

# DRAFT CHARITIES (JERSEY) LAW 201-

## Report

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### Explanatory Note

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This Law introduces a system of registration for charities. Registration is not compulsory, but entities that do not register will not be able to refer to themselves as “charities” and may not be able to obtain exemptions from taxation (subject in both cases to exceptions, and to transitional provisions to be made by Regulations under the Law). Some elements of the scheme are similar to those in the Charities and Trustee Investment (Scotland) Act 2005. The main elements of the Law are as follows.

- (a) The Law sets up the register of charities. The register will have a general section, a restricted section and a historic section. Certain elements of the register will not be public.
- (b) It defines charitable purposes and sets out other elements of a charity test, including public benefit. It requires the Minister to make an Order setting conditions for a charity to be entered in the restricted section. At least one of the conditions must apply to charities that do not solicit donations from the general public.
- (c) It establishes a Charity Commissioner to administer the test and maintain the register (and a tribunal to hear appeals against the Commissioner’s decisions).
- (d) It imposes obligations on registered charities and their managers, including obligations to maintain the registered charitable purposes and public benefit. It gives the Commissioner power to issue required steps notices and deregister charities, and it gives the Royal Court wide-ranging powers to ensure registered charities remain charitable (these are not intended to limit the powers of the Attorney General and the court under customary law in relation to charities).
- (e) It imposes restrictions on the use of the terms “charity” and “Jersey charity” by entities that are not registered (or excepted as foreign charities). It also allows the States by Regulations to restrict the use of the term “charitable” by other entities in connection with soliciting donations from the public.
- (f) It amends Article 115 of the Income Tax (Jersey) Law 1961 (which affects other taxes that refer back to that Article), so that income tax exemption for charities primarily depends on registration. However, it also allows exemption from income tax (but not from other taxes) for unregistered charitable entities that apply their income to the making of

donations to registered charities. It preserves some exemptions and allows for transitional provision to be made for others.

*Article 1* provides definitions of terms used, or references to where they are defined in later Articles. The definitions include “register”, “general section” and “restricted section”; “registered charity”, “registered charitable purposes” and “registered public benefit statement”; “solicit” and “donation”; “publish”; and “regulated financial services business”.

*Article 2* defines the underlying concepts of “entity”, “Jersey entity”, “constitution”, “constitutional Law”, “purpose”, “manager” and “misconduct”. Each definition specifies how those concepts work with the various different types of entity that can be a charity. *Article 11* sets out which entities are eligible to apply to be registered as charities, but “charity” as such is not defined, as the concept is only used in relation to a registered charity (and *Part 6* restricts use of the term “charity” by other entities).

A trust and an unincorporated association do not have legal personality, so the trustees or members together are taken as forming the entity. There is overlap between trusts and other categories of entity.

- (a) If a company (or other body corporate) is one of several trustees of a trust, then the trust will be the entity that is registered. The trust consists for these purposes of the company and all the other trustees, who are also the managers.
- (b) If a company holds all its property on trust as a sole trustee, then the company and the trust are the same entity for registration purposes, and the company’s directors are the managers (but eligibility to register may be restricted by Regulations under *Article 11(7)(a)*).
- (c) If a company is not a trustee, but has been set up with charitable purposes in its constitution, then the company itself is the entity for registration purposes, and its directors are the managers.

The definition “purpose” includes (where the entity is of a type that does not have to include specific objects in its constitution) any purpose to which the entity may lawfully apply its property under its constitution. That also includes any purposes to which the entity’s property can be lawfully applied on its winding up or other termination (but does not cover the application of the property under a court order). References to charitable purposes are therefore to be read in this broad sense (see in particular *Articles 13(2)-(3)* and *18(1)(a)* on the powers of registered charities and the duties of their managers).

*Article 3* establishes the Jersey Charity Commissioner as a corporation sole, and gives effect to Schedule 1 which makes further provision as to the Commissioner.

*Article 4* sets out the Commissioner’s general functions of administering the charity test, operating the register, seeking to enforce the restrictions on use of “charity” and other terms, supervising duties of charity managers, publishing guidance on the charity test and other aspects of the Law, assisting other persons with functions in relation to charities, and monitoring compliance with the Law. The Commissioner may also provide information, advise the Minister on proposals for further regulation, and assist overseas bodies.

*Part 3* provides a new charity test, for determining whether an entity can register.

*Article 5* sets out the charity test, under which all the purposes of the entity must be charitable (or purely ancillary or incidental to its charitable purposes). The entity must also provide public benefit (in Jersey or elsewhere) to a degree that justifies registration. The Commissioner must publish guidance on the charity test, and the

Commissioner and others must have regard to the guidance in performing their functions. A Minister or member of the Assembly (or overseas equivalent) cannot be a manager in that capacity, unless an Order provides otherwise.

*Article 6* sets out the charitable purposes, in broader and more specific terms than under the current law (closely following section 7(2) and (3) of the Charities and Trustee Investment (Scotland) Act 2005), for example making express provision for culture, sport, environmental protection, animal welfare and philosophical beliefs. Advancing a political party or promoting a candidate for election to any office (in Jersey or elsewhere) cannot be a charitable purpose. The list of charitable purposes applies for the purposes of this Law, but *Article 42* amends references to charitable purposes in tax legislation and *Article 44* enables the States to make Regulations amending references to charitable purposes in other enactments (see below).

*Article 7* provides more detail on public benefit. No particular charitable purpose is presumed to be for the public benefit. Comparison must be made between benefits and disbenefits, in relation to the members of the entity and to the public. Fees and other conditions must not be unduly restrictive. Benefitting only a particular individual, or a group of identified individuals, cannot be treated as public benefit. The Commissioner's guidance must cover the assessment of public benefit.

*Part 4* provides for the charity register.

*Article 8* requires the Commissioner to establish and maintain the register. The register will be composed of 3 sections - general, restricted and historic. A set of details must be entered on the register for entities in the general and restricted sections (although entries on the register are normally accessible to the public, there will not be public access to some of the entries about an entity that is in the restricted section, or where there is a safety risk - see *Articles 9* and *10*). The registered details will include the entity's name, registered number and constitutional form, the names of managers, the addresses (other than private dwelling houses) where activities are undertaken in Jersey (with the principal address as the entity's registered office, the main premises for activities or a manager's address), and the date of registration. In addition the entity must provide statements, to be approved by the Commissioner, setting out the entity's charitable purposes and the public benefit to be provided by the entity (the entity is then held to those statements during and after registration - see *Articles 13(2)-(4)*, *14(1)(b)*, and *17(6)-(9)*). Other registered details include whether the charity is an externally organized religious charity, is permitted to have a States member or Minister as a manager in that capacity, has submitted its most recent annual return, has been served with a required steps notice, or has changed its name. The Minister can provide by Order for other information to be registered.

The historic section will contain details of deregistered charities, comprising the former registered number, the name (but not if formerly in the restricted section), reasons for deregistration, and dates of registration and deregistration. The Minister is given power to add further details by Order. The Commissioner must also retain for 10 years copies of documents that were not themselves on the register, including the constitution, annual returns, and notices (with a power for the Minister to add others by Order).

*Article 9* provides for the restricted section of the register. The result of entry in the restricted section is that only limited elements of the register are accessible to the public in respect of that charity - its registered number (but not its name, which will however appear on the registration certificate issued under *Article 11(9)*), its constitutional form, its statement of registered charitable purposes, its registered public benefit statement, whether it has submitted its most recent annual return, whether it has been served with a required steps notice, summary reasons for entry in

the restricted section, and any other elements that might be prescribed by the Minister by Order. An entity that wishes to be in the restricted section must apply in the form published by the Commissioner, with evidence to his or her satisfaction in support, and must indicate whether in the event of refusal it wishes to be in the general section or to withdraw its registration application (or apply for deregistration). The Minister must make an Order setting conditions that must be met to apply for entry in the restricted section. There must be a condition as to as to refraining from soliciting donations from the general public or from any prescribed description of persons. The Order must specify what constitutes soliciting a donation (but can allow the Commissioner discretion in deciding that issue), and must prescribe what constitutes the general public or what other description of persons are covered. The Order may additionally prescribe alternative conditions, related to the source of funds or otherwise. The Order must also prescribe grounds on which the Commissioner may accept or refuse a request.

*Article 10* provides for public inspection, through a website and without charge, of the public parts of the register (and by other means, which may be subject to a charge, if the Minister so provides by Order). For a charity in the general section, or a deregistered entity in the historic section, all of the registered elements are normally public. If the charity is in the restricted section, only the registered elements described above (in the note on *Article 9*) are public. However, the Commissioner can also designate particular matters in relation to a charity's register entry as not being public, if otherwise the safety or security of any person, property or premises would be significantly put at risk.

*Article 11* provides for applications to register. An entity only needs to apply to register if it wishes to obtain the advantages of registration (primarily the ability to refer to itself as a charity, and certain tax advantages). Its constitution must be a written document and it must meet the charity test. It must also have an appropriate connection with Jersey, either by being a "Jersey entity" (primarily by being established under Jersey law) or by doing more in Jersey than merely fund-raising (whether carrying out its charitable purposes and providing public benefit, or some other substantial activity). The Commissioner can publish applications forms, which can be different for different types of applicant. The applicant must provide information and evidence as to its eligibility to register, including its constitution, draft statement of registered charitable purposes and registered public benefit statement, and financial information (the States may by Regulations prescribe other evidence to be provided). The Commissioner must register the applicant if satisfied that it meets the charity test, that its name is not undesirable and that there are no other grounds for refusal, as prescribed by the States by Regulations (the grounds can include that the managers are too closely related to each other, or that there is only one manager, where that manager is not carrying on regulated financial services business). The Minister can, by Order, provide for time limits on decisions and for notification of decisions and reasons. The Commissioner must issue a registration certificate, giving the name, number and date of registration. If an applicant is not already registered with the Jersey Financial Services Commission ("JFSC") under the Non-Profit Organizations (Jersey) Law 2008, the application for charity registration must include the information necessary for registration under the Non-Profit Organizations (Jersey) Law 2008, and the Commissioner will pass the information on to the JFSC to carry out registration under that Law. No power is given to charge any fee for registration.

*Article 12* provides for the names of charities. The name must not be too similar to other charities, misleading as to purposes, activities or connections, or offensive. If the name is approved and the registration application granted, the name will be registered along with a registered number. Once the charity is registered it must only use its

registered name. But after registration the charity can apply for permission to change its name. If information subsequently comes to light that could have prevented approval of the name, the charity must report it to the Commissioner who may require the charity to apply to change its name.

*Article 13* provides for the effects of registration. While the charity is registered it cannot change its purposes to non-charitable purposes. It can change to other charitable purposes, but only with the Commissioner's prior approval. It must also provide public benefit in accordance with its most recent registered public benefit statement. It can apply to the Commissioner for approval of a proposed amendment to that statement. If it is in the restricted section it must ensure it continues to meet the relevant condition in the Order under *Article 9*, but may apply to the Commissioner for approval to meet a different condition under that Order. The charity must promptly report changes in registered matters, new information casting doubt on previous decisions, proposals to change the constitution, reportable matters about its managers, matters likely to lead to bankruptcy or to the charity ceasing to exist, proposals to change the condition under which it is entered in the restricted section and any other matter prescribed by the Minister by Order. The charity must make an annual return containing that information as well as any other information prescribed by the Minister by Order (the Order can also provide for format, timing, consequences of lateness and entries in the register in respect of annual returns). Any Regulations made under *Article 11(7)* can require a registered charity (and its managers) to report (and remedy) or avoid a situation in which an application for registration would have been refused under those Regulations. In particular that enables the Regulations to provide for a situation where managers leave without being replaced, with the result that the remaining managers are all related in a prohibited manner or that there is only one remaining manager (other than one who is entitled under the Regulations to be a sole manager, such as a person carrying on regulated financial services business).

*Article 14* gives the Royal Court powers over a registered charity (without derogating from those it has under customary law – see *paragraph (4)(a)* and *Article 41(1)*). The Commissioner, or the Attorney General (whose customary law powers are also preserved by *Article 41(1)*), can apply to the court to make any order the court sees fit to remedy misconduct, or to protect the charity's property and secure its proper application in accordance with the charity's registered charitable purposes and registered public benefit statement. There is a non-exhaustive list of orders the court may make, including temporary or permanent prohibition on using terms like "charity" or soliciting donations from the public; suspending, removing, adding or substituting managers; freezing accounts held by financial services businesses on behalf of charities or managers; requiring the court's consent for transactions; imposing supervision, restraint or conditions on the administration of the charity; and requiring managers (or others) who engaged in misconduct to take steps to remedy its effects. The court can make an order despite anything in the constitution of the charity. The fact that the court can make orders about misconduct does not limit the Commissioner's powers to act over misconduct.

*Article 15* provides for deregistration on the application of an entity that is a registered charity. The entity must give the Commissioner its proposals for the continuation or winding up of the entity and for the application of any of its property remaining after deregistration, and the Commissioner may refuse if not satisfied with those proposals.

*Article 16* provides for deregistration at the initiative of the Commissioner, where the entity no longer exists or no longer meets the charity test, the Commissioner was misled into registering the entity, or the entity failed to comply with a required steps notice (the Minister may by Order prescribe other grounds).

*Article 17* provides for the effects of deregistration. The Commissioner must retain the registered information for 10 years after deregistration, and must not re-use the registration number for another charity. If the Commissioner deregisters under *Article 16*, he or she can do so retrospectively to the date when the grounds first existed (but not so as to render any act an offence). The deregistered entity is free to use newly acquired property for any purpose under its constitution (and variation of the purposes no longer requires the Commissioner's consent) and without providing public benefit (subject to its constitution and to any other powers of the court under the entity's constitutional Law). But if and as long as there is any remaining property, acquired before the entity was deregistered, the last versions of the registered charitable purposes and registered public benefit statement continue to bind the entity in respect of that property. The entity cannot vary the purposes or public benefit statement in respect of that remaining property, but can apply to the court to do so. The court also retains the power, on the application of the Attorney General (rather than the Commissioner), to make orders to remedy misconduct or secure proper application of property, as if the entity were still registered (see *Article 14*), but only in respect of the remaining property acquired before deregistration.

*Part 5* deals with managers of registered charities.

*Article 18* provides for the general duties of managers of registered charities. The managers must seek, in good faith, to ensure that the charity acts consistently with its current registered charitable purposes and registered public benefit statement, and that it complies with this Law (and with requirements imposed under this Law). They have duties, similar to those of trustees, to observe the utmost good faith and act with due diligence, as would a prudent person and to the best of their ability and skill. These duties are in addition to any more onerous duties imposed by the constitution or the constitutional Law of the charity. This Article also provides that a manager will count as engaging in misconduct, not only if it is the manager's own misconduct, but also if the manager concurs in the charity's misconduct, assists or encourages another manager's misconduct, or conceals or fails to remedy another's misconduct.

*Article 19* prohibits remuneration of managers of registered charities, except in circumstances where it is permitted under Regulations made by the States. Those Regulations can prescribe any circumstances, including where the work is done by the manager in the course of carrying on regulated financial services business. The Regulations can provide for guidance from the Commissioner, and can create offences subject to a penalty no greater than [imprisonment for a term of 2 years, an unlimited fine, or both].

*Article 20* provides for reportable matters in relation to those acting as managers of registered charities. The manager must promptly report the matter to the charity and the Commissioner. Applications for registration, and annual reports from registered charities, must include a statement that the charity has declarations from each manager (who has not reported any matter) that there is no reportable matter in relation to that manager. A person who fails to report a reportable matter, or to provide a declaration when required, must not act as a manager of the registered charity for as long as the breach of that requirement continues. If a manager does report a matter to the Commissioner, the Commissioner must make inquiries to determine whether the manager is a fit and proper person to be a manager. The Commissioner can refer the question to the court, or determine it himself or herself and then require the removal or suspension of the manager or give written permission for the person to act as a manager. After reporting the matter, the person must not act as a manager until permitted by the Commissioner or the court to do so (and then only in accordance with any condition on that permission). Breach of that prohibition, without reasonable

excuse, is an offence carrying [imprisonment for up to 2 years, an unlimited fine, or both], but does not render the manager's acts void or invalid. If the Commissioner suspects a manager has failed to report a reportable matter, the Commissioner may apply to the court to determine whether the manager is a fit and proper person (and may take any other available action).

*Article 21* provides powers for the court to make orders as to the fitness of a manager (again these powers are not in derogation of the court's customary law powers in relation to charities). If the Commissioner applies under *Article 20* the court can make any order it sees fit (including permitting the manager to act, or requiring the manager's suspension or removal). The Commissioner (and the Attorney General) are given powers to apply to court for a disqualification order (and the court can make such an order on an application under *Article 20*). A disqualification order can last up to 15 years, and prevents the person from being concerned in the management of a registered charity without the leave of the court. Contravention of a disqualification order is an offence carrying [imprisonment for a term of up to 2 years, an unlimited fine, or both].

*Part 6* restricts the use of the expressions "charity" and "charitable".

*Article 22* prohibits unregistered entities being referred to as registered or as "charities". The entity must not refer to itself as being registered by the Commissioner, or cause or permit another person to do so. A person must not knowingly (or with reasonable grounds for suspicion) incorrectly refer to the entity as being registered by the Commissioner, with intent to mislead or to obtain any property or financial or other advantage for the entity. If the unregistered entity is a "Jersey entity", it must not anywhere refer to itself or allow itself to be referred to (and another person must not, with the intention and grounds for suspicion mentioned above, refer to it) as a "charity". Similar prohibitions apply with respect to an unregistered entity that is not a "Jersey entity" or an "excepted foreign charity", but only in connection with any of its activities in Jersey. It is an offence, carrying [imprisonment for a term of up to 2 years, an unlimited fine, or both], to contravene a prohibition involving the intention and grounds for suspicion mentioned above (or the prohibition on an unregistered entity referring to itself as registered). Contravention of the other prohibitions is an offence carrying [a fine of up to level [3/4] on the standard scale under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, currently [£2,000/£5,000]].

*Article 23* defines an excepted foreign charity for the purpose of *Article 22*. An excepted foreign charity can refer to itself as a "charity" in connection with its fund-raising activities in Jersey (but not any other activities here), despite not being registered in Jersey. The foreign charity must be established under the law of any of the jurisdictions in the United Kingdom, be managed from that jurisdiction, and be entitled there to refer to itself as a charity under that law. The Minister can by Order add other jurisdictions (or apply the provisions to specified entities from other jurisdictions). The States can by Regulations amend the conditions under which this Article applies.

*Article 24* provides similar prohibitions (with offences carrying the same penalties) on unauthorized use of the expression "Jersey charity". The term is only permitted when the entity is a registered charity that is a "Jersey entity" and is managed or controlled in or from within Jersey.

*Article 25* enables the States, by Regulations, to restrict the use by unregistered entities of term "charitable" (or "public benefit" or related terms other than "charity") in relation to the soliciting of donations from the general public (or from any prescribed description of persons). The meaning of "soliciting" and "donations" must

be fixed by the Order under *Article 9(3)(b)*. The Regulations can make it an offence to contravene the restrictions, carrying a penalty no greater than [imprisonment for a term of up to 2 years, an unlimited fine, or both].

*Article 26* enables the Minister by Order to require registered charities to identify themselves as such in prescribed documents or publicity.

*Part 7* deals with information and enforcement.

*Article 27* provides a power for the Commissioner to demand information (for determining whether to serve a required steps notice) from a registered charity or deregistered entity or from a manager or former manager of such a charity or entity. The Commissioner must serve a notice, and there is a right of appeal. Failure to comply, without reasonable excuse, is an offence carrying [imprisonment for a term of up to [3/6] months, a fine of up to level 3 on the standard scale (£2,000), or both]. There is a separate offence, carrying [imprisonment for a term of up to 2 years, an unlimited fine, or both], of knowingly providing false information to the Commissioner on a registration application or where the Commissioner is determining whether to serve a required steps notice.

*Article 28* provides for the Commissioner to serve required steps notices on registered charities or their managers. The notice can be served if the Commissioner believes there has been misconduct or the charity no longer passes the charity test or a manager is unfit. The notice can require steps to be taken that the Commissioner believes are appropriate to remedy the matter prompting service of the notice, which can include suspension, removal or replacement of a manager. The Minister may make an Order as to the procedure for, and restrictions on, serving a notice.

*Article 29* limits the Commissioner's power to use a required steps notice to require the suspension, removal or replacement of a manager, if the Minister makes an Order categorizing the charity as an externally organized religious charity. The power is available where a religious charity adequately supervises and disciplines its managers, (in its activities in Jersey), and the Order can rely on designation under Scottish, or English and Welsh equivalent legislation.

*Article 30* restricts disclosure, without consent, of information (not entered in the public parts of the register) received under or for the purposes of the Law. Contravention is an offence, carrying [imprisonment for a term of up to 2 years, an unlimited fine, or both].

*Article 31* [requires the Commissioner to disclose information to the Comptroller of Taxes (in relation to tax) and to the JFSC (in relation to registration of non-profit organizations)].

*Article 32* permits disclosure of information to various bodies carrying out functions under relevant laws, and allows the States by Regulations to prescribe other circumstances in which disclosure is permitted.

*Part 8* provides for appeals to a Charity Tribunal.

*Article 33* establishes the tribunal and gives effect to *Schedule 2* which provides more detail as to the tribunal.

*Article 34* sets out the rights of appeal against decisions of the Commissioner. An applicant may appeal against refusal to register (or to register in the restricted section). A registered charity may appeal against deregistration, refusal of permission for a change of name (or a requirement to change the name), or refusal of approval of variation of purposes or of the registered public benefit statement. A person can appeal against a notice demanding information or requiring steps to be taken by them. The Attorney General may appeal against any decision of the Commissioner. A third party

may appeal against registration of an applicant, either over whether the charity test is met or over whether the name is undesirable.

*Article 35* provides that the appeal can be on the ground that the decision was wrong or unreasonable on its merits, the facts or the law. The tribunal can make interim orders, consider fresh evidence, substitute its decision for the Commissioner's, award costs for vexatious or grossly unreasonable appeals, and make recommendations to the Commissioner.

*Article 36* provides for an appeal to the Royal Court on the ground that the decision of the tribunal was unreasonable having regard to all the circumstances of the case. The court can make interim orders, substitute its decision for the tribunal's or remit the decision to the tribunal.

*Article 37* makes further provision as to the effects of an appeal to the tribunal or court. The tribunal or court can make its substituted decision effective retrospectively, or can delay the effect of the decision to a later date, depending on what appears appropriate to the tribunal or court in the particular case. Any retrospective effect cannot render an act an offence, but could for example support a backdated claim for tax relief or provide a defence against an accusation of referring to an entity as a charity while it was not registered. The availability of appeals does not prevent the Commissioner from reconsidering his or her own decisions or the decisions of his or her staff. The Minister may by Order prescribe time limits for bringing appeals to the tribunal or court, and may also require notice to be given of decisions or reasons, to enable appeals to be brought within time limits.

*Part 9* contains miscellaneous and final provisions

*Article 38* provides that offences by corporate and other bodies can be attributed to their directors or similar officers or managing members.

*Article 39* allows the Minister to make Orders as to service of notices.

*Article 40* allows Regulations and Orders under other Articles to include transitional, consequential, incidental, supplementary and savings provisions (including where the Regulations are amending this Law).

*Article 41* preserves the pre-existing functions of the Attorney-General, the Bailiff, and the Royal Court in relation to charities and charitable purposes. It also allows the States by Regulations to make other saving and transitional provisions.

*Article 42* amends taxation enactments. The main change is to Article 115 of the Income Tax (Jersey) Law 1961 (on which goods and services tax, stamp duty and land transaction tax mostly depend in turn). Income tax and other exemptions will be available to registered charities primarily. Income tax exemption (but not others) will also be available (after notifying the Comptroller) to unregistered charitable trusts and foundations that would be eligible to register but for not meeting the public benefit requirement, if they donate the income to registered charities and do not solicit donations from the general public. In addition income tax exemption will continue to be available to unregistered trusts and foundations that still have it under the current law immediately before 1st January 2015 (which will be before this Article is brought fully into force), as long as they do not solicit donations. In Article 115(c) of the Income Tax (Jersey) Law 1961, the income tax exemption for the property of the States is extended to the property of the parishes.

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

*Article 43* allows the States, by Regulations, to amend taxation legislation and legislation under which the JFSC has functions, to enable the JFSC and the Comptroller to disclose information to the Commissioner for the purposes of this Law.

*Article 44* allows the States, by Regulations, to make consequential amendments to references in other legislation to charities or charitable purposes.

*Article 45* names this Law. It would bring into force, 7 days after the Law is registered in the Royal Court, the provisions that merely pave the way for the substantive provisions (those that allow charity registration to start and those that impose obligations on charitable and other entities). It would enable the States to bring the substantive provisions into force by an Appointed Day Act, or in stages by different Acts for different provisions.

*Schedule 1* provides for the appointment, status, termination and staff of the Commissioner. The Minister appoints the Commissioner, after seeking the views of the Appointments Commission and presenting a notice of intention to the Assembly. The Commissioner is independent of the States and the Minister, but his or her staff and resources are provided by the Minister (no provision is made for the Commissioner to make any charge for services).

*Schedule 2* provides for the tribunal's appointment and termination of appointment. The Minister must provide staff and resources. The States may by Regulations make provision as to the procedure of the tribunal, and the tribunal may regulate its own procedure subject to those Regulations.

# DRAFT CHARITIES (JERSEY) LAW 201-

## Arrangement

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## DRAFT CHARITIES (JERSEY) LAW 201-

A LAW to establish a commissioner and register of charities, to regulate holding out entities as charities and for related purposes

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<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

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### PART 1 INTERPRETATION

#### 1 Interpretation

In this Law, unless the context otherwise requires –

“charitable purpose” has the meaning given by Article 6;

“Commissioner” means the person for the time being appointed to hold the office of the Jersey Charity Commissioner established by Article 3;

“company” means a company registered under the Companies (Jersey) Law 1991, or an existing company within the meaning of that Law, and in relation to a company “director”, “memorandum” and “articles of association” have the meanings assigned by that Law;

“Comptroller” has the meaning given by the Income Tax (Jersey) Law 1961;

“constitution” has the meaning given by Article 2(4);

“constitutional Law” has the meaning given by Article 2(5);

“court”, in the expression “the court”, means the Royal Court;

“court-approved fidéicomis” means a fidéicomis created under Article 3 of the Loi of 1862, or to which the court has extended the benefits of that Loi under Article 17 of that Loi;

“donation” is to be construed in accordance with the Order made under Article 9(3)(b)(ii);

“entity” has the meaning given by Article 2(1);

“foundation” means a foundation incorporated under the Foundations (Jersey) Law 2009, and “charter”, “regulations” and “council member” have, in relation to a foundation, the meanings assigned by that Law;

“incorporated 1862 association” means an association incorporated under Article 4 of the Loi of 1862;

“JFSC” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998;

“Jersey entity” has the meaning given by Article 2(3);

“Loi of 1862” means the Loi (1862) sur les teneures en fidéicomis et l’incorporation d’associations;

“manager” in relation to an entity (including a registered charity) has the meaning given by Article 2(7);

“Minister” means the Chief Minister;

“misconduct” has the meaning given by Article 2(8), and a reference to a manager engaging in misconduct is to be read in accordance with Article 18(4);

“prescribed” and “specified” mean prescribed or specified in an Order or Regulations, as the case may be;

“property” has the meaning given by the Trusts (Jersey) Law 1984;

“publish”, in respect of any information, means publish in a manner that, in the opinion of the person publishing, is likely to bring the information or how the information may be obtained to the attention of those affected by the information or of the public;

“purpose”, in relation to an entity, has the meaning given by Article 2(6);

“register” means the register kept by the Commissioner under Article 8, and “general section” and “restricted section” mean the sections of the register that are to be distinguished under paragraph (2) of that Article;

“registered charity” means an entity entered for the time being in the general section or the restricted section of the register, and “registered charitable purposes” and “registered public benefit statement” have the meanings assigned by Article 8(3)(e) and (f) in relation to a registered charity;

“regulated financial services business” means –

- (a) business for which a person must be registered under the Banking Business (Jersey) Law 1991,
- (b) the business of a recognized fund, or of an unclassified fund, within the meaning of the Collective Investment Funds (Jersey) Law 1988, or business for which a person must hold a permit under that Law,
- (c) business for which a person must be registered under the Financial Services (Jersey) Law 1998, and
- (d) business for which a person must be authorized by a permit under the Insurance Business (Jersey) Law 1996;

“solicit” is to be construed in accordance with the Order made under Article 9(3)(b)(i);

“tribunal” means the Charity Tribunal established by Article 33;

“trust” means a trust over which the court has jurisdiction under Article 5 of the Trusts (Jersey) Law 1984.

## 2 Definition of entity and related terms

- (1) In this Law, unless the context otherwise requires, “entity” means –
  - (a) the person or persons, taken together, who are the trustees of a trust;
  - (b) without prejudice to the generality of sub-paragraph (a), the person or persons, taken together, who are the fidéicommissaires of a court-approved fidéicommiss;
  - (c) an incorporated 1862 association;
  - (d) a foundation;
  - (e) a body corporate established –
    - (i) by an enactment,
    - (ii) by Act of the States, or
    - (iii) by Royal Charter, in relation to Jersey;
  - (f) a company;
  - (g) a body incorporated under, but not by, any enactment other than the Companies (Jersey) Law 1991;
  - (h) a body incorporated under, but not by, an Act of the United Kingdom Parliament or Order in Council, as such Act or Order is extended to or applicable in Jersey;
  - (i) the persons, taken together, who constitute for the time being an unincorporated body or association of persons, other than a partnership and other than the trustees of a trust;
  - (j) an entity that is substantially similar to an entity mentioned in any of sub-paragraphs (a) to (h), but is established under the law of a territory or country other than Jersey.
- (2) The Minister may by Order add sub-paragraphs to paragraph (1).
- (3) For the purposes of this Law, an entity is a “Jersey entity” if –
  - (a) it falls within any of sub-paragraphs (a) to (h) of paragraph (1); or
  - (b) it is an unincorporated body or association of persons falling within paragraph (1)(i), in respect of which –
    - (i) the law governing the relationship between the persons constituting the body or association, in that capacity, is the law of Jersey, and
    - (ii) at least one manager is a natural person resident in Jersey, or is itself a Jersey entity by virtue of sub-paragraph (a).
- (4) In this Law, unless the context otherwise requires, “constitution” in relation to an entity means –

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- (a) in the case of a trust the terms of the trust;
  - (b) in the case of a court-approved fidéicommis, the minute of the contract annexed to the application to the court for the creation of the fidéicommis, any other documents so annexed, and any authorisation granted by the court under Article 10 of the Loi of 1862 in respect of the fidéicommis;
  - (c) in the case of an incorporated 1862 association, the Act of the court incorporating it under Article 4 of the Loi of 1862, and the object and rules approved or modified under that Article;
  - (d) in the case of a foundation, the charter and regulations of the foundation;
  - (e) in the case of a company, the memorandum and articles of association of the company;
  - (f) in the case of a body corporate falling within paragraph (1)(e), the enactment, Act of the States or Royal Charter that established the body corporate;
  - (g) in any other case, any instrument or instruments (in whatever form) that establish the entity or give it any powers.
- (5) In this Law, unless the context otherwise requires, “constitutional Law” means –
- (a) in relation to an entity that is a trust, the Trusts (Jersey) Law 1984;
  - (b) in relation to an entity that is a court-approved fidéicommis or an incorporated 1862 association, the Loi of 1862;
  - (c) in relation to an entity that is a foundation, the Foundations (Jersey) Law 2009;
  - (d) in relation to an entity that is a company, the Companies (Jersey) Law 1991; and
  - (e) in relation to an entity that is a body incorporated by (but not under) any other Law, that Law.
- (6) In this Law, unless the context otherwise requires, “purpose” in relation to an entity means –
- (a) in the case of a trust, the benefit of its beneficiaries or any other purpose mentioned in Article 2(b) of the Trusts (Jersey) Law 1984 by virtue of which the trust exists, as specified in its constitution;
  - (b) in the case of a court-approved fidéicommis, or of an incorporated 1862 association, the objects for which it was created or incorporated, or that were subsequently authorized under Article 10 of the Loi of 1862;
  - (c) in the case of a foundation, the objects specified in its charter or its regulations; or
  - (d) in the case of any other entity, a purpose to which that entity’s property may lawfully be applied, other than by virtue of an order of a court, in accordance with the powers of the entity as set out in its constitution (including on its winding up or other termination).
- (7) In this Law, unless the context otherwise requires, “manager” in relation to an entity means –

- (a) in the case of a trust or fidéicomis, a trustee or fidéicommissaire of the trust or fidéicomis;
  - (b) in the case of a foundation, a member of the council of the foundation;
  - (c) in the case of a company, a director of the company; and
  - (d) in all cases, any other person who, under the constitution of the entity, has the general control and management, whether alone or with others, of the administration of the entity.
- (8) In this Law, unless the context otherwise requires, “misconduct” in relation to the administration of a registered charity means a contravention, by the registered charity or by any of its managers, of a provision –
- (a) of this Law, or of any enactment under this Law;
  - (b) of the constitution of the registered charity, or of the constitutional Law of the charity;
  - (c) of a required steps notice; or
  - (d) of an order of the court under this Law or under the constitutional Law of the charity, or under any enactment under such a Law.

## **PART 2**

### **JERSEY CHARITY COMMISSIONER**

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

- (1) There is established a corporation sole to be known as the Jersey Charity Commissioner.
- (2) Schedule 1 makes further provision in respect of the Commissioner.

#### **4 General functions of Commissioner**

- (1) The general functions of the Commissioner are –
  - (a) to administer the charity test under Part 3, and to operate the charity register under Part 4;
  - (b) to supervise the compliance of charity managers with their duties under Part 5;
  - (c) to seek to enforce the requirements of Part 6 as to restricted use of relevant terms;
  - (d) to publish and maintain guidance on the operation of this Law, including guidance on the duties of managers and guidance on the charity test under Article 5(4);
  - (e) to assist other persons (including the Attorney General, the court, the Bailiff, the Comptroller and the JFSC) to discharge their functions under any enactment or law in relation to registered charities and entities with charitable purposes, particularly by

- giving information about registered charities and other entities under Part 7;
- (f) generally to encourage, facilitate and monitor compliance of registered charities with this Law and any enactment under this Law; and
  - (g) any other function conferred on the Commissioner by this Law or by any other enactment.
- (2) The Commissioner may do anything (other than acting as a manager of a charity or of an entity with charitable purposes) that is calculated to facilitate, or is conducive or incidental to, the performance of any of his or her functions.
- (3) The Commissioner may in particular, without prejudice to the generality of his or her powers –
- (a) provide information to the public about the system of registration of charities, including information about the difference between charities and bodies with charitable purposes, information about the advantages of donating to entities that are registered as charities, and information by way of model constitutions;
  - (b) advise the Minister as to the nature of charities in Jersey and as to the merits of any proposal for further regulation of charities;
  - (c) assist a body in any country or territory other than Jersey, that is equivalent to the Commissioner, or to the Attorney General, the court, the Comptroller or the JFSC, in the performance of that body's functions under the law of that country or territory.

### **PART 3**

#### **CHARITY TEST**

##### **5 The charity test**

- (1) An entity meets the charity test if, in the opinion of the Commissioner –
- (a) all of its purposes are –
    - (i) charitable purposes, or
    - (ii) purposes that are purely ancillary or incidental to any of its charitable purposes; and
  - (b) in giving effect to those purposes, it provides (or, in the case of an applicant, provides or intends to provide) public benefit in Jersey or elsewhere to a degree that justifies registration as a charity under this Law.
- (2) A entity that otherwise meets the charity test, nevertheless does not meet that test, despite paragraph (1), if its constitution expressly permits its activities to be directed or otherwise controlled by, or any of its managers to be –
- (a) a Minister;
  - (b) a member of the States Assembly; or

- (c) any equivalent of such a person in another jurisdiction, acting in that capacity.
- (3) The Minister may by Order disapply paragraph (2) in relation to any entity or description of entity specified in the Order.
- (4) The Commissioner must publish and maintain guidance on how the Commissioner determines whether a body meets the charity test.
- (5) Before issuing or amending guidance the Commissioner must consult –
  - (a) any persons appearing to the Commissioner to be representative of charities or bodies with charitable purposes; and
  - (b) such other persons as the Commissioner considers appropriate.
- (6) The Commissioner, the tribunal, the court, a registered charity and a manager of a registered charity must have regard to the guidance when performing their functions under this Law.

## **6 Charitable purposes**

- (1) For the purposes of this Law, the charitable purposes 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;
  - (p) any other purpose that may reasonably be regarded by the Commissioner as analogous to any of the preceding purposes.
- (2) For the purposes of paragraph (1) –
  - (a) in paragraph (1)(d), “the advancement of health” includes the prevention or relief of sickness, disease or human suffering;
  - (b) paragraph (1)(f) includes –

- (i) rural or urban regeneration, and
    - (ii) the promotion of civic responsibility, volunteering, the voluntary sector or the effectiveness or efficiency of charities;
  - (c) in paragraph (1)(h), “sport” means sport that involves physical skill and exertion;
  - (d) paragraph (1)(i) applies only in relation to recreational facilities or activities that are –
    - (i) primarily intended for persons who have need of them by reason of their age, ill-health, disability, financial hardship or other disadvantage, or
    - (ii) available to members of the public at large or to male or female members of the public at large;
  - (e) paragraph (1)(n) includes relief given by the provision of accommodation or care;
  - (f) for the purposes of paragraph (1)(p), the advancement of any philosophical belief (whether or not involving belief in a god) is analogous to the purpose set out in paragraph (1)(c).
- (3) The purpose of advancing a political party or promoting a candidate for election to any office, whether in Jersey or elsewhere, is neither a charitable purpose nor a purpose ancillary or incidental to a charitable purpose, irrespective of whether it would otherwise fall within paragraph (1) or Article 5(1)(a)(ii).

## **7 Public benefit**

- (1) Paragraphs (2) and (3) apply to the Commissioner, the tribunal and the court when determining the question of whether an entity provides or intends to provide public benefit, for the purpose of Article 5(1)(b).
- (2) The person determining the question must have regard to –
  - (a) how any –
    - (i) benefit gained or likely to be gained by members of the entity or any other persons (other than as members of the public), and
    - (ii) disbenefit incurred or likely to be incurred by the public, in consequence of the entity exercising its functions, compares with the benefit gained or likely to be gained by the public in that consequence; and
  - (b) if benefit is, or is likely to be, provided to a section of the public only, whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive.
- (3) The person determining the question must not –
  - (a) presume any particular charitable purpose to be for the public benefit; or
  - (b) treat one particular natural person or a group of identified natural persons as being a section of the public, and accordingly must not

treat an entity that benefits only such a person or persons as providing public benefit.

- (4) The guidance published by the Commissioner under Article 5(4), must in particular give guidance on the determination of the question of whether an entity provides or intends to provide public benefit.

## **PART 4**

### **CHARITY REGISTER**

#### **8 Charity register**

- (1) The Commissioner must establish and maintain a register of charities.
- (2) The register must be kept in such a way as to distinguish between –
  - (a) the general section;
  - (b) the restricted section; and
  - (c) the historic section.
- (3) The Commissioner must enter in the general and restricted sections of the register, in respect of each registered charity, in addition to the registered name and registration number entered under Article 12(2) –
  - (a) a note of the status of the entity that is the registered charity, being –
    - (i) the sub-paragraph of the definition “entity” in Article 2(1) within which the entity falls (including, in the case of an entity falling within one of sub-paragraphs (f) to (j) of that definition, whether it also falls within sub-paragraph (a)), and
    - (ii) in the case of an entity falling within one of sub-paragraphs (e), (g), (h) or (j) of that definition, details of the enactment, Act of the States, Royal Charter, Act of the United Kingdom Parliament, Order in Council or foreign law, by virtue of which it falls within that sub-paragraph;
  - (b) the names of each of the managers of the registered charity;
  - (c) the principal address of the registered charity with the meaning of paragraph (4);
  - (d) the address of any other premises in Jersey, other than a private dwelling house, at or from which the registered charity undertakes any activity;
  - (e) a statement of the purposes of the registered charity (the charity’s “registered charitable purposes”), drawn by the charity from its constitution and approved by the Commissioner as accurately reflecting the constitution as to the purposes;
  - (f) a statement (the charity’s “registered public benefit statement”), approved by the Commissioner, of the public benefit provided by the charity and of the means by which the charity ensures that it provides that public benefit;

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- (g) the date on which the charity was registered;
  - (h) if the registered charity is an externally organized religious charity, a note of that fact and of the provision of the Order under Article 29 by virtue of which it is such a charity;
  - (i) if the registered charity meets the charity test by virtue of an Order under Article 5(3), the text of the provision in the constitution that falls within paragraph (2) of that Article;
  - (j) whether the registered charity has or has not submitted its annual return for the most recent year under Article 13(7);
  - (k) if a required steps notice has been served on the registered charity, or on a manager of the registered charity, under Article 28, a note of that fact (or a copy of the notice) and of the date on which the notice was served;
  - (l) if the registered name has been changed, the previous registered name or names;
  - (m) any other information prescribed by the Minister by Order.
- (4) The principal address for the purpose of paragraph (3)(c) is –
- (a) if the registered charity is a company, foundation, or other entity required by its constitutional Law to have a registered office or business address in Jersey, the address of that registered office or that business address;
  - (b) if the charity is not such an entity, the address of the main premises in Jersey at or from which the activities in Jersey of the registered charity are managed, controlled or undertaken, unless the premises are a private dwelling house; or
  - (c) if neither sub-paragraph (a) nor (b) applies, the address in Jersey of one of the managers of the charity.
- (5) The Commissioner must enter in the historic section, in relation to any formerly registered charity that has been deregistered –
- (a) the entity's former registered number;
  - (b) if the entity was registered in the general section, the name under which the entity was registered immediately before deregistration, and any names under which it was previously so registered;
  - (c) a summary of the reason why the entity was deregistered, including, if that reason was a contravention of a required steps notice, the reason for the service of that notice;
  - (d) the dates on which the entity was registered and deregistered; and
  - (e) such other matters as the Minister may prescribe by Order.
- (6) The Commissioner must retain for 10 years, in respect of each registered charity, a copy of –
- (a) the constitution of the charity, and any amendments;
  - (b) the annual returns submitted by the charity;
  - (c) any notice served on the charity under this Law; and
  - (d) any other document prescribed by the Minister by Order.

**9 Restricted section**

- (1) For the purpose of Article 10 the public elements of the restricted section are, in relation to each charity registered in that section –
  - (a) the registration number (but not the registered name) of the charity;
  - (b) the matters registered under sub-paragraphs (a), (e), (f), (j) and (k) of Article 8(3);
  - (c) a summary, produced by the charity, to the satisfaction of the Commissioner, of the reasons for registration of the charity in the restricted section; and
  - (d) any other element that may be prescribed by the Minister by Order.
- (2) An applicant for registration, or a charity registered in the general section of the register, may request entry in the restricted section of the register if –
  - (a) the applicant meets the funding condition, prescribed by the Minister by Order for this purpose, as to refraining from soliciting donations from the general public or from any prescribed description of persons; or
  - (b) the applicant meets any other condition that may be prescribed by the Minister by Order, whether by reference to any other source of the entity's funds or on any other basis.
- (3) The Order –
  - (a) must prescribe grounds, that may include the exercise of discretion by the Commissioner, on which the Commissioner may accept or refuse such a request;
  - (b) must specify, for the purpose of paragraph (2)(a) –
    - (i) what constitutes soliciting,
    - (ii) what constitutes a donation, and
    - (iii) if the Order does not prescribe a description of persons, what constitutes the general public for the purpose of the Order; and
  - (c) may make provision under sub-paragraph (b) by reference to the exercise of discretion by the Commissioner, or in any other manner.
- (4) A request under paragraph (2) must be –
  - (a) made in the form published by the Commissioner; and
  - (b) supported by information and evidence to the satisfaction of the Commissioner.
- (5) A request under paragraph (2) must be accompanied by a statement of the applicant's intention, in the event of refusal of the request, being –
  - (a) in the case of an application for registration –
    - (i) that that application should be treated as withdrawn, or
    - (ii) that it should be treated as an application for entry in the general section of the register, on provision of any further information and evidence required for such an application; or

- (b) in the case of a charity registered in the general section of the register –
  - (i) that the charity should remain so registered, or
  - (ii) that the charity should be treated as applying to be deregistered, on provision of any further information and evidence required for such an application.
- (6) The Commissioner must not enter a charity in the restricted section of the register unless satisfied –
  - (a) that the request complied with paragraphs (4) and (5);
  - (b) that a condition under paragraph (2) is met; and
  - (c) that there is no ground under paragraph (3) on which the request must be refused or, in the case of a discretionary ground, on which the Commissioner considers the request should be refused.
- (7) If the Commissioner refuses a request, he or she –
  - (a) must give written notice of the refusal to the applicant or charity; and
  - (b) may proceed on the basis of the intention stated under paragraph (5).

## **10 Public access**

- (1) The Commissioner must make the public parts of the register available to the public on a website for inspection without charge.
- (2) The Minister may by Order provide for the Commissioner to make the public parts of the register available in any other specified manner, to the public or to such description of persons as may be specified, on payment of –
  - (a) a specified charge; or
  - (b) a charge determined and published by the Commissioner under the Order.
- (3) For the purpose of paragraphs (1) and (2), the public parts of the register are, subject to paragraph (5) –
  - (a) the general section;
  - (b) the public elements of the restricted section, within the meaning of Article 9(1); and
  - (c) the historic section.
- (4) Paragraph (5) applies if the Commissioner considers, in relation to a particular registered charity, that the safety or security of any person, property or premises would be significantly put at risk by public access to a matter entered on any section of the register in respect of that charity.
- (5) The Commissioner may designate that matter as not being a public part of the register, in relation to that registered charity.

**11 Application to register**

- (1) An entity (“the applicant”), that wishes to have available to it the advantages of registration as a charity under this Law, may apply to be registered if –
  - (a) the constitution of the applicant is a written document;
  - (b) the applicant –
    - (i) is a Jersey entity, or
    - (ii) carries out, or intends to carry out, any relevant activity in or from within Jersey; and
  - (c) the applicant considers that it meets the charity test, or it intends to do so on registration.
- (2) A relevant activity for the purpose of paragraph (1)(b)(ii) is any substantial activity that does not consist of the soliciting of donations or other raising of funds from persons in Jersey.
- (3) The applicant must provide to the Commissioner, in such form as the Commissioner may publish in relation to an entity of a description into which that charity falls –
  - (a) information and evidence, as at the time of the application and (if different) as proposed once the entity is registered, as to –
    - (i) how the entity meets the requirement of paragraph (1)(b),
    - (ii) the matters that are required to be registered under sub-paragraphs (a), (b), (c) and (d) of Article 8(3), and
    - (iii) if applicable, the matters that are required to be registered under sub-paragraphs (h), (i) and (m) of that Article;
  - (b) a copy of the applicant’s constitution;
  - (c) a draft of the proposed statement of the entity’s registered charitable purposes;
  - (d) a draft of the entity’s registered public benefit statement;
  - (e) details of –
    - (i) the applicant’s most recent, if any, financial accounts,
    - (ii) any other financial information that would be required if the application were for registration under the Non-Profit Organizations (Jersey) Law 2008, and
    - (iii) if the applicant is not requesting entry in the restricted section of the register, any further financial information prescribed by the Minister by Order; and
  - (f) such other information, documents and evidence as may be –
    - (i) required by Regulations under paragraph (4), or
    - (ii) otherwise requested by the Commissioner in order to determine the application.
- (4) The States may by Regulations prescribe other information, documents or evidence that must be provided on an application, and make further provision as to the procedure for making an application.

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- (5) If the applicant complies with paragraph (3), and with any Regulations under paragraph (4), the Commissioner must register the applicant as a charity if satisfied that –
    - (a) the applicant meets the charity test;
    - (b) the name of the applicant is not undesirable under Article 12; and
    - (c) no other ground for refusal, prescribed under paragraph (7), applies or should be applied.
  - (6) If not so satisfied, the Commissioner must refuse to register the applicant.
  - (7) The States may by Regulations prescribe further grounds on which an application must or may be refused, and those grounds may, without limitation, include –
    - (a) that the entity has only one manager, not being a person who carries on regulated financial services business by way of acting as a manager; or
    - (b) that a number or proportion of its managers are related to each other in prescribed ways.
  - (8) The Minister may by Order make provision as to –
    - (a) the period within which the Commissioner must make a decision on an application;
    - (b) the notification to applicants of decisions and of reasons for refusal.
  - (9) The Commissioner must –
    - (a) on registering an entity as a charity, issue to that charity a certificate of registration, in the form published by the Commissioner, confirming the registered name, the registration number and the date of registration of the charity; and
    - (b) on entering on the register a new or alternative registered name, under Article 12(5), issue a further such certificate confirming the new or alternative registered name and the date on which that name was entered on the register.
  - (10) An applicant for registration, if it is an entity that is required to be registered under the Non-Profit Organizations (Jersey) Law 2008 but is not so registered, must –
    - (a) provide with the application any additional information that must be provided to the JFSC in an application for registration under that Law; and
    - (b) request to be registered under that Law (by virtue of paragraph (11)).
  - (11) If the Commissioner receives information and a request under paragraph (10) –
    - (a) the Commissioner must pass to the JFSC that information and request, with a copy of the application and accompanying information and documents submitted under this Law; and
    - (b) the JFSC must treat that request, with the information and documents, as an application for registration under the Non-Profit Organizations (Jersey) Law 2008.

**12 Name of charity**

- (1) For the purpose of Article 11(5)(b), the name of an entity is undesirable as the registered name of a charity if, in the opinion of the Commissioner, the name –
  - (a) is the same as, or too similar to, the name of any other registered charity;
  - (b) is likely to mislead the public as to the purpose of the entity or its activities;
  - (c) gives the impression that the entity is connected to any person to which it is not connected, whether in Jersey or elsewhere; or
  - (d) is offensive.
- (2) If the Commissioner registers the entity, the Commissioner must –
  - (a) enter the name of the entity in the register (the “registered name”); and
  - (b) allocate a number in respect of the registration, and enter that number (“the registration number”) in the register.
- (3) A registered charity may apply to the Commissioner for permission to change its registered name or to add an alternative registered name.
- (4) The Commissioner must refuse permission if, in his or her opinion, any of the grounds in sub-paragraphs (a) to (d) of paragraph (1) applies in relation to the proposed name.
- (5) If the Commissioner grants permission, and the registered charity notifies the Commissioner that it has changed or added the name accordingly, the Commissioner must enter on the register the new or alternative registered name.
- (6) If a registered charity reports a matter relating to its registered name under Article 13(6)(b), the Commissioner may require the charity to apply to change its registered name under paragraph (3).
- (7) A registered charity must not use any name other than its registered name or names.

**13 Effects of registration**

- (1) Paragraphs (2) to (4) apply while an entity is registered as a charity, and only cease to apply if the entity is deregistered.
- (2) Any provision of the entity’s constitution or constitutional Law is of no effect to the extent that it purports to permit an amendment of the purposes of the entity to include a purpose that is not charitable.
- (3) Any provision of the entity’s constitution or constitutional Law that purports to permit an amendment of the purposes of the entity to add or substitute a different charitable purpose, is to be read as being subject to the entity –
  - (a) providing evidence, to the satisfaction of the Commissioner, of a reason justifying the proposed amendment; and

- 
- (b) obtaining the Commissioner's prior approval of the proposed amendment.
- (4) The entity must –
    - (a) provide public benefit in accordance with its registered public benefit statement; and
    - (b) if it requests the Commissioner's approval of a proposed amendment to that statement, provide evidence, to the satisfaction of the Commissioner, of a reason justifying that request.
  - (5) A registered charity must, while it is entered in the restricted section of the register, ensure –
    - (a) that it meets the condition, prescribed under Article 9(2), as to which the Commissioner was satisfied under Article 9(6)(b); or
    - (b) if, before it ceased to meet that condition, the Commissioner gave prior permission for it to remain entered in the restricted section on the basis of a different condition prescribed under that Article, that it meets that condition as specified in that permission.
  - (6) A registered charity must promptly report to the Commissioner –
    - (a) a change in a matter about which information is entered on the register (whether in the general or restricted section) in relation to that charity;
    - (b) any other matter, coming to light after registration or after permission for a change of name, that could, if known before the registration or permission, have led to the Commissioner refusing to register the charity, refusing to accept the name of the charity, or entering it in a different section;
    - (c) a proposal to change the charity's constitution;
    - (d) a reportable matter, in relation to a manager of the charity, if the charity is aware that the manager has not promptly reported it to the Commissioner under Article 20(2);
    - (e) a matter likely to lead to the charity becoming bankrupt, being wound up or otherwise ceasing to exist;
    - (f) if the charity is entered in the restricted section, a proposal to change how or whether the charity meets a condition prescribed under Article 9(2); and
    - (g) any other matter prescribed by the Minister by Order for this purpose.
  - (7) A registered charity must make an annual return to the Commissioner, containing information as to any matter falling within paragraph (6) arising during the year to which it relates, and as to any other matter prescribed by the Minister by Order for this purpose.
  - (8) An Order under paragraph (7) may also make provision as to the format and timing of the annual return, the consequences of lateness, and the content of any entries to be made on the register in respect of the annual return.
  - (9) If the States make Regulations under Article 11(7), those Regulations may also make provision requiring a registered charity or its managers (or

both) to avoid, or report and remedy, a situation arising at a time after registration in which, if the charity were at that time applying for registration, it would fall to be refused under those Regulations.

#### **14 Powers of court over registered charity**

- (1) The court may exercise any of the powers set out in paragraph (2) in relation to a registered charity if, on an application by the Commissioner or the Attorney General, it appears to the court –
  - (a) that there is or has been misconduct in the administration of the charity; or
  - (b) that it is necessary or desirable to exercise the power for the purpose of protecting the property of the charity or securing a proper application of that property in accordance with the charity's registered charitable purposes and registered public benefit statement.
- (2) The court may make any order that the court sees fit to remedy the misconduct, protect the property and secure its proper application.
- (3) Without prejudice to the generality of paragraph (2), the orders that the court may make include an order –
  - (a) prohibiting (whether for a specified or indefinite period) the charity or a manager from –
    - (i) referring to or holding out the entity as a charity or Jersey charity, or as being charitable, having charitable purposes or providing public benefit,
    - (ii) soliciting donations from the public, as specified in the order, or
    - (iii) taking any other action specified in the order;
  - (b) appointing a person (whether a specified or indefinite period) to manage the affairs of the charity in place of its managers;
  - (c) appointing a person to be a manager of the charity;
  - (d) suspending or removing a manager of the charity, or any other person concerned in the management or control of the charity;
  - (e) requiring a person (including without prejudice a person carrying on regulated financial services business) who holds property on behalf of the charity, or on behalf of a manager of the charity, not to part with the property without the court's consent;
  - (f) restricting the transactions that may be entered into, or the nature or amount of the payments that may be made, in the administration of the charity without the court's consent;
  - (g) making the administration of the charity subject to such supervision, restraint or conditions, from such time, and for such periods, as the court may specify;
  - (h) make an order requiring a manager who appears to the court to have engaged in any misconduct, or any other person who appears

- to be responsible for any misconduct, to take such steps as the court may direct to remedy the effects of the misconduct;
- (i) making such ancillary provision as the court thinks desirable.
- (4) The court may, on the application of the Commissioner, the Attorney General, the registered charity or any person to whom the order was directed, amend or revoke any order made under this Article.
- (5) The powers of the court under this Article apply –
- (a) in addition to and not in derogation from any powers of the court under any other enactment; and
  - (b) despite anything in the constitution of the charity.
- (6) The powers of the court under this Article are without prejudice to any power of the Commissioner to take any action under this Law in respect of any misconduct.

## **15 Deregistration on application by entity**

- (1) An entity that is a registered charity may apply to the Commissioner to terminate the registration of the entity as a charity (to “deregister” the entity).
- (2) An entity applying for deregistration must provide the Commissioner with any information or document requested by the Commissioner in relation to the entity’s proposals for the continuation or winding up of the entity and for the application of any of its property remaining after deregistration.
- (3) If the entity complies with paragraph (2) the Commissioner must –
- (a) deregister the entity; or
  - (b) refuse to deregister the entity on grounds relating to the proposals mentioned in paragraph (2).

## **16 Deregistration in other cases**

- (1) The Commissioner may, by written notice to an entity that is registered as a charity, deregister the entity if satisfied, after giving the entity written notice specifying reasons and inviting objections within a reasonable time specified in the notice, that it is proportionate to do so on the ground that –
- (a) the entity no longer meets the charity test;
  - (b) the Commissioner was misled into registering the entity, whether by the entity or by any other person and whether intentionally or otherwise;
  - (c) the entity has failed to comply with a required steps notice; or
  - (d) any other circumstance prescribed by the Minister by Order applies.
- (2) If the Commissioner is satisfied that an entity, that is registered as a charity, no longer exists, the Commissioner must, by written notice to any

person purporting to be a manager of the entity or to be responsible for the winding up of the affairs of the entity, deregister the entity.

## **17 Effects of deregistration**

- (1) After deregistering an entity, the Commissioner –
  - (a) must retain the information registered in respect of that entity for 10 years; and
  - (b) must not assign the registered number of that entity to any other registered charity.
- (2) Paragraph (3) applies if the Commissioner –
  - (a) deregisters a charity under Article 16;
  - (b) is satisfied that the grounds for deregistration have existed since a past date;
  - (c) specifies that date in the notice under Article 16(1) or (2); and
  - (d) determines that the deregistration should take effect retrospectively.
- (3) The termination takes effect from the past date specified under paragraph (2)(c) for all purposes, including the purposes of any enactment relating to taxation, but subject to paragraph (4).
- (4) An act, that occurred before the date of the giving of the notice under Article 16(1) or (2) is not rendered an offence merely by virtue of the operation of paragraph (3).
- (5) Paragraphs (6) and (7) apply, after a charity is deregistered, if and so long as there remains any property of the charity that was acquired before it was deregistered (the “remaining property”).
- (6) The entity must continue to apply the remaining property for the purposes that were its registered charitable purposes immediately before deregistration (the “preserved charitable purposes”), and in accordance with the registered public benefit statement that was in effect immediately before deregistration (the “preserved public benefit statement”).
- (7) Despite any provision of the entity’s constitution, or of the constitutional Law of the entity, the entity has no power to amend the preserved purposes or preserved public benefit statement.
- (8) The entity may apply to the court for an order amending the preserved purposes or preserved public benefit, and the court may make such amending order, and any ancillary order, as it considers expedient to ensure that the remaining property continues to be applied for purposes that are, in the opinion of the court, charitable purposes and in a manner that, in the opinion of the court, provides public benefit.
- (9) The court may exercise any of the powers set out in Article 14 in relation to the deregistered entity, as if it were still registered, if, on an application by the Attorney General [or a manager of the entity], it appears to the court –

- (a) that there is or has been any conduct in the administration of the entity in relation to the remaining property, that would have been misconduct if the entity had not been deregistered; or
- (b) that it is necessary or desirable to exercise the power for the purpose of protecting the remaining property or securing a proper application of the remaining property for the preserved purposes of the entity and for the preserved public benefit.

## **PART 5**

### **MANAGERS OF REGISTERED CHARITIES**

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

- (1) A manager of a registered charity must seek, in good faith, to ensure that the charity –
  - (a) acts in a manner that is consistent with its registered charitable purposes and with its registered public benefit statement; and
  - (b) complies with any direction, requirement, notice or duty imposed on it by or under this Law.
- (2) A manager of a registered charity must in the execution of his or her duties and in the exercise of his or her powers and discretions –
  - (a) act –
    - (i) with due diligence,
    - (ii) as would a prudent person,
    - (iii) to the best of the manager's ability and skill; and
  - (b) observe the utmost good faith.
- (3) The duties imposed by this Article apply despite any contrary provision in the constitution or the constitutional Law of the charity, except to any extent that such provision imposes a more onerous duty.
- (4) For the purposes of this Law a manager engages in misconduct if –
  - (a) the manager contravenes a provision mentioned in Article 2(7);
  - (b) the manager concurs in misconduct by the charity;
  - (c) the manager assists or encourages another manager to engage in misconduct; or
  - (d) the manager –
    - (i) becomes aware or ought to have become aware of any misconduct in relation to the charity, or of the intention of another manager to engage in misconduct; and
    - (ii) the manager actively conceals that misconduct or that intention, or fails within a reasonable time to take proper steps to protect or restore the property of the charity or to prevent the misconduct.

**19 Remuneration of managers of registered charities**

- (1) A registered charity must not pay to any of its managers, and a manager of a registered charity must not accept from that charity, any remuneration for work done by the manager as a manager.
- (2) The States may by Regulations –
  - (a) prescribe circumstances in which paragraph (1) does not apply, which circumstances may include, without limitation –
    - (i) that the Commissioner grants permission, or
    - (ii) that the work is done by the manager in the course of carrying on regulated financial services business;
  - (b) provide for the Commissioner to issue guidance as to the operation of this Article and the Regulations;
  - (c) make a contravention of paragraph (1) an offence, carrying a penalty no greater than [imprisonment for a term of 2 years and a fine].

**20 Reportable matters and acting as a manager**

- (1) A reportable matter in relation to a person is the fact that the person –
  - (a) has engaged in misconduct as a manager of a registered charity, being misconduct that led to the service of a required steps notice on that manager or on that charity or on another manager of that charity;
  - (b) is the subject of a disqualification order, or of any other restriction on his or her acting as a manager, imposed under this Law;
  - (c) has been disqualified from or for being a charity trustee or trustee for a charity under the law of any part of the United Kingdom, or from holding any equivalent position under the law of any other jurisdiction;
  - (d) has been disqualified from being a company director, or has been made subject to any equivalent disqualification under the law of any other jurisdiction;
  - (e) is bankrupt or otherwise insolvent, whether under the law or Jersey or elsewhere;
  - (f) has a conviction (whether or not spent) for an offence under this Law;
  - (g) has an unspent conviction for an offence -
    - (i) under any enactment mentioned in Article 2,
    - (ii) under the Income Tax (Jersey) Law 1961, the Goods and Services Tax (Jersey) Law 2007, or the Taxation (Land Transactions) (Jersey) Law 2009,
    - (iii) under any other enactment, being an offence involving deception or dishonesty, or
    - (iv) under any law of any other jurisdiction, being an offence that relates to the administration of charities or equivalent bodies

- in that jurisdiction, relates to taxation, or involves deception or dishonesty;
- (h) falls within any other description that may be prescribed by the Minister by Order.
- (2) A manager of an entity applying for registration, or of a registered charity, must report any reportable matter promptly to that entity or charity and to the Commissioner.
  - (3) A manager of an entity applying for registration must, if there is no reportable matter in relation to that manager, provide to the entity a declaration to that effect before the application is made.
  - (4) A manager of a registered charity must, if there is no reportable matter in relation to that manager, provide to the charity a declaration to that effect when notified that the charity's annual report is being prepared for submission
  - (5) The entity must state in its application, and the registered charity must state in its annual report, that it has declarations from all of its managers who have not made a report under paragraph (2).
  - (6) An application for registration is not complete if the entity has not complied with paragraph (5).
  - (7) A registered charity that contravenes paragraph (5) must explain to the Commissioner the reason for the contravention.
  - (8) A person must not act as a manager of a registered charity at any time when the person is in breach of paragraph (2) or (4).
  - (9) If a manager reports a reportable matter to the Commissioner, the Commissioner –
    - (a) must make inquiries to determine whether the manager is a fit and proper person to be a manager;
    - (b) may apply to the court to determine that issue under Article 21;
    - (c) must not, in the case of an application for registration, grant that application until the issue has been determined and any resulting order or notice complied with;
    - (d) may, in the case of a registered charity, by written notice to the charity, permit, either unconditionally or subject to any condition appearing to the Commissioner to be necessary, the manager to act as a manager until that issue is determined or the notice is withdrawn;
    - (e) must, if the issue is not to be determined by the court under subparagraph (b), on determining the issue –
      - (i) notify the entity that the application will be refused unless the manager is removed, or in the case of a registered charity serve a required steps notice requiring the charity to suspend or remove the manager; or
      - (ii) by notice in writing, entered in the register, give permission for the manager to act as a manager, either unconditionally or subject to any condition or time limit that appears to the Commissioner to be necessary.

- (10) A person must not act as a manager of a registered charity at any time after reporting a reportable matter, unless the manager –
  - (a) is permitted to do so by the Commissioner under paragraph (d) or (e)(ii), or by the court under Article 21; and
  - (b) does so in either case in accordance with any condition on that permission.
- (11) A person who without reasonable excuse contravenes paragraph (10) commits an offence and is liable to [imprisonment for 2 years and to a fine].
- (12) Paragraphs (10) and (11) are not to be construed as requiring an act to be treated as void or invalid merely by virtue of the act constituting a contravention of paragraph (10).
- (13) If at any time the Commissioner suspects that a manager of a registered charity may have breached paragraph (2), the Commissioner may, without prejudice to any other of his or her powers, apply to the court to determine whether the manager is a fit and proper person to be a manager.

## **21 Court orders as to fitness of manager**

- (1) On an application under Article 20(9)(b) or (13), the court may make any order that the court sees fit, including without limitation –
  - (a) an order dismissing the application;
  - (b) an order giving permission for the manager to act as a manager despite a reportable matter;
  - (c) an order that the entity must not be registered as a charity;
  - (d) an order requiring a registered charity to suspend or remove the manager;
  - (e) an order making any provision that could be made by a required steps notice;
  - (f) any order ancillary to any such order.
- (2) An order under paragraph (1) may, without limitation –
  - (a) apply to a manager in respect of a particular registered charity, a description of registered charities or all registered charities;
  - (b) be made subject to any condition or time limit that appears to the court to be necessary or equitable.
- (3) If it appears to the Commissioner or the Attorney General that it is or may be expedient in the public interest that a person should not, without the leave of the court, be a manager of or in any way whether directly or indirectly be concerned or take part in the management of a registered charity, the Commissioner or the Attorney General may apply to the court for an order to that effect against the person (a “disqualification order”).
- (4) The court may, on such an application or on an application under Article 20(9)(b) or (13), make a disqualification order if it is satisfied that the person is unfit to be concerned in the management of a registered charity, by virtue of –

- (a) the person's conduct in relation to a registered charity, or to an entity applying for registration; or
  - (b) the seriousness of a reportable matter in relation to the person.
- (5) A disqualification order is to be for such period, not exceeding 15 years, as the court directs.
- (6) A person who contravenes a disqualification order commits an offence and is liable to [imprisonment for 2 years and to a fine].

## **PART 6**

### **USE OF EXPRESSIONS "CHARITY", "CHARITABLE" AND RELATED TERMS**

#### **22 Prohibition of unauthorized use of expression "charity" and related terms**

- (1) An entity that is not a registered charity –
- (a) must not refer to itself as being registered by the Commissioner; and
  - (b) must not cause or permit another person to refer to the entity as being registered by the Commissioner.
- (2) A person must not refer to an entity, that is not a registered charity, as being registered by the Commissioner, if the person –
- (a) knows, suspects or has reasonable grounds to suspect that the entity is not a registered charity; and
  - (b) intends, by so referring to the entity, to cause another person –
    - (i) to be misled as to the nature of the entity, or
    - (ii) to give to the entity any property or financial or other advantage.
- (3) A Jersey entity that is not a registered charity –
- (a) must not refer to itself as a "charity"; and
  - (b) must not cause or permit another person to refer to the entity as a "charity".
- (4) A person must not refer to a Jersey entity, that is not a registered charity, as a "charity", if the person –
- (a) knows, suspects or has reasonable grounds to suspect that the entity –
    - (i) is a Jersey entity, and
    - (ii) is not a registered charity; and
  - (b) intends, by so referring to the entity, to cause another person –
    - (i) to be misled as to the nature of the entity, or
    - (ii) to give any property or financial advantage to the entity.
- (5) An entity that is not a registered charity and is neither a Jersey entity nor an excepted foreign charity –

- (a) must not refer to itself as a “charity” in connection with any of its activities in Jersey; and
  - (b) must not cause or permit another person to refer to the entity as a “charity” in connection with any of its activities in Jersey.
- (6) A person must not refer to an entity, that is not a registered charity and is neither a Jersey entity nor an excepted foreign charity, as a “charity” in connection with any of its activities in Jersey, if the person –
- (a) knows, suspects or has reasonable grounds to suspect that the entity –
    - (i) is neither a Jersey entity nor an excepted foreign charity, and
    - (ii) is not a registered charity; and
  - (b) intends, by so referring to the entity, to cause another person –
    - (i) to be misled as to the nature of the entity, or
    - (ii) to give any property or financial advantage to the entity.
- (7) Paragraphs (2), (4) and (6) apply whether or not the person making the reference is also the entity, and is referring to itself.
- (8) The States may by Regulations prescribe exceptions to the prohibitions in paragraphs (1) to (6).
- (9) An entity or other person, that contravenes paragraph (1), (2), (4) or (6) commits an offence and is liable to [imprisonment for a term of 2 years and to a fine].
- (10) An entity, that contravenes paragraph (3) or (5), commits an offence and is liable to [a fine of level [3/4] on the standard scale].

### **23 Excepted foreign charities**

- (1) An entity is an excepted foreign charity if it meets both the condition in paragraph (2) and the condition in paragraph (3).
- (2) The first condition is that the entity is –
  - (a) established under the law of any jurisdiction that is –
    - (i) a part of the United Kingdom, or
    - (ii) a country or territory other than Jersey, that is prescribed for this purpose by the Minister by Order; and
  - (b) entitled, under the law of that jurisdiction, to refer to itself in that jurisdiction as a “charity” (or by any equivalent term in a language other than English that is used in that jurisdiction).
- (3) The second condition is that –
  - (a) the entity is managed wholly or mainly from the jurisdiction under the law of which it is established; and
  - (b) the activities that it carries out in Jersey do not include relevant activities within the meaning of Article 11(2).
- (4) The Minister may by Order prescribe that a specified entity is not required to meet the first condition, despite sub-paragraphs (a) and (b) of paragraph (2).

- (5) The States may by Regulations amend paragraph (1), (2) or (3) to make different provision as to the conditions that are to be met.

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

- (1) Unless an entity meets all of the conditions in paragraph (3), that entity –
  - (a) must not refer to itself out as a “Jersey charity”; and
  - (b) must not cause or permit another person to refer to the entity as a “Jersey charity”.
- (2) Unless an entity meets all of the conditions in paragraph (3), a person must not refer to that entity as a “Jersey charity”, if the person –
  - (a) knows, suspects or has reasonable grounds to suspect that the entity does not meet all of those conditions; and
  - (b) intends, by so referring to the entity, to cause another person –
    - (i) to be misled as to the nature of the entity, or
    - (ii) to give any property or financial advantage to the entity.
- (3) The conditions are that the entity –
  - (a) is a registered charity;
  - (b) is a Jersey entity; and
  - (c) is wholly or mainly managed or controlled in or from within Jersey.
- (4) Paragraphs (1) and (2) are subject to any exception prescribed by the States by Regulations.
- (5) Paragraph (2) applies whether or not the person making the reference is also the entity, and is referring to itself.
- (6) An entity that contravenes paragraph (1) commits an offence and is liable to [a fine of level [3/4] on the standard scale].
- (7) A person who contravenes paragraph (2) commits an offence and is liable to [imprisonment for a term of 2 years and to a fine].

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

- (1) The States may by Regulations make provision restricting the use, other than by a registered charity, of any relevant term in relation to the soliciting of donations from the general public or from any prescribed description of persons.
- (2) The relevant terms are “charitable”, “public benefit” and any related term (other than “charity”) specified as such in the Regulations.
- (3) Without prejudice to the generality of paragraph (1) any Regulations under that paragraph –
  - (a) may make the provision by adapting any provisions of Articles 22 to 24;
  - (b) may impose the restriction by any means, including by requiring permission to be sought from the Commissioner, who may be given discretion as to whether to grant that permission; and

- (c) may provide for the Commissioner to issue guidance as to the operation of the Regulations.
- (4) The Regulations may make it an offence to contravene a restriction imposed by the Regulations, being an offence carrying a penalty no greater than [imprisonment for a term of 2 years and a fine].

## **26 Power to require registered charities to identify themselves as such**

- (1) The Minister may by Order prescribe statements that must be made (including the manner in which they must be made) by a registered charity in relation to its registration in prescribed descriptions of document or publicity.
- (2) Without prejudice to the generality of paragraph (1), the provision that may be made includes –
  - (a) provision requiring the charity to state any or all of the following –
    - (i) that it is a charity,
    - (ii) its charity registration number,
    - (iii) that it is registered with the Commissioner,
    - (iv) how documents relating to its registration may be inspected,
    - (v) the nature of its purposes,
    - (vi) the identity or contact details of one or more of its charity managers;
  - (b) provision as to the legibility of the statement, and the language or languages in which the statement must or may be made;
  - (c) provision as to whether the requirement only applies to documents or publicity issued or signed on behalf of the charity, or to other descriptions of document or publicity;
  - (d) provision as to whether and how the requirement applies to web pages and websites, and the responsibility of the charity for those pages or sites.

## **PART 7**

### **INFORMATION AND ENFORCEMENT**

## **27 Power to demand information**

- (1) The Commissioner may, by notice in writing served on a person falling within paragraph (2), require that person –
  - (a) to provide to the Commissioner, at such time and place as may be specified in the notice, any information or document of a specified description that the Commissioner reasonably requires for the purpose of determining whether to serve a required steps notice under Article 28; or

- 
- (b) to attend at such place and time as may be specified in the notice and answer questions that the Commissioner reasonably requires the person to answer for that purpose.
  - (2) The persons falling within this paragraph are –
    - (a) a registered charity or an entity that was formerly a registered charity; and
    - (b) a manager or former manager of a registered charity or of an entity that was formerly a registered charity.
  - (3) If a person from whom provision of a document is required under paragraph (1) claims a lien on any such document, the provision is without prejudice to the lien.
  - (4) The power under paragraph (1) to require a document to be provided includes power –
    - (a) if the document is provided, to retain or take copies of it or extracts from it and to require the person providing it, or any person who appears to be in possession of relevant information and to be a manager or employee of the registered charity, to provide an explanation of the document; and
    - (b) if the document is not provided, to require the person to whom the requirement was directed to state, to the best of the person's knowledge and belief, where the document is.
  - (5) A document, copy or extract retained or taken under paragraph (4)(a) may be retained for whichever is the longer of –
    - (a) a period of one year; and
    - (b) if within that period proceedings to which the document is relevant are commenced against any person, until the conclusion of those proceedings.
  - (6) A person who requires a document retained under paragraph (4)(a) for the purpose of the person's business, and who requests that document, must be supplied with a copy as soon as practicable.
  - (7) A person who without reasonable excuse contravenes a requirement imposed on the person by a notice under paragraph (1) or (4), commits an offence and is liable to [imprisonment for a term of [3/6] months and to a fine of level [3] on the standard scale].
  - (8) Nothing in this Article is to be construed as requiring the disclosure or production by a person to the Commissioner of information or documents that the person would in an action in court be entitled to refuse to disclose or produce on the grounds of legal professional privilege.
  - (9) A statement made by a person in compliance with a requirement imposed under this Article may not be used by the prosecution in evidence against the person in any criminal proceedings except proceedings under paragraph (7) or (10).
  - (10) A person commits an offence, and is liable to [imprisonment for a term of 2 years and to a fine], if the person provides information to the Commissioner, knowing that it is false in a material particular and intending it to be used by the Commissioner for the purpose of an

application for registration or for the purpose of determining whether to serve a required steps notice under Article 28.

- (11) For the purpose of paragraph (10) it is irrelevant whether the information –
- (a) is contained in a document or not; or
  - (b) is provided under this Article or not.

## **28 Required steps notices**

- (1) Paragraph (2) applies if the Commissioner believes that –
- (a) there has been misconduct by a registered charity;
  - (b) a registered charity does not pass the charity test;
  - (c) a manager of a registered charity has engaged in misconduct; or
  - (d) a manager of a registered charity is, by reason of a reportable matter within the meaning of Article 20, unfit to be a manager of a registered charity; or
- (2) The Commissioner may serve written notice on any one or more of the relevant persons, within the meaning of paragraph (3), requiring steps specified in the notice to be taken by that person in a time specified in the notice, being steps that in Commissioner's opinion are appropriate to remedy the matter prompting service of the notice.
- (3) The relevant persons for the purpose of paragraph (2) are –
- (a) the registered charity; and
  - (b) the managers of the registered charity.
- (4) If the notice is served under paragraph (1)(c) or (d), the steps required may include (subject to Article 29) the suspension, removal or replacement of the manager referred to in that paragraph.
- (5) The Minister may by Order make further provision as to the procedure for, and restrictions on, serving a notice under this Article.

## **29 Required steps notices restricted in relation to managers of externally organized religious charities**

- (1) The Minister may by Order provide for registered charities to be categorized as externally organized religious charities for the purpose of this Article, being charities that appear to the Minister –
- (a) to meet the charity test by virtue of Article 6(1)(c), whether solely or in combination with other charitable purpose; and
  - (b) to be adequately organized in respect of the supervision and discipline of their managers, in relation to the activities of the charity in Jersey or in general, to justify application of this Article.
- (2) The provision that may be made under paragraph (1) includes, without limitation –
- (a) provision granting discretion to the Commissioner to grant or withdraw status as an externally organized religious charity;

- (b) provision that distinguishes between charities on the basis of the status of the charity as a designated religious charity within the meaning of the Charities and Trustee Investment (Scotland) Act 2005 of the Scottish Parliament, or as an institution falling within section 10(2) of the Charities Act 2011 of the parliament of the United Kingdom.
- (3) A notice served under Article 28 on an externally organized religious charity, or on a manager of such a charity, is invalid to the extent that it purports to impose a requirement to suspend, remove or replace a manager of that charity.

### **30 Restricted information**

- (1) Subject to paragraph (2) and to Articles 31 and 32, a person who receives information relating to the business or other affairs of any person –
  - (a) under or for the purposes of this Law; or
  - (b) directly or indirectly from a person who has so received it,commits an offence and is liable to [imprisonment for a term of 2 years and a fine] if he or she discloses the information without the consent of the person to whom it relates and (where sub-paragraph (b) applies) the person from whom it was received.
- (2) This Article does not apply to information –
  - (a) that is registered in the public parts of the register, within the meaning of Article 10(3) to (5);
  - (b) that at the time of the disclosure is or has already been made available to the public from other sources; or
  - (c) in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it.

### **31 Required disclosure of information**

- [(1) The Commissioner must disclose information to the Comptroller, if required by the Comptroller for the purpose of enabling the Comptroller to discharge any of his or her functions in relation to the taxation of registered charities or other entities with any charitable purposes.
- (2) The Commissioner must disclose information to the JFSC, if required by the JFSC for the purpose of enabling the JFSC to discharge any of its functions under the Non-Profit Organizations (Jersey) Law 2008.]

### **32 Permitted disclosure of information**

Article 30 does not preclude the disclosure of information –

- [(a) by or on behalf of the Commissioner, for purpose of enabling the Commissioner to discharge any of his or her functions;
- (b) to the Comptroller for purpose of enabling the Comptroller to discharge any of his or her functions;

- (c) to the JFSC for purpose of enabling the JFSC to discharge any of its functions;
- (d) to the Attorney General, the Bailiff or the court for the purpose of enabling them to discharge any of their functions, under this Law, a constitutional Law or the customary law, relating to charities;
- (e) to any person for the purpose of the investigation or prosecution of any offence under any enactment or under the customary law of Jersey, or for the purpose of taking or deciding whether to take any proceedings under this Law;]
- (f) in any other circumstances prescribed by the States by Regulations.

## **PART 8**

### APPEALS TO CHARITY TRIBUNAL

#### **33 Establishment of Charity Tribunal**

- (1) There is established a tribunal to be known as the Charity Tribunal.
- (2) The function of the tribunal is to hear and determine appeals under this Part.
- (3) Schedule 2 makes further provision in respect of the tribunal.

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

- (1) An applicant for registration may appeal against a decision of the Commissioner –
  - (a) to refuse to register the applicant; or
  - (b) to refuse to register the applicant in the restricted section of the register.
- (2) A registered charity may appeal against a decision of the Commissioner –
  - (a) to deregister the charity;
  - (b) to refuse permission, under Article 12(4), for the charity to change its registered name or add an alternative registered name;
  - (c) to require the charity, under Article 12(6), to apply to change its registered name;
  - (d) to refuse approval, under Article 13(3), of a proposed amendment of the charity's purposes to add or substitute a different charitable purpose; or
  - (e) to refuse to approve a proposed amendment to the charity's registered public benefit statement, under Article 13(4)(b).
- (3) A person on whom the Commissioner serves a notice under Article 27 or 28 may appeal against the decision of the Commissioner to impose a requirement contained in the notice.
- (4) The Attorney General may appeal against any decision of the Commissioner.

- (5) A person, other than an applicant for registration, a registered charity, or the Attorney General, may appeal against a decision of the Commissioner to register an applicant, on the ground that, at both the time of the application and the time of the appeal –
  - (a) the applicant did not meet the charity test; or
  - (b) if the appellant has an interest in the registered name of the applicant, that name was undesirable under Article 12(1).

### **35 Grounds of appeal and powers of tribunal in determining appeals**

- (1) An appeal may be made to the tribunal on the ground that the decision of the Commissioner was wrong or unreasonable on its merits, the facts or the law.
- (2) The tribunal may –
  - (a) make such interim order on an appeal as it thinks fit;
  - (b) consider evidence that was put to the Commissioner or accept other evidence.
- (3) On determining an appeal the tribunal may –
  - (a) remit the decision to the Commissioner, substitute the tribunal's decision for that of the Commissioner, or dismiss the appeal;
  - (b) award costs if satisfied that the appeal was vexatious or otherwise grossly unreasonable;
  - (c) make any recommendation to the Commissioner, as to the performance of his or her functions in connection with the subject matter of the appeal, that appears to the tribunal to be called for in the circumstances of the case.

### **36 Appeal to court**

- (1) An appeal lies from the tribunal to the court on the ground that the decision of the tribunal was unreasonable having regard to all the circumstances of the case.
- (2) The court may –
  - (a) make such interim order on an appeal as it thinks fit;
  - (b) on determining the appeal, remit the decision to the tribunal or to the Commissioner, substitute the court's decision for that of the tribunal or that of the Commissioner, or dismiss the appeal.

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

- (1) Nothing in this Part is to be read as limiting the Commissioner's power to reconsider his or her own decisions or the decisions of his or her staff, whether at the request of any person or on the Commissioner's own motion.
- (2) The Minister may by Order–

- (a) prescribe time limits within which appeals to the tribunal or court are to be brought; and
  - (b) make such provision as to the giving of notice of decisions by the Commissioner or the tribunal, or of notice of reasons for such decisions, as appears to the Minister to be expedient for the purpose of enabling appeals to be brought within any time limits.
- (3) If the court or tribunal substitutes its decision for any other decision, it may order that the substituted decision is to take effect for all purposes from any date appearing to the court or tribunal to be appropriate, whether that date is before, on or after the date of the original decision or of the court's or tribunal's own decision.
- (4) If the court or tribunal makes an order under paragraph (3) that a substituted decision is to take effect from a date before the date of the order, an act, that occurred before the date of the order, is not rendered an offence merely by virtue of the operation of the order.

## **PART 9**

### **MISCELLANEOUS AND FINAL PROVISIONS**

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

- (1) If an offence under this Law, committed by a limited liability partnership, a separate limited partnership or a body corporate is proved to have been committed with the consent or connivance of, [or to be attributable to any neglect on the part of] –
- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person purporting to act in any such capacity,
- the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

#### **39 Service of notices**

The Minister may by Order make further provision as to the service of any notice under this Law.

#### **40 Regulations and Orders**

- (1) An Order or Regulations under this Law may contain such transitional, consequential, incidental, supplementary or savings provisions, other than an amendment of this Law, as appear to the Minister or the States (as the case may be) to be necessary or expedient for the purposes of the Order or Regulations.

- (2) A power under this Law to amend, by Regulations, any provision of this Law includes the power to make such transitional, consequential, incidental or supplementary amendments to any other provision of this Law as appears to the States to be necessary or expedient.

**41 Savings and transitional provisions**

- (1) Nothing in this Law is to be read as derogating from any power or function of the Attorney-General, the Bailiff, or the court, being a power or function that exists independently of this Law (under customary law or otherwise), in respect of charities or of acts for charitable purposes (whether as defined in this Law or otherwise).
- (2) The States may by Regulations make such other saving provision as appears to the States to be necessary or expedient for the purposes of this Law.
- (3) The States may by Regulations make such transitional provision as appears to the States to be necessary or expedient for the purposes of the bringing into force of this Law.

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

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

- (1) In the Income Tax (Jersey) Law 1961 –
    - (a) for Article 115(a) there is substituted the following paragraph –
      - “(a) any income derived from the property of a charity registered under the Charities (Jersey) Law 201-, in so far as such income is applied in accordance with that Law;”;
    - (b) after Article 115(ab) there are inserted the following paragraphs –
      - “(ac) any income derived from the property of a foundation within the meaning of the Foundations (Jersey) Law 2009 or of a trust, if –
        - (i) the income does not fall within sub-paragraph (a), but the foundation or trust is eligible, under Article 11(1) of the Charities (Jersey) Law 201-, to apply for registration as a charity, or would be so eligible but for not meeting the public benefit requirement in Article 5(1)(b) of that Law,
        - (ii) the foundation or trust does not solicit donations, within the meaning of that Law, from the general public, and
        - (iii) before the income is derived, the foundation or trust notifies the Comptroller in writing that it qualifies for and intends to rely on this exemption,
- in so far as such income is applied to the making of donations to charities registered under the Charities (Jersey) Law 201-;

- (ad) any income derived from the property of a foundation within the meaning of the Foundations (Jersey) Law 2009 or of a trust, if –
- (i) the foundation or trust was established in Jersey, before 1st January 2015 (“the relevant date”), for any of the following purposes –
    - (A) the advancement of education,
    - (B) the relief of poverty,
    - (C) the furtherance of religion,
    - (D) a purpose beneficial to the whole community,
    - (E) the service of any church or chapel or any building used solely for the purpose of divine worship,
  - (ii) the income does not fall within paragraph (a) or (ac), but the foundation or trust was entitled immediately before the relevant date to exemption from income tax under paragraph (a) of this Article as then in force on the income derived from its property, and
  - (iii) the foundation or trust does not solicit donations within the meaning of the Charities (Jersey) Law 201-, and has not done so at any time whether before, on or after the relevant date
- in so far as such income is applied to a purpose mentioned in sub-paragraph (i);”;
- (c) in Article 115(c) for the words “the States” there are substituted the words “the States or any of the parishes”;
  - (d) in paragraph 7(a) of Schedule 2, for the words “any charity or ecclesiastical body” there are substituted the words “any registered charity (within the meaning of the Charities (Jersey) Law 201-) or ecclesiastical body”.
- (2) In the Goods and Services Tax (Jersey) Law 2007 –
    - (a) in paragraph 5(2) of Schedule 5 for the words “means a corporation, association, or trust,” there are substituted the words “means a corporation, association, trust or other entity,”;
    - (b) in paragraph 1A of Schedule 6, in the definition “use for a relevant charitable purpose”, after the word “charity” there are inserted the words “(within the meaning of paragraph 5(2) of Schedule 5)”.
  - (3) In Regulation 28 of the Goods and Services Tax (Jersey) Regulations 2007 –
    - (a) in paragraph (1)(aa) for the words “in the course or furtherance of the charitable activities of the charity and in accordance with the rules, articles or other constitution of the charity” there are substituted the words “in the furtherance of the charitable purposes of the charity, in accordance with the constitution of the charity and, if the charity is registered under the Charities (Jersey) Law 201-, in accordance with the requirements of that Law”;

- (b) in paragraph (3) for the definition “charitable purposes” there is substituted the following definition –
- “ ‘charitable purposes’ has the meaning given by the Charities (Jersey) Law 201-;”.

#### **43 Amendments of Laws relating to sharing of information**

- (1) For the purpose of paragraph (2) a relevant enactment is –
- (a) the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008;
  - (b) any other enactment under which the JFSC has functions;
  - (c) any enactment relating to taxation.
- (2) The States may by Regulations amend any relevant enactment, to make such provision as the States consider necessary or expedient to enable any supervisory body, the JFSC and the Comptroller to disclose information to the Commissioner for the purposes of this Law.

#### **44 Consequential amendments of other enactments**

The States may by Regulations amend any enactment other than this Law to make such consequential provision as the States consider necessary or expedient, in relation to a reference (direct or indirect) in that other enactment to charities or charitable purposes or related terms.

#### **45 Citation and commencement**

- (1) This Law may be cited as the Charities (Jersey) Law 201-
- (2) Parts 1 to 3, Articles 33, 38, 39, 40, 42 and 43, this Article and the Schedules come into force 7 days after registration.
- (3) The remainder of this Law comes into force on such day or days as the States may by Act appoint.

**SCHEDULE 1**

(Article 3)

**JERSEY CHARITY COMMISSIONER****1 Appointment of Commissioner**

- (1) The Minister must appoint a person appearing to the Minister to be suitable to hold the office of the Commissioner.
- (2) Before appointing a person as the Commissioner, the Minister must seek the views of the Appointments Commission, established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005, on the appointment (without prejudice to the powers of the States or the Appointments Commission under Article 15 of that Law).
- (3) The Minister must, at least 2 weeks before appointing a person as the Commissioner, present to the States a notice of his or her intention to make the appointment.
- (4) A person appointed as the Commissioner holds and vacates that office in accordance with the terms of his or her appointment, subject to this Law.
- (5) When appointing a person as the Commissioner the Minister must determine the period of the appointment, being not more than 6 years.
- (6) The Minister may re-appoint a person serving as the Commissioner (and references in this paragraph to appointment include re-appointment).
- (7) The Minister must take all reasonable steps to ensure that at all times the office of the Commissioner is filled.
- (8) Nothing in sub-paragraph (7) is to be construed as preventing the terms of a person's appointment from requiring the person to work under the appointment for only a limited number of days in a year or hours in a day.

**2 Status of Commissioner**

- (1) The Commissioner may, as a corporation sole, in the name of his or her office –
  - (a) enter into agreement for any purpose of his or her office;
  - (b) acquire, hold and dispose of movable property;
  - (c) sue and be sued in any civil proceedings;
  - (d) be charged with an offence and defend criminal proceedings; and
  - (e) do anything reasonably necessary or expedient for or incidental to any of the Commissioner's functions.
- (2) The Commissioner is independent of the States and the Minister.
- (3) The terms and conditions of the appointment of the Commissioner must not be construed so as to create a contract of employment or agency between the States, or the Minister, and the person appointed.
- (4) Despite sub-paragraphs (2) and (3) –

- (a) the remuneration or other payment for services of the Commissioner, due under the terms of his or her appointment, must be paid out of the annual income of the States; and
- (b) all fees and other sums received by the Commissioner in the exercise of his or her functions must be paid to the income of the States.

### **3 Termination of office as Commissioner**

- (1) A person ceases to be appointed as the Commissioner if –
  - (a) he or she resigns from office by giving not less than 3 months' notice in writing to the Minister;
  - (b) the Minister terminates his or her appointment under sub-paragraph (2); or
  - (c) his or her appointment expires under sub-paragraph (4).
- (2) The Minister may terminate the appointment of a person as the Commissioner, after satisfying himself or herself that the person –
  - (a) has been absent from his or her duties for a period longer than 4 consecutive weeks;
  - (b) has become bankrupt;
  - (c) is incapacitated by physical or mental illness; or
  - (d) is otherwise unable or unfit to discharge the functions of the Commissioner.
- (3) The Minister must, not more than 2 weeks after terminating the appointment, present to the States a notice that the Minister has terminated the appointment.
- (4) A person's appointment as the Commissioner expires if –
  - (a) the period for which the person was appointed expires without re-appointment;
  - (b) the person becomes a member of the States;
  - (c) the person completes 12 years (whether consecutive or in aggregate) of service as Commissioner.

### **4 Staff**

- (1) The Minister must make available to the Commissioner such number and descriptions of staff as the Minister considers are required for the proper and effective discharge of the Commissioner's functions.
- (2) To the extent that any States' employee (within the meaning of the Employment of States of Jersey Employees (Jersey) Law 2005) performs functions under the direction of the Commissioner because of sub-paragraph (1), the employee is a member of the Commissioner's staff.
- (3) Any function of the Commissioner may, to the extent authorized by the Commissioner, be exercised on behalf of the Commissioner by any member of the Commissioner's staff, except the decision under Article 11 or 16 on whether to register or deregister a charity.

- (4) The Minister may designate a person as the relevant person for the purpose of sub-paragraph (5).
- (5) A relevant person designated under sub-paragraph (4) is to be treated as the Commissioner for the purposes of this Law, if –
  - (a) the person appointed as the Commissioner is unable to act through incapacity or absence; or
  - (b) there is a vacancy in the office of Commissioner,  
on a temporary basis until the Commissioner becomes able to act again or a new Commissioner is appointed under paragraph 1.
- (6) The Minister must provide such accommodation and equipment as the Minister considers are required for the proper and effective discharge of the Commissioner's functions
- (7) The cost of providing staff, accommodation and equipment under this paragraph must be met out of the annual income of the States.

**SCHEDULE 2**

(Article 33)

**CHARITY COMMISSION TRIBUNAL****1 Appointment**

- (1) The Minister must appoint as members of the tribunal at least 4 persons appearing to the Minister to be suitable for the position and to have appropriate experience to safeguard the interests of the public and the charitable sector in Jersey.
- (2) Before appointing a person as a tribunal member, the Minister must seek the views of the Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005 on the appointment (without prejudice to the powers of the States or the Appointments Commission under Article 15 of that Law).
- (3) The Minister must, at least 2 weeks before appointing a person as a tribunal member, present to the States a notice of his or her intention to make the appointment.
- (4) A person appointed as a tribunal member holds and vacates that position in accordance with the terms of his or her appointment, subject to this Law.
- (5) When appointing a person as a tribunal member the Minister must determine the period of the appointment, being not more than 6 years.
- (6) The Minister may re-appoint a person serving as a tribunal member (and references in this paragraph to appointment include re-appointment).
- (7) The Minister must, among the members of the tribunal, designate one as the chair and another as the vice-chair.
- (8) Service as a tribunal member is honorary, unless the Minister determines that the chair is, or all the members are to be remunerated by the States as Minister sees fit.

**2 Termination of appointment**

- (1) A person ceases to be a member of the tribunal if –
  - (a) he or she resigns from office by giving not less than 1 month's notice in writing to the Minister;
  - (b) the Minister terminates his or her appointment under sub-paragraph (2); or
  - (c) his or her appointment expires under sub-paragraph (4).
- (2) The Minister may terminate the appointment of a person as a member of the tribunal, after satisfying himself or herself that the person –
  - (a) has been absent from his or her duties for a period longer than 8 consecutive weeks;
  - (b) has become bankrupt;

- (c) is incapacitated by physical or mental illness; or
  - (d) is otherwise unable or unfit to discharge the functions of a member of the tribunal.
- (3) The Minister must, not more than 2 weeks after terminating the appointment, present to the States a notice that the Minister has terminated the appointment.
- (4) A person's appointment as a member of the tribunal expires if –
- (a) the period for which the person was appointed expires without re-appointment;
  - (b) the person becomes a member of the States;
  - (c) the person completes 12 years (whether consecutive or in aggregate) of service as a member of the tribunal.

### **3 Staff and resources**

- (1) The Minister must make available to the tribunal such number and descriptions of staff and resources as the Minister considers are required for the proper and effective discharge of the tribunal's functions.
- (2) The Minister must secure that there is available to the tribunal at least one member of staff to serve as the responsible officer, charged with assisting with the administration of (but not determinations by) the tribunal.

### **4 Procedure of tribunal**

- (1) A sitting of the tribunal is to be presided over by –
- (a) the chair;
  - (b) the vice-chair, if the chair is absent; or
  - (c) if both the chair and vice-chair are absent, a tribunal member appointed for the purpose by the tribunal members present at the sitting.
- (2) Subject to sub-paragraph (1), and to any Regulations under sub-paragraph (3), the tribunal may regulate its own procedure.
- (3) The States may by Regulations make further provision as to the procedure of the tribunal, including in particular provision as to –
- (a) the burden of proof on an appeal;
  - (b) the summoning of witnesses and the administration of oaths;
  - (c) securing the production of documents and evidence;
  - (d) the conduct of hearings, the determination of appeals with or without hearings, and the holding of hearings wholly or partly in public or private or in the absence of any party;
  - (e) enabling an appeal to be determined, or any matter preliminary or incidental to an appeal to be dealt with or direction given, by the chair or vice-chair;

- (f) the award of costs, and the creation of offences in relation to the tribunal, carrying a penalty not exceeding [imprisonment for a term of 2 years and a fine];
- (g) the publication of reports of the tribunal's decisions;
- (h) duties of the Commissioner in relation to an appeal;
- (i) striking out, withdrawal and amendment of appeals or replies;
- (j) such ancillary powers of the tribunal as the States think necessary for the proper discharge of its functions.

