



Jersey

## CHARITIES (JERSEY) LAW 2014

### Arrangement

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Jersey

## CHARITIES (JERSEY) LAW 2014

**A LAW** to establish a commissioner and register of charities, to impose duties on governors of charities, to regulate use of the term “charity” and for related purposes

*Adopted by the States*

*18th July 2014*

*Sanctioned by Order of Her Majesty in Council*

*5th November 2014*

*Registered by the Royal Court*

*14th November 2014*

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

### PART 1

#### INTERPRETATION

##### 1 Interpretation

In this Law, unless the context otherwise requires –

“annual return” means a return sent under Article 13(7);

“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<sup>1</sup>, or an existing company within the meaning of that Law, and in relation to a company the expressions “director”, “memorandum” and “articles of association” have the same meanings as in that Law;

“Comptroller” has the meaning given by the Income Tax (Jersey) Law 1961<sup>2</sup>;

“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)(i);

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

“foundation” means a foundation incorporated under the Foundations (Jersey) Law 2009<sup>3</sup>, and “charter”, “regulations” and “council member” have, in relation to a foundation, the same meanings as in that Law;

“general section” means the section of the register that is to be distinguished from the restricted and historic sections under Article 8(2);

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

“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<sup>4</sup>;

“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<sup>5</sup>;

“Minister” means the Chief Minister;

“misconduct” has the meaning given by Article 2(10), and a reference to a governor 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<sup>6</sup>;

“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 the public or of those affected by the information;

“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, or (as a verb) to enter an entity on that register, and “registration” and “deregistration” are to be construed accordingly;

“registered charitable purposes” has the meaning assigned by Article 8(3)(e);

“registered charity” means an entity entered for the time being in the general section or the restricted section of the register;

“registered public benefit statement” has the meaning assigned by Article 8(3)(f);

“regulated financial services business” means business for which a person –

- (a) is registered under the Banking Business (Jersey) Law 1991<sup>7</sup>;
- (b) holds a permit or certificate under the Collective Investment Funds (Jersey) Law 1988<sup>8</sup>;
- (c) is registered under the Financial Services (Jersey) Law 1998<sup>9</sup>; or
- (d) is authorized by a permit under the Insurance Business (Jersey) Law 1996<sup>10</sup>;

“reportable matter” has the meaning given by Article 19;

“required steps notice” means a notice served under Article 27;

“restricted section” means the section of the register that is to be distinguished from the general and historic sections under Article 8(2);

“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 32;

“trust” means a trust over which the court has jurisdiction under Article 5 of the Trusts (Jersey) Law 1984<sup>11</sup>.

## **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 fidéicommis;
  - (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<sup>12</sup>;
  - (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 jurisdiction 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 governor 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 –
- (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<sup>13</sup>;
  - (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<sup>14</sup>;
  - (d) in relation to an entity that is a company, the Companies (Jersey) Law 1991<sup>15</sup>; 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<sup>16</sup> 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, "governor" in relation to an entity means –
- (a) in the case of a trust or fidéicommis, a trustee or fidéicommissaire of the trust or fidéicommis;
  - (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;
  - (d) in the case of a relevant unincorporated entity, a person who is a member of the management committee of the entity; or
  - (e) in any other case, a person who, under the constitution of the entity, has the general control and management of the administration of the entity.
- (8) For the purpose of paragraph (7)(d) a relevant unincorporated entity is an unincorporated body or association of persons that –
- (a) falls within paragraph (1)(i); and
  - (b) has a constitution that conforms to a model that –
    - (i) is published for the purpose by the Commissioner, and
    - (ii) provides for the entity to have a management committee.
- (9) For the purpose of paragraph (7)(e) –
- (a) a person is not a governor merely by virtue of exercising general control and management on behalf of another person who has the general control and management in that other person's own right under the constitution of the entity; and
  - (b) a person is a governor whether that person has that general control and management alone or as one of a number of governors.
- (10) In this Law, unless the context otherwise requires, "misconduct" means –
- (a) a contravention, by a registered charity or by any of its governors, of a provision –
    - (i) of this Law, or of any enactment under this Law,

- (ii) of the constitution of the registered charity, or of the constitutional Law of the charity,
  - (iii) of a required steps notice, or
  - (iv) 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; or
- (b) the commission by any person, in relation a registered charity or to an excepted foreign charity (within the meaning of Article 22) or to an entity equivalent to a registered charity under the law of a jurisdiction other than Jersey, of an offence –
- (i) under the constitutional Law of that charity or other entity,
  - (ii) under the Financial Services (Jersey) Law 1998<sup>17</sup>, the Banking Business (Jersey) Law 1991<sup>18</sup>, the Collective Investment Funds (Jersey) Law 1988<sup>19</sup>, the Insurance Business (Jersey) Law 1996<sup>20</sup>, any Regulation or Order made under any of those Laws, or the Alternative Investment Funds (Jersey) Regulations 2012<sup>21</sup>,
  - (iii) under the Income Tax (Jersey) Law 1961<sup>22</sup>, the Goods and Services Tax (Jersey) Law 2007<sup>23</sup>, or the Taxation (Land Transactions) (Jersey) Law 2009<sup>24</sup>,
  - (iv) under any other enactment, being an offence relating to money laundering or terrorist financing,
  - (v) under any other enactment or under customary law, being an offence involving deception or dishonesty, or
  - (vi) under the law of a jurisdiction other than Jersey, being an offence similar to any of those listed in clauses (i) to (v).

## **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 governors with their duties under Part 5;
  - (c) to seek to enforce the requirements of Part 6 as to use of terms restricted by or under that Part;

- 
- (d) to publish and maintain guidance on the operation of this Law, including guidance on the duties of governors 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, in relation to registered charities and entities with charitable purposes, any function of such a person under any enactment or law, 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 governor 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 jurisdiction 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 jurisdiction.
- (4) In performing his or her functions, the Commissioner must, so far as appears to him or her to be reasonably practicable, seek to act in a way that –
- (a) protects public trust and confidence in registered charities, and is compatible with the encouragement of –
    - (i) all forms of charitable giving, and
    - (ii) voluntary participation in the work of registered charities; and
  - (b) is proportionate as to the burdens imposed on, and supports the development of registered charities.

## PART 3

### CHARITY TEST

#### 5 The charity test

- (1) An entity meets the charity test if –
  - (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 reasonable degree.
- (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 governors 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 the determination of whether an entity meets the charity test.
- (5) Any person, in determining whether an entity meets the charity test, must have regard to the guidance, and the Commissioner, the tribunal, a registered charity and a governor of a registered charity must have regard to the guidance when performing any other of their functions under this Law to which the guidance is relevant.
- (6) Before issuing or amending guidance the Commissioner must –
  - (a) consult –
    - (i) any persons appearing to the Commissioner to be representative of charities or bodies with charitable purposes,
    - (ii) the Minister, and
    - (iii) such other persons as the Commissioner considers appropriate; and
  - (b) publish a report on the Commissioner’s views on the results of the consultation, and the reasons for the Commissioner’s decision on the guidance in the light of those results.
- (7) Within a reasonable time after issuing or amending guidance the Commissioner must provide to the Minister a copy of the issued or amended guidance and the report published under paragraph (6)(b).

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- (8) The Minister must lay a copy of the guidance and report so provided before the States as soon as practicable after the Minister receives the guidance and report.

## **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 as analogous to any of the purposes listed in sub-paragraphs (a) to (o).
- (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 registered 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 States may, on the recommendation of the Commissioner, by Regulations –
  - (a) add sub-paragraphs to paragraph (1);
  - (b) add sub-paragraphs to paragraph (2) making explanatory provision in relation to any sub-paragraphs so added to paragraph (1).
- (4) The power under paragraph (3) does not include power –
  - (a) to amend or restrict the effect of any of paragraphs (1)(a) to (p) and (2)(a) to (f); or
  - (b) to alter the effect of paragraph (5).
- (5) 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 register, in respect of each registered charity (whether entered in the general or restricted section), 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 governors 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;
  - (g) the date on which the charity was registered;
  - (h) if the registered charity is an organized religious charity, within the meaning of Article 28, a note of that fact and of the provision of the Order under that Article 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 sent its annual return for the most recent year;
  - (k) if a required steps notice has been served on the registered charity, or on a governor of the registered charity, 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) if an Order under Article 13(9)(c) applies to the registered charity, any details or statement that must be entered on the register under that Order; and
  - (n) 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 governors 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 to it;
- (b) the annual returns of 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 one of the conditions prescribed under paragraph (2) is met; and
  - (c) that there is no ground, prescribed 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.
- (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.
- (2) 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 requirements of paragraphs (4)(c) and (d),
    - (ii) the matters that are required to be registered under sub-paragraphs (a), (b) and (d) of Article 8(3), and
    - (iii) if applicable, the matters that are required to be registered under sub-paragraphs (h), (i), (m) and (n) of Article 8(3);
  - (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 payment made to any governor of the entity in the 12 months preceding the application, and if an Order under Article 13(9)(b) applies to the registered charity, a draft of the proposed statement under that Order,
    - (iii) any other financial information that would be required if the application were for registration under the Non-Profit Organizations (Jersey) Law 2008<sup>25</sup>, and
    - (iv) 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 (3), or
    - (ii) otherwise requested by the Commissioner in order to determine the application.
- (3) The States may by Regulations –

- (a) prescribe other information, documents or evidence that must be provided on an application;
  - (b) make further provision as to the procedure for making an application.
- (4) If the applicant complies with paragraph (2), with any Regulations under paragraph (3), and with Article 19(5), the Commissioner must register the applicant as a charity if satisfied that –
  - (a) the applicant meets the charity test, or will do so on registration;
  - (b) the constitution of the applicant is a written document;
  - (c) the applicant –
    - (i) is a Jersey entity, or
    - (ii) carries out, or intends to carry out, in or from within Jersey, an activity that is, in the opinion of the Commissioner, substantial;
  - (d) the applicant has a principal address in Jersey, within the meaning of Article 8(4);
  - (e) the name of the applicant is not undesirable under Article 12; and
  - (f) no other ground for refusal, prescribed under paragraph (7), applies or should be applied.
- (5) If not so satisfied, the Commissioner must refuse to register the applicant.
- (6) For the purpose of paragraph (4)(c)(ii) –
  - (a) the Commissioner must publish and maintain guidance as to how he or she determines whether an activity is substantial;
  - (b) Articles 5(6) to (8) apply to that guidance as they apply to guidance under Article 5(4);
  - (c) the Commissioner must have regard to that guidance, in determining whether an activity is substantial; and
  - (d) a registered charity, a governor of a registered charity, the tribunal and the court must have regard to the guidance when performing any of their functions under this Law to which the guidance is relevant.
- (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 governor, not being a person who, by way of acting as a governor, carries on a prescribed description of regulated financial services business or any other prescribed description of business; or
  - (b) that a number or proportion of its governors are related to each other in prescribed ways.
- (8) The Minister may by Order –
  - (a) make provision as to –
    - (i) the period within which the Commissioner must make a decision on an application,

- (ii) the notification to applicants of decisions and of reasons for refusal;
  - (b) after consulting the Commissioner and any body appearing to the Minister to be representative of interested entities, provide that any provision of paragraph (2) –
    - (i) does not apply to a prescribed description of applicant appearing to the Minister to require relief from the burden of that provision by virtue of the small size, or lack of resources or expertise of applicants of that description, or
    - (ii) applies to a prescribed description of applicant only subject to a modification prescribed by the Order, being a modification that appears to the Minister to give reasonable relief from the burden of that provision, having regard to the small size, or lack of resources or expertise of applicants of that description.
- (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 request, with the information and documents, held by the Commissioner, that must be provided to the JFSC in an application for registration under the Non-Profit Organizations (Jersey) Law 2008; and
  - (b) the JFSC must treat that request, with the information and documents, as an application for registration under that Law.

## **12 Name of charity**

- (1) For the purpose of Article 11(4)(e), 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, activities or identity of the entity;
  - (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 –
- (a) its registered name or one of its registered names; or
  - (b) another name that –
    - (i) is related to such a name, and
    - (ii) is not, in the opinion of the Commissioner, undesirable within the meaning of paragraph (1), in the context in which it is used.

### **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

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- (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 proposal that could result, or an event that has resulted in the charity ceasing to meet the requirements of Article 11(4)(c) or (d);
    - (e) a reportable matter, in relation to a governor of the charity, if the charity is aware that the governor has not promptly reported it to the Commissioner under Article 19(2);
    - (f) a matter likely to lead to the charity becoming bankrupt, being wound up or otherwise ceasing to exist;
    - (g) 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
    - (h) any other matter prescribed by the Minister by Order for this purpose.
  - (7) A registered charity must send an annual return to the Commissioner, containing information as to any matter falling within paragraph (6) arising during the year to which the return 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
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content of any entries to be made on the register in respect of the annual return.

- (9) The Minister may by Order –
- (a) require a registered charity to include in its annual return details of a prescribed description of any payment made, during the year to which the return relates, by or on behalf of the registered charity to a governor, or to a person having a prescribed connection with a governor;
  - (b) require a registered charity to provide to the Commissioner a statement of its current intentions as to making any payments of such a prescribed description in future;
  - (c) provide for the entry on the register by the Commissioner of the details included under sub-paragraph (a) in the charity's latest annual return, and of the statement provided under sub-paragraph (b).
- (10) The Minister may by Order, after consulting the Commissioner and any body appearing to the Minister to be representative of interested registered charities, provide that any provision of paragraph (6) or (7), or of any Order under paragraph (7), (8) or (9) –
- (a) does not apply to a prescribed description of charity appearing to the Minister to require relief from the burden of that provision by virtue of the small size, or lack of resources or expertise of charities of that description; or
  - (b) applies to a prescribed description of charity only subject to a modification prescribed by the Order, being a modification that appears to the Minister to give reasonable relief from the burden of that provision, having regard to the small size, or lack of resources or expertise of charities of that description.
- (11) A registered charity –
- (a) must not make any payment that is inconsistent with a statement provided under paragraph (9)(b);
  - (b) may apply to the Commissioner, with reasons, for permission to amend that statement.
- (12) If the States make Regulations under Article 11(7), those Regulations may also make provision requiring a registered charity or its governors (or both) to avoid, or report and remedy, a situation arising at a time after registration, being a situation in which, if the charity were at that time applying for registration, there would be grounds under those Regulations to refuse that application.
- (13) If a court-approved fidéicommis or an incorporated 1862 association becomes registered as a charity under this Law, paragraphs (2) and (3) do not apply to that registered charity to the extent that they are inconsistent with any order made, whether before or after registration under this Law, by the court under the Loi of 1862.



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**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 governor 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 governors;
  - (c) appointing a person to be a governor of the charity;
  - (d) suspending or removing a governor 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 governor 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) requiring a governor 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 or under customary law; 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 governor of the entity or to be responsible for the winding up of the affairs of the entity, deregister the entity.

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**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) to (11) 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 charitable purposes or preserved public benefit statement.
- (8) The entity may apply to the court for an order amending the preserved charitable purposes or preserved public benefit statement, 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 governor 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 charitable purposes of the entity and in accordance with the preserved public benefit statement.
- (10) A governor may not apply under paragraph (9) unless the governor has first given notice to the Attorney General of the governor's intention to do so and of the reasons for that intention.
- (11) The Attorney General may at any time, by giving notice to the governor and the court, take over an application made by a governor under paragraph (9), and may then withdraw or proceed with the application as the Attorney General sees fit.

## **PART 5**

### **GOVERNORS OF REGISTERED CHARITIES**

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

- (1) A governor 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 governor of a registered charity, that is an unincorporated body or association of persons falling within Article 2(1)(i), 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 governor'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 governor engages in misconduct if –
  - (a) the governor contravenes a provision, or commits an offence, mentioned in Article 2(10);
  - (b) the governor concurs in misconduct by the charity;
  - (c) the governor assists or encourages another governor to engage in misconduct; or
  - (d) the governor –

- (i) becomes aware or ought to have become aware of any misconduct in relation to the charity, or of the intention of another governor to engage in misconduct, and
- (ii) the governor 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 Reportable matters and acting as a governor**

- (1) A reportable matter in relation to a person is the fact that the person –
  - (a) has engaged in misconduct as a governor of a registered charity, being misconduct that led to the service of a required steps notice on that governor or on that charity or on another governor of that charity;
  - (b) is the subject of a disqualification order, or of any other restriction on his or her acting as a governor, 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 jurisdiction other than Jersey;
  - (e) is bankrupt or otherwise insolvent, whether under the law of 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 falling within Article 2(10)(b); or
  - (h) falls within any other description that may be prescribed by the Minister by Order.
- (2) A governor 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 governor of an entity applying for registration must, if there is no reportable matter in relation to that governor, provide to the entity a declaration to that effect before the application is made.
- (4) A governor of a registered charity must, if there is no reportable matter in relation to that governor, provide to the charity a declaration to that effect when notified by the charity that it is preparing its annual return.
- (5) The entity must state in its application, and the registered charity must state in its annual return, that it has declarations from all of its governors 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 governor of a registered charity at any time when the person is in breach of paragraph (2) or (4).
- (9) If a governor reports a reportable matter to the Commissioner, the Commissioner –
  - (a) must make inquiries to determine whether the governor is a fit and proper person to be a governor;
  - (b) may apply to the court to determine that issue under Article 20;
  - (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 governor to act as a governor 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 governor is removed, or in the case of a registered charity serve a required steps notice requiring the charity to suspend or remove the governor, or
    - (ii) by notice in writing, entered in the register, give permission for the governor to act as a governor, 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 governor of a registered charity at any time after reporting a reportable matter, unless the governor –
  - (a) is permitted to do so by the Commissioner under paragraph (9)(d) or (e)(ii), or by the court under Article 20; 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 one year 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 governor 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 governor is a fit and proper person to be a governor.

**20 Court orders as to fitness of governor**

- (1) On an application under Article 19(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 governor to act as a governor 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 governor;
  - (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 governor 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 governor 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 19(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****21 Prohibition of unauthorized use of expression “charity” and related terms**

- (1) An entity that is not a registered charity –
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- (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 (within the meaning of Article 22) –
  - (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 (within the meaning of Article 22), 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.



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- (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 (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 (1), (3) or (5), commits an offence and is liable to a fine of level 3 on the standard scale.

## **22 Excepted foreign charities**

- (1) For the purpose of Article 21, 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 –
    - (i) of the United Kingdom, or of any jurisdiction that is part of the United Kingdom, or
    - (ii) of a jurisdiction (not being Jersey, the United Kingdom or a part of the United Kingdom) 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 the entity –
  - (a) is managed wholly or mainly from the jurisdiction under the law of which it is established; and
  - (b) is not a registered charity.
- (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.

## **23 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 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 on the standard scale.
- (7) An entity or other person, that contravenes paragraph (2), commits an offence and is liable to imprisonment for a term of 2 years and to a fine.

#### **24 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 21 to 23;
  - (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 a fine.

#### **25 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

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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 governors;
  - (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**

#### **26 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; 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 governor or former governor 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) If the Commissioner exercises a power under paragraph (1) to require a document to be provided, the Commissioner may –
  - (a) if the document is provided, retain or take copies of it or extracts from it and require the person providing it, or any person who appears to be in possession of relevant information and to be a governor or employee of the registered charity, to provide an explanation of the document; and
  - (b) if the document is not provided, 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 under paragraph (1) or (4), commits an offence and is liable to imprisonment for a term of 3 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.
- (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.

## **27 Required steps notices**

- (1) Paragraph (2) applies if the Commissioner believes that –
  - (a) there has been misconduct by a registered charity;

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- (b) a registered charity does not pass the charity test;
  - (c) a governor of a registered charity has engaged in misconduct;
  - (d) a governor of a registered charity is, by reason of a reportable matter, unfit to be a governor of a registered charity; or
  - (e) a registered charity has ceased to meet the requirements of Article 11(4)(c) or (d).
- (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 governors of the registered charity.
  - (4) If the notice is served by virtue of paragraph (1)(c) or (d), the steps required may include (subject to Article 28) the suspension, removal or replacement of the governor 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.

**28 Required steps notices restricted in relation to governors of organized religious charities**

- (1) The Minister may by Order provide for registered charities to be categorized as organized religious charities for the purpose of paragraph (3), being registered 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 any other charitable purpose; and
  - (b) to be organized in such a way that the supervision and discipline of the governors of the registered charity, in relation to the activities of the registered charity in Jersey (whether or not also in relation to activities elsewhere), is adequate to justify the application of paragraph (3).
- (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 organized religious charity;
  - (b) provision that distinguishes between charities on the basis of the status of the charity as –
    - (i) a designated religious charity within the meaning of the Charities and Trustee Investment (Scotland) Act 2005 of the Scottish Parliament,
    - (ii) an institution falling within section 10(2) of the Charities Act 2011 of the parliament of the United Kingdom, or

- (iii) an entity in Jersey that is similar to such a designated religious charity or to such an institution.
- (3) A required steps notice served on an organized religious charity, or on a governor of such a charity, is invalid to the extent that it purports to impose a requirement to suspend, remove or replace a governor of that charity.

## **29 Restricted information**

- (1) Subject to paragraph (2) and to Articles 30 and 31, 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.

## **30 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<sup>26</sup>.

## **31 Permitted disclosure of information**

Article 29 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;

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- (d) to the Attorney General, the Bailiff or the court for the purpose of enabling them to discharge any of their functions in relation to charities, whether under this Law, a constitutional Law, the customary law, or any other law;
  - (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

#### **32 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.

#### **33 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 an amendment, proposed under Article 13(4)(b), to the charity's registered public benefit statement.
- (3) A person on whom the Commissioner serves a notice under Article 26 or a required steps notice 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).

### **34 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.

### **35 Appeal and reference to court**

- (1) A party to an appeal to the tribunal, or the Attorney General, may appeal from the decision of the tribunal to the court on the ground that the decision was unreasonable having regard to all the circumstances of the case.
- (2) The court, on determining the appeal, may 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.
- (3) The tribunal may refer any point of law to the court for the court to give a ruling on the point.
- (4) The court may make such interim order on an appeal or reference as it thinks fit.



**36 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****37 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 –
  - (a) a person who is a partner of the partnership, or director, governor, 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.

**38 Service of notices**

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

**39 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.

**40 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.

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

- (1) In the Income Tax (Jersey) Law 1961<sup>27</sup> –
  - (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 2014<sup>28</sup>, 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<sup>29</sup> or of a trust, if –

    - (i) the income does not fall within sub-paragraph (a), but all of the purposes of the foundation or trust are charitable purposes, or purposes that are purely ancillary or incidental to any of its charitable purposes, within the meaning of the Charities (Jersey) Law 2014,
    - (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 2014, or to excepted foreign charities within the meaning of Article 22 of that Law;

- (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 the date on which Article 41 of the Charities (Jersey) Law 2014 comes into force (“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 (at any time on or after the relevant date) solicit donations within the meaning of the Charities (Jersey) Law 2014,

in so far as such income is applied to a purpose mentioned in subparagraph (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 2014<sup>30</sup>) or ecclesiastical body”.
- (2) In the Goods and Services Tax (Jersey) Law 2007<sup>31</sup> –
- (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 2014<sup>32</sup>, 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 2014<sup>33</sup>.”.

#### **42 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<sup>34</sup>;
  - (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.

#### **43 Consequential amendments of other enactments**

The States may by Regulations –

- (a) amend the Trusts (Jersey) Law 1984<sup>35</sup> and the Foundations (Jersey) Law 2009<sup>36</sup>, to make provision for the application under those Laws of the charity test under this Law (by reference the test itself, or to whether a trust or foundation is registered under this Law, or otherwise), or of the definition of charitable purposes under this Law, and for related purposes;
- (b) amend any other enactment (not including 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.

#### **44 Citation and commencement**

- (1) This Law may be cited as the Charities (Jersey) Law 2014.
- (2) Parts 1 to 3, Articles 32, 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.

**L.-M. HART**

*Deputy Greffier of the States*

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**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 Jersey Appointments Commission, established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>37</sup>, on the appointment (without prejudice to the powers of the States or the Jersey 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 an 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 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; or
  - (c) the person completes 12 years (whether consecutive or in aggregate) of service as Commissioner.

### **4 Staff, resources and reporting**

- (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), while made available under sub-paragraph (1), performs a function under the

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direction of the Commissioner, the employee is to be treated as a member of the Commissioner's staff for the purposes of this Law.

- (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 –
  - (a) the decision under Article 11 on whether to register a charity;
  - (b) the decision under Article 15(3) on whether to refuse to deregister a charity; and
  - (c) the decision under Article 16 on whether to 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.
- (8) The Commissioner must prepare and publish a report on the activities of the Commissioner in each calendar year.
- (9) The Commissioner must provide the Minister with the report as soon as practicable after the end of the year to which the report relates, but in no case later than 4 months after the end of that year.
- (10) The Minister must lay a copy of the report so provided before the States as soon as practicable after the Minister receives the report.
- (11) The Minister may, by giving written notice to the Commissioner and publishing that notice, give directions to the Commissioner as to the content and form of the report.
- (12) Directions under paragraph (11) must respect the independence of the Commissioner and, in particular, must not require the report to contain justification of any decision of the Commissioner in relation to individual charities, governors or applicants for registration.

**SCHEDULE 2**

(Article 32)

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

- (1) The Minister must appoint as members of the tribunal at least 4, and no more than 8, 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 Jersey Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005<sup>38</sup> on the appointment (without prejudice to the powers of the States or the Jersey 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 one 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;



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- (b) has become bankrupt;
  - (c) is incapacitated by 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; or
  - (c) the person completes 12 years (whether consecutive or in aggregate) of service as a member of the tribunal.

### **3 Staff, resources and reporting**

- (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.
- (3) The responsible officer must prepare a report on the activities of the tribunal in each calendar year.
- (4) The responsible officer must provide the Minister with the report as soon as practicable after the end of the year to which the report relates, but in no case later than 4 months after the end of that year.
- (5) The Minister must lay a copy of the report so provided before the States as soon as practicable after the Minister receives the report.

### **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, or subject to any quorum or voting rules;
- (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.

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1	<i>chapter 13.125</i>
2	<i>chapter 24.750</i>
3	<i>chapter 13.265</i>
4	<i>chapter 13.250</i>
5	<i>chapter 04.120</i>
6	<i>chapter 13.875</i>
7	<i>chapter 13.075</i>
8	<i>chapter 13.100</i>
9	<i>chapter 13.225</i>
10	<i>chapter 13.425</i>
11	<i>chapter 13.875</i>
12	<i>chapter 13.125</i>
13	<i>chapter 13.875</i>
14	<i>chapter 13.265</i>
15	<i>chapter 13.125</i>
16	<i>chapter 13.875</i>
17	<i>chapter 13.225</i>
18	<i>chapter 13.075</i>
19	<i>chapter 13.100</i>
20	<i>chapter 13.425</i>
21	<i>chapter 17.245.51</i>
22	<i>chapter 24.750</i>
23	<i>chapter 24.700</i>
24	<i>chapter 24.980</i>
25	<i>chapter 15.430</i>
26	<i>chapter 15.430</i>
27	<i>chapter 24.750</i>
28	<i>L.41/2014</i>
29	<i>chapter 13.265</i>
30	<i>L.41/2014</i>
31	<i>chapter 24.700</i>
32	<i>L.41/2014</i>
33	<i>L.41/2014</i>
34	<i>chapter 08.785</i>
35	<i>chapter 13.875</i>
36	<i>chapter 13.265</i>
37	<i>chapter 16.325</i>
38	<i>chapter 16.325</i>