

Jersey Charities Law

April 2014

2 phases

phase one

Definition

Commissioner

Register

Managers' duties

phase two

Regulation

Capture information



1st stage consultation

- 8 week consultation: 8 July – 30 August
- 240 people
- 130 responses

Significant mandate for Law and key proposals

96%: definition

89%: charitable purposes & public benefit requirement

95%: register to make appeals for money

94% : register to call yourself a charity

98% register to receive tax exemptions (**67% FSI**)

What will the law do?

1. Charity Commissioner

- determine if a charity is a charity; register or deregister

2. Tribunal

- grounds (decision wrong, unreasonable or unlawful)
- applicant: refused registration charity: required steps notice or deregistered
third party: does not meet charity test or interest in name
- submit new evidence but not at 2nd stage appeal to Royal Court
- costs if vexatious

3. Charity test: charitable purposes and public benefit

4. Register: general; restricted; historic

5. “Managers” duties

6. Required steps notice

7. Restrictions on use of “charity” and “charitable”

8. Amendments to tax laws

2: Charity test - charitable purposes

- can only have charitable purposes but have more than one
 - can undertake activities which are incidental to charitable purposes
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poverty

animal
welfare

religion

Saving lives

Relief for those in
need (age; health;
disability;
financial
hardship; other)

education

health

Arts, heritage,
culture, science

Environmental
protection or
improvement

Human rights,
conflict
resolution,
reconciliation

Citizenship/
Community
development

Public
participation
in sport

Recreational
facilities to
improve life

Equality and
diversity

Religious or
racial
harmony

Charity test - public benefit

Commissioner will give consideration to:

- any benefit gained by members of that entity or others, other than as members of the public (eg: employees)
- any disbenefit to the public
- where benefit is restricted to a section of the public, whether conditions associated with gaining benefit is restrictive

Individual organisations, not types of organisations

Public opinion considered but not arbiter

Charity register

Apply to all charities regardless of legal form

Voluntary but if not registered cannot:

- be called a charity
- use term “charitable” when fundraising
- receive charitable tax reliefs

To register:

- pass the charity test
- written constitution
- Jersey entity/carry out relevant activity (more than fundraising)
- acceptable name

Register

<ul style="list-style-type: none"> ✓ solicits public donations ✓ can call itself a charity ✓ <u>full</u> charitable tax reliefs 	<p>GENERAL REGISTRATION</p> <ul style="list-style-type: none"> • Must register • All registration info must be public (unless there is a risk to people/property) 	<p><u>Public charities:</u> Jersey hospice</p>
<ul style="list-style-type: none"> x solicit public donations ✓ can call itself a charity ✓ <u>full</u> charitable tax reliefs 	<p>RESTRICTED REGISTRATION</p> <ul style="list-style-type: none"> • Must register • Some info not public 	<p><u>Private charities:</u> Trust or Foundation</p>
<ul style="list-style-type: none"> X solicit public donations X cannot not call itself as a charity X full charitable tax reliefs ✓ receive income tax benefit 	<p>EXEMPT REGISTRATION</p> <p>Law will <u>not</u> apply – except restrictions on right to call itself a charity</p>	<p><u>Not a charity:</u> Financial services vehicle</p>

X appeals for individual people: Criminal law applies if a person gains monies on false pretences (e.g.: fraud)

In the public domain

General registration

- name
- charity number
- address/es
- constitutional form
- names of all managers
- registered charitable purpose statement and registered public benefit statement
- if an externally organised religious charity
- if constitution permits a States Minister to act as charity “manager”

Restricted registration:

- charity number
- constitutional form
- registered charitable purpose statement and registered public benefit statement
- grounds for restricted entry

Lock in to protect charitable assets even after deregistration

All info provided at application

Effects of registration/deregistration

Registration

- only use property in accordance with statements
- cannot change statements without approval
- Annual return
- Court powers (misconduct or secure property)
 - appoint someone to take over management
 - suspend or remove managers
 - prevent charity parting with property

De-registration

- Commissioner (satisfied property will still be applied):
 - on request
 - no longer meets test
 - failed to comply with *required steps notice*

 On deregistration property must still be applied in accordance with statements

Charity “managers”

= people who form governing body: often referred to as trustees, board, committee or council members.

- ensure charity complies with law & delivers purpose/public benefit
- cannot be paid as a “manager” unless in prescribed circumstances (eg: regulated by JFSC or Commissioner approved)
- can be paid to provide services
- “reportable” matter - refuse to register/require removal
- single manager & family only managers (regs)

Required steps notice

Commissioner can issue if:

- charity no longer meets charity test
- misconduct
- requires name change

Sets out:

- action to be taken
- timeframe



De-registration if fail to comply

Expressions: charity/charitable

- “Charity”: registered in Jersey
- “Jersey charity”: registered in Jersey and Jersey entity
- “Charitable”: not when soliciting public donations (unless a registered charity)

Non-Jersey entities (ie: UK charities)

Called a “charity” in Jersey but not be registered in Jersey if:

- registered, or exempt registration, in UK (+ potentially other jurisdictions)
- entitled to be called a charity in UK
- wholly or mainly managed or controlled outside Jersey
- do not undertaken any activity in Jersey except fundraising activity.

Current charitable tax reliefs*

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

* may be subject to review in the future

Consequential amends to tax laws

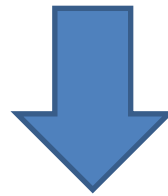
- Registered charity: all charitable tax reliefs
- New charitable trusts and foundations: income tax exemption
 - only charitable purposes under new law
 - only distribute property to registered Jersey charities
 - do not solicit voluntary donations
 - notify Comptroller of Taxes
- Trusts and foundations previously exempt income tax under Article 115 (a)
 - only charitable purposes under current definition
 - do not and have never solicited voluntary donations
 - before 1 January 2015

Effects and implications

- Support governance in Sector. Critical to expanding funding/commissioning relationship
- Assessment by Commissioner, not Comptroller of Taxes: more rigorous
- Lock charity assets into charitable purpose/public benefit
- Jersey charities can gain access to some UK funders
- Greater transparency; improved capability to identify abuse
- Info base allowing for informed review of charitable tax relief
- Growth of philanthropic wealth management market

Future regulation (Phase 2)

- Law is silent on regulatory standards (e.g.: accounting standards) but paves ways for future regulation
- Initial gateway to regulation will be via registration (no registration; no charities regulation)



Law will however place controls on ensuring charity assets are always used for charitable purposes/public benefit even after de-registration

Timetable

Close public consultation	1 May
Analyse responses; amend draft law; draft report and proposition	
Council of Ministers	21 May
Lodge deadline	2 June
Debate (6 weeks after lodging)	14 July (last sitting)
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Develop regulations/orders	Q4 2014 (assuming Privy Council Sanction Q3 2014)
Debate regulations/orders	Q1 2015
Commissioner recruited	Q2 2015
Registration period (3 months)	Q3 2015 – Q4 2015
Post-registration period ends (21 months)	Q4 2015 – Q4 2016
Phase 2: Regulation Commence consultation on draft regulatory standards	Q3 2016
Phase 2: Regulatory standards in force	Q1 2018