

Jersey charity law developments

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CATEGORY:
ARTICLE

Jersey's Chief Minister's Department (the 'Department') has launched a consultation on whether a new Charities Law for Jersey should be developed to provide a legal and regulatory framework for charities operating in Jersey.

Jersey does not currently have a statute specifically governing charities, in the way that the Charities Act 2011 does in England and Wales, nor a regulatory body like the Charity Commission supervising charities' activities and maintaining a Register of Charities.

The Department suggests that a new Charities Law would introduce:

- a 'charities test', which would set out a qualifying definition for charitable status; and
- '*light-touch, proportionate regulation*'; which would involve the establishment of a Charity Commissioner to regulate Jersey's charities and maintain a Charities Register.

The current proposals would create a legislative framework and regulatory regime more similar to that already in place in England and Wales, Scotland and – though not yet fully implemented – in Northern Ireland. The Association of Jersey Charities has welcomed the proposals.

Definition of 'charity'

The existing definition of 'charity' set out in Jersey's 1961 Income Tax Law has been identified as problematic by the Department in that it does not require all charities to deliver public benefit, and it does not recognise certain charitable activities, such as community sports activities.

The new Charities Law would include a revised, up-to-date definition of charity with a list of eligible charitable purposes, which broadly mirrors the charitable purposes introduced in England and Wales by the Charities Act 2006 (and now contained in the Charities Act 2011). It is interesting to note, however, that (as in Scotland and Northern Ireland), the promotion of the efficiency of the armed forces, police, fire and rescue, or ambulance services, is not recognised as a separate charitable purpose as it is in England and Wales.

It is also proposed that a charity must demonstrate that it provides, or intends to provide, public benefit. It has been suggested that, if Jersey does introduce the Charities Law, it might take the opportunity to clarify in the legislation the principles which are to be used to judge whether public benefit exists.

Charities Commissioner and the Charities Register

Like the Charity Commission of England and Wales, it is proposed that the Charities Commissioner would maintain a publicly accessible Charities Register. Under the current proposals, all charities would need to register, not only charities with a certain income.

This would include charities which are registered elsewhere in the UK but wish to operate or fundraise as a charity in Jersey. However, the consultation document indicates that there may be certain 'exemptions' for charities which are registered elsewhere and are not seeking tax exemptions in Jersey. It is also suggested that charities which do not have a presence in Jersey and do not directly fundraise there, but do have fundraisers in Jersey raising funds on its behalf '*i.e. donating to an individual who is undertaking a sponsored run from a charity based elsewhere*' would not be required to register. A footnote to the document indicates this aspect of the legislation is 'pending clarification'.

Once registered, charities would be required to file information on an ongoing basis with the Charities Commissioner, such as changes to a charity's name or governing document. The Charities Commissioner would have powers of investigation in order to regulate charities on an ongoing basis, and remove charities which no longer pass the 'charities test'.

The Charities Commissioner would also have a role providing guidance to charities.

Tax benefits

It is proposed that an organisation may only be registered as a charity if it is run by '*fit and proper people*'. This is similar to the test introduced in the Finance Act 2010 in England and Wales, which provides that a charity for tax purposes must be managed by '*fit and proper persons*' as determined by HMRC.

Importantly, once an organisation is registered on the Charities Register, it would be entitled to accrue tax benefits. There would not be any additional need to register with the local tax authority.

The Charities Commissioner would also have a role in clawing any tax benefit paid to an organisation which should not have been on the Register. Currently, it is suggested that this could include situations where an organisation has failed to provide information on time as required and has been removed from the Charities Register as a result.

It is proposed that charities already established in Jersey and registered with its tax authority would have a grace period during which they may continue to receive tax exemptions prior to registering on the Charities Register.

Next steps

The consultation is open until 30 August 2013. More details about the consultation and how to submit comments can be found [here](#).

If you are thinking of establishing a charity and considering which jurisdiction may best suit your purposes, these proposals may be of particular interest. Please contact Chris Priestley on +44 (0) 207 597 6135 or by [email](#) if you would like any further advice in this regard.