any types of charities or organisations that you think should be on the charities register but on a confidential basis (i.e. their information is not in the public domain)?
6. Do you think that there should be a single registration process (which would automatically align the charities registration with the Taxes Office and Jersey Financial Services Commission registration processes)?

### **Charities commissioner**

1. Do you think a charities commissioner should be appointed?
2. Do you agree that a charities commissioner should be completely independent of the States of Jersey or any other organisation in Jersey?
3. Do you think a charities commissioner should have the power to:
  - a. Decide if an organisation is a charity?
  - b. Investigate and remove an organisation from the register if it no longer meets the requirements to be deemed a charity?

4. If you have any comments on the proposed appeals process, please tell us.

### **Trustees**

1. Do you think that the duties and responsibilities of charity trustees should be set out in law?
2. Do you agree with the proposed basic duties and responsibilities for charity trustees?
3. Do you think there should be regulations to ensure charities are not run by a single person or members of the same family?
4. Do you think that there should be restrictions on who can act as a charity trustee?

### **Regulation**

1. Do you think that charities should be regulated?
2. Do you think charities should provide members of the public with information about how they spend their money?
3. Do you think charities should publish an annual report?

### Consultation Meetings

Nine public meetings were organised for members of the public and representatives from voluntary and community organisations to attend.

<b>Date</b>	<b>Time</b>	<b>Venue</b>
Mon 15 July	1pm – 3pm	Concord Room, 4 <sup>th</sup> Floor Cyril Le Marquand House
Tues 16 July	5.30pm – 7.30pm	Church House, St Helier Parish Church
Wed 17 July	9am – 11am	Church House, St Helier Parish Church
Thurs 18 July	5.30pm – 7.30pm	Church House, St Helier Parish Church
Fri 19 July	1pm – 3pm	Church House, St Helier Parish Church
Mon 22 July	12pm – 2pm	Concord Room, 4 <sup>th</sup> Floor Cyril Le Marquand House
Tues 23 July	5pm – 6.30pm	Church House, St Helier Parish Church
Wed 24 July	9am – 11am	Church House, St Helier Parish Church
Thurs 25 July	5.30pm – 7.30pm	Church House, St Helier Parish Church

A separate meeting was arranged by Jersey Finance Limited specifically for members of the financial services sector. In addition to this a briefing session was also held for States Members.

The format of all of the meetings was a presentation outlining the charities law proposals, followed by a question and answer session. The meetings were lead by the Assistant Director for Social Policy from the Chief Minister's Department.



**Organisations who engaged in the consultation process**

<p>ACET Jersey          Arts in Health Care          Ashburton          Association of Jersey Charities          Bible Society          BKS Family Office          Brig-y-Don Children's Charity          British Legion          British Red Cross          Buddhist Group          Campaign for Real Ale (CAMRA) Jersey Branch          Centre Point          Challenge 4 Ben          Christian Aid          Christian Portuguese Mission          Christians Together in Jersey          CLIC Sargent (Jersey)          Community Savings Ltd          Curtain Up Theatre Group          Diabetes Jersey          Don Ballaine Trust          Don Gruchy Trust          Driving for the Disabled          Duke of Edinburgh Award          Durrell Wildlife Conservation Trust          Education, Sport and Culture          Family Nursing and Home Care          Freedom Church Jersey          Friends of Ecce Homo Trust          Friends of Mont a L'Abbe School          Friends of the Bridge</p>	<p>Genuine Jersey          Glanville Home          Good Companions Club          Good News Trust          Grace Trust          Hands Around the World (Jersey)          Help From the Rock          Highfield Bridge Club          Holidays for Heroes          Institute of Directors          Jersey Alzheimer's Association          Jersey Animal Rights Association          Jersey Archery Association          Jersey Art and Therapy Group          Jersey Arts Centre          Jersey Association for Spina Bifida &amp; Hydrocephalus          Jersey Association of Carers Incorporated (JACI)          Jersey Ballroom Dancing Association          Jersey Baptist Church          Jersey Blind Society          Jersey Chamber of Commerce          Jersey Cheshire Home          Jersey Child Care Trust          Jersey Citizen's Advice Bureau          Jersey Employment Trust          Jersey Fairtrade Island Group          Jersey Financial Services Commission          Jersey Freshwater Anglers Association          Jersey Guide Association          Jersey Hedgehog Preservation Group          Jersey Heritage</p>
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Jersey Hospice Care  
Jersey Jewish Burial Society  
Jersey Jewish Congregation  
Jersey Mencap  
Jersey One World Group  
Jersey Quaker Meeting  
Jersey Sea Cadets  
Jersey Voluntary and Community Partnership  
Jersey Women's Refuge  
Jersey/England Parents Support  
JFAA  
JSPCA  
Kisumu Orphans Education Fund  
Kleinwort Benson  
La Motte Street Youth Project  
Les Amis  
Les Vaux Housing Trust  
Lighthouse Church  
Lloyds TSB Foundation  
Macmillan Jersey  
Meals on Wheels  
Methodist Homes for the Aged  
Milli's Child Contact Centre  
Mind Jersey  
Music in Action  
Mustard Seed Jersey  
National Trust for Jersey  
Ogier  
One Foundation  
Optimists Club  
Parkinson's UK Jersey Branch  
Rawlinson & Hunter

Raynet  
Rotary Club de la Manche  
Royal Commonwealth Society Jersey Branch  
Side by Side  
Silkworth Charity Group  
SOBS  
Societe Jersiaise  
St Andrew's Church  
St Christopher's School PTA  
St John Ambulance  
St Michael's School  
St Paul's Centre  
Stagefright Drama Groups  
Street Pastors Jersey  
Swim Easy Jersey  
The Abbeyfield Jersey Society  
The Antoine Trust  
The Freemasons of Jersey  
The Institute of Chartered Secretaries and Administration – Jersey Branch  
The Institute of Chartered Secretaries and Administration (ICSA)  
The Jersey Friends of Anthony Nolan  
The Methodist Church  
The Salvation Army  
The Shelter Trust  
The Simon Digby Memorial Charity  
The Universal Healing Group  
Triumph Over Phobia Jersey  
United Reform Church  
Variety, the Children's Charity  
West Show Association  
Women's Institute

## **Appendix 4**

### **Financial Services Sector Survey**

- Q1. Are you responding to this survey:
- As an individual
  - On behalf of an organisation
- Q2. Are you also responding to our general online survey?
- Q3. Are there any other charitable structures which need to be considered?
- Q4. Do you think the structures set out in question 3 above should all be required to register in order to call themselves charities and receive the associated tax benefits?
- Q5. Do you think the proposed requirement for information on the register to be in the public domain, including trustee's names, should extend to all structures set out in question 3 above?
- Q6. Do you think charities regulation should apply to all charities on the register including those structures set out in question 3 above?
- Q7. Do you think charities with a sole professional trustee should be exempt from charities regulation?
- Q8. Do you think sole trustee or family only trustees should be permitted for some structures?
- Q9. Do you think the proposal that trustees of charities should not be remunerated is appropriate for all charitable structures?
- Q10. If you have any further comments about the proposals for the law and regulations, please tell us.