COLLAS CRILL

Charities Law in Jersey

JULY 2017

Prior to 21 November 2014, Jersey looked to the case law of England and Wales for guidance in determining whether or not a particular purpose was a 'charitable purpose'.

However, on that date, certain parts of the Charities (Jersey) Law 2014 came into effect, namely, the introduction of a statutory test for what is charitable (the charity test), the post of a Charity Commissioner and the establishment of a charity tribunal.

The intent behind the law is to give confidence in Jersey as a centre for the good governance of public charities and for charitable and philanthropic activity generally.

What is a charity?

The statutory test for what is a "charity" is based on the charity test applied in Scotland. To satisfy the test, all of an organisation's purposes must be charitable purposes, or purely incidental or ancillary to its charitable purposes. In giving effect to those purposes, it must provide a public benefit (either in Jersey or elsewhere) to a reasonable degree.

What are charitable purposes?

The law helpfully provides a list of purposes that will be recognised in Jersey as being charitable and they are as follows:

- **The prevention or relief of poverty**
- **The advancement of education**
- **The advancement of religion**
- **The advancement of health**
- **The saving of lives**
- **The advancement of citizenship or community development**
- **The advancement of the arts, heritage, culture or science**
- **The advancement of public participation in sport (which must involve physical skill or exertion)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**
- **The advancement of human rights, conflict resolution or reconciliation**
- **The promotion of religious or racial harmony**

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- **The promotion of equality and diversity**
- **The advancement of environmental protection or improvement**
- **The relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage**
- **The advancement of animal welfare**
- **Any other purpose that may reasonably be regarded as analogous to any of the above purposes**

It is likely that case law prior to the law will help in interpreting what does and does not fall within one of the charitable purposes listed in the law.

What constitutes public benefit?

In determining public benefit, which is not presumed to be present, regard must be had to how any benefit obtained by members of the organisation (or any other persons other than as members of the public), or any detriment to the public, compares with the benefit gained by the public. If an entity only provides its services to a section of the public, it may still pass the public benefit test, provided that any condition on obtaining that benefit (including any charge or fee) is not unduly restrictive.

The Charity Commissioner will have a duty to publish and maintain guidance on the determination of whether an entity meets the charity test. This guidance will, in due course, need to be considered by anyone wishing to establish a charity in determining whether their entity will meet the charity test.

Charities register

In due course other provisions of the law will be brought into force, which will include provision for the registration of charities. This will not be compulsory but only a registered charity will in future be able to refer to itself as a "charity" and receive tax relief in Jersey due to its charitable status.

The register will have a general section, a restricted section and a historic section.

Charities which solicit public donations will be required to be registered in the general section, and that section will be accessible by the public. These charities will be required to provide certain prescribed information, including, their registration number, name, principal address, names of their governors, a registered charitable purpose statement and a registered public benefit statement.

Those charities which are privately endowed will be able to apply to be registered in a restricted section of the charities register. They will be required to enter the same information on the register as for those in the general section, but only a limited amount of that information will be publicly available. For example, only the number, and not the name, of the charity will be shown.

The historic section will contain prescribed information including the charity's former registered number (and name, if originally entered in the general section), why it was deregistered and the dates of registration and deregistration.

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Further implementation of the Law

Although introduced as one of the initial operative provisions of the law, the charity tribunal has yet to be established. However, on 26 June 2017, the Chief Minister gave notice of the appointment of the Charity Commissioner. It is the Charity Commissioner who will administer the charity test and the register of charities. The Charity Commissioner will also publish guidance on the law and supervise the compliance of charity governors with their duties.

We will bring you updates on the law as and when further provisions are brought into force, and in the meantime, if you have any questions on the law please contact Kellyann Ozouf or Nick Marshall.

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