

## **Jersey Charity Commissioner**

### **Annual Report for 2018**

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#### **Introduction**

1. Under the Charities (Jersey) Law 2014 ('the Law') I am required to publish an annual report on my work as Commissioner. I must also provide the Minister with a copy of it, within four months of the end of the year to which it relates, and he or she must lay that copy before the States as soon as practicable after having received it. The Minister may give me directions as to the content and form of the report, but has not done so.

2. 2018 was my first full year in office and saw a deal of activity in preparing for the opening of applications for registration, in receiving the bulk of those applications and in approving the first of them for registration. Guidance on the operation of the Law was issued. Resources, and a small but excellent team, were secured. Work was done on publicising the new arrangements and there was good interaction with a lot of potential applicant entities. The scheme of the Law was broadly completed through several legal measures. The online applications process and public register were developed satisfactorily. There were no material setbacks and a lot of learning, both direct and indirect.

3. In a sense, however, 2018 was still a preliminary phase in the embedding of the new arrangements for the regulation of the country's charities that was mandated by the States in 2014. A twelvemonth from now I shall be able to report more fully on the outcome of the registration process as a whole and what it will have revealed about the size, nature and range of Jersey's charity sector; and on the approaches that will be needed to sustain the effectualness of registration as time goes by, so that its principal object, the protection of public trust and confidence in registered charities, is well met over the years. But there are things and issues that have already surfaced as we have gone along, brief reportage of which in this report is worthwhile and may be of some interest to people. This includes a little looking ahead as well as the same back to last year.

4. Information about the main provisions of the Law, the Commissioner's role under it, and the guidance on its operation, notably on the charity test which is at the heart of the scheme of the Law, is available at [www.charitycommissioner.je](http://www.charitycommissioner.je). There is a link from there to the public part of the register, which now has over 100 entries.

#### **2018 in Summary**

5. The following seven points aim to summarise the main spheres of endeavour and practice during 2018. These adumbrations are developed in the remainder of the report, and are followed by key information updated to April 2019, and some commentary on main issues with and about the registration process that have emerged so far:



- the Law was brought fully into force, and various regulations and orders were made under it to enable the registration process to begin
- key guidance on the operation of the Law, in particular concerning the charity test, which must be met by any entity as a condition of registration, and the process for applying for registration, was published following public consultation
- the Commissioner's office premises were established, at 31 Broad Street, St Helier, and taxpayers' resources secured in order for a small staff team to be put in place and to meet the costs of developing and maintaining the systems needed for the public register to operate. (The Law requires that the register is made available on a website, free of charge.)
- the systems development project noted above was started and finished on time, successfully. The Commissioner's website was also developed, from which there is a link to the public part of the register which, for security reasons, has been established on a standalone basis. Policies and procedures were established for the actual registration of each entity, the Commissioner having approved an application, including due diligence in respect of anti-money laundering rules. Procedures were established for ensuring the confidentiality of restricted applications
- the system went live in May 2018 and applications for registration invited. The first of these were received in the period leading up to the summer break and the first approval was given in September. By 31 December 2018, 434 applications for registration had been received, the significant majority of which were submitted in the last nine weeks of the year
- by the year's end 36 charities had been registered. No application at that point had been rejected for failure to meet the charity test. A considerable number, approaching 100, were 'in play' after an initial review, this generally including requests for clarification and discussion with applicants to and fro
- a lot of learning and communication with, and from, people involved in the work of charities went hand in hand with all these first steps in helping to make sure that the new arrangements would work well and robustly. That continues. And contact was established with those responsible for the regulation of charities in both England and Scotland, and with a number of leading lawyers specialising in charity law; this is crucial, for our own charities regime is not an island but is, rather, swept up as a part of the wider world of the common law of charity extending well beyond England itself.

## **The Law**

6. Two sets of Regulations by the States and two Orders by the Chief Minister were made during the year, pursuant to various provisions of the Law in which, in 2014, some things had deliberately been left open for later completion in such a manner:



(i) Charities (Core Financial Information)(Jersey) Regulations 2018 (R&O.19/2018):

these Regulations define the financial information that applicant entities need to provide for inclusion in the public part of the register (save for restricted section registrations – see (ii) below). In essence the information required is the amount of liquid and illiquid assets the entity had at the start, and then at the end, of the one year's period immediately before its application was made. This is intended to aid the understanding of citizens consulting the public part of the register in getting a broad sense of a registered charity's scale and size.

This requirement will be ongoing for annual returns, so that information on the register remains up to date. Separately, applicant entities must provide the Commissioner with their most recent accounts, if any, and this rule applies too in years ahead when annual returns are submitted. The accounts will form part of the Commissioner's register of charities, which he or she must retain for a decade, but the Law does not require accounts to be made available in the public part of the register. Quite a few full sets of accounts are available on the websites of registered charities but it is evident that practice in this regard is not uniform. I intend to begin to seek to encourage such transparency.

The Regulations were made on 6 March 2018 and came into force on 1 May

(ii) Charities (Restricted Section of Register) (Jersey) Order 2018 (R&O.60/2018):

this Order establishes the conditions for permitting the registration of an entity in the 'restricted section' of the public register. In this case, a registered charity is identified only by its registration number, and neither its address nor the names of its governors are made publicly known. Statements of charitable purposes and public benefit, however, are nonetheless required to be publicly available, needing to be written in a manner that avoids revealing the identity of the entity

The essential condition for restricted registration is, in summary, that the entity in question undertakes to refrain from soliciting donations from the general public. There are some exceptions for connected persons. The Commissioner may refuse a restriction request if, in the exceptional circumstances of that request, he or she considers that accepting it for registration would prejudice her or his duty to seek to protect public trust and confidence in registered charities.

The Order was made on 26 April 2018, also coming into force on the following 1 May

(iii) Charities (Additional Information) (Jersey) Order 2018 (R&O.59/2018):

this Order sets out certain items of information that the Commissioner must include in the public part of the register, notably the core financial information described above and details of any payments made, or intended to be made, to governors of the charity. It also requires the same information to be provided in annual returns.

The Order was made and came into force on the same dates as (ii) above



(iv) Charities (Transitional Provisions)(Jersey) Regulations 2018 (R&O.18/2018):

these Regulations brought into force Art.41 of the Law, which amends Art.115(a) of the Income Tax (Jersey) Law 1961. The Regulations were made on 6 March 2018 and came into force on 1 January 2019.

These Regulations establish a transitional period of one year, that is to say, 2019, during which an entity previously entitled to exemption from income tax and other taxes by virtue of charitable status as confirmed by the Comptroller of Taxes continues to be so exempt for that one year. This is provided that the entity had, by 31 December 2018, applied to the Commissioner for registration as a charity, which application had not yet been determined or withdrawn.

The purpose of this is to allow time for applications to be determined without applicant entities, previously entitled to tax exemption, losing that status as they wait for a determination by the Commissioner. The effect was to make 31 December 2018 come to be seen as a *de facto* application deadline for everyone, which is why there was such a spike in applications towards the end of the year.

(The 36 charities on the register at 31 December 2018 were duly notified to the Comptroller at the beginning of January, and their existing exemptions thus continue unaffected by the transitional arrangement. Applications currently being processed are notified to the Comptroller upon approval, so that the benefit of the transitional provision will gradually apply to fewer entities as 2019 goes by.)

7. These four items of secondary legislation may, for convenience, be viewed on the Commissioner's website.

### **Guidance on the Operation of the Law**

8. One of my principal duties is to publish and maintain guidance on the operation of the Law. This includes, in particular, guidance on the charity test, to which I (and anyone else) must have regard in determining the test in each case. I issued a consultation draft of this in February 2018. Having received some good, although not numerous, comments, and, importantly, no significant disapprobation of the main aspects of the draft guidance having emerged, I published the final version on 21 May, intitled as Guidance Note 2.

9. Following the same procedure, I had already, a month earlier, published Guidance Note 1. This was an introduction to the guidance note series and mainly rehearsed the framework of the Law and aspects of the legal background to it. It noted in particular the derivation of the charity test in Jersey from the Charities and Trustee Investment (Scotland) Act 2005 (an Act of the Scottish Parliament), albeit with certain differences, and sought to indicate how key provisions of the Law are rooted in the English common law of charity, which the Royal Court has in a past leading case confirmed provides 'valuable guidance' to it.

10. In July, similarly, I published Guidance Notes 3a and 3b which put on record the detailed provisions of the Law on the application process for registration, in the general and restricted sections of the register respectively. Further guidance notes will



follow during 2019, notably on the duties and responsibilities of charity governors once registration is done and on the rules for annual returns.

11. All the Guidance Notes, and other information materials, are to be found on the Commissioner's website. All applicants for registration are encouraged to regard them, and they are duly 'signposted' from the online application form.

## **Resources**

12. The Law provides that no charge shall be levied on any person applying for registration or wishing to consult the public part of the register. The Minister is required to provide such accommodation and equipment as he or she thinks is necessary for the proper and effective discharge of the Commissioner's functions; and the cost of this, and staff, is to be met from the public purse. Arrangements on this were satisfactorily concluded with the Ministry and the financial resources consequently made available to me were sufficient for what had, and has, to be done. Those arrangements continue to obtain in 2019, satisfactorily. It is my policy in any event to run a tight ship but, looking ahead to 2020, I do need to continue to seek to ensure that our staff resources, although still small, are sufficient and offer the right mix of skills and experience, so that we can do properly the job the States has ordered to be done.

13. In 2018, the costs of the Commissioner and his office were £148,000. The lion's share of this, 75%, was for remuneration, and most of the remainder was for office, equipment, and systems development costs. Our small office at 31 Broad Street was occupied on favourable terms as we took over an unexpired lease from another statutory body which had outgrown it. Two journeys were made abroad, one to Dundee in order to meet and consult with the Scottish Charity Regulator and one to London to see the England and Wales Charity Commission. Keeping such links in repair will be valuable to us. I myself was able to combine both those journeys with other business in order to keep the cost to the taxpayer to the minimum.

14. A key focus in 2018 was necessarily the computer systems required for the online applications and registration process. In brief, these have deliberately been built separately from government systems and are hosted independently of the latter. The Commissioner's website, registry and portal contain cross-referencing links in order to provide a seamless user experience with end-to-end online management from application to certification. The portal hosts a range of electronic services for both registered and anonymous users. Citizens can access and search the public part of the register, while entities are able to submit registration applications and then, in the guise of registered charities, file submissions (such as annual returns or notifications of new governors) throughout the complete 'life-cycle' of the charity.

15. In addition to myself (who is appointed on a part-time basis through a contract for services with the Minister), Nicky Martini was appointed as our Office Manager from August 2018 (also part-time, combining the role with a similar one for another branch of the public service). Richard Jouault served throughout the year as the Commissioner's Executive Officer, combining the role with other duties as a senior civil servant. Valuable and wise support was received from Louise Richardson, who also occupies a senior position in the civil service. Help was also provided for a while by Emma Oxenham, who chanced to be studying for a master's degree in charity



regulation at a leading university in London. This small team gave us a good blend of operational effectiveness and analytical capacity, and sufficiency in both to get us off the starting line. Everyone has learnt as they have gone along, and I include in this the learning we have been able to receive from many good people in the charity sector itself whose insight and experience has often been a fruitful contributor to the development of our policy.

16. The Law provides that when any States employee performs a function under the direction of the Commissioner, that person is to be treated as a member of the Commissioner's staff for the purposes of the Law. Thus, through sensible work-sharing arrangements, is the independence of the Commissioner preserved while receiving support from the civil service. But it does also underline the pressures faced by the first-rate people who comprise the core of Jersey's small public service, who can expect to be faced with multiple roles under what one might term 'whole country' demands, and whose excellence and diligence is far too often unsung in local public commentary.

17. I take this opportunity earnestly to thank my colleagues named above, and others in the public service, who worked really hard during the year to get things up and running so that I was able to begin fulfilling the mandate given by the legislature to the holder of my office.

### **Applications for Registration**

18. The door was opened for applications on 1 May 2018, coincident with the entry into force of the Orders described at paragraph 6 above. Richard Jouault had already been working with several potential applicants on dummy runs to test the online process that we had commissioned, and applications from those were among the first that we received. It was at this point too that there was a final review of Guidance Note 2 on the charity test before its publication on 21 May, in the light of the consultation on it that had been in train in February and March. We were keen to tell applicants that they need not rush, and that we were very happy to go over their applications in draft to help them – and indeed us – ensure that things were gotten right. I believe that this interaction was appreciated, and it certainly helped us to hone the applications process and the way the system should be set in order to make things go well.

19. The reasons for telling people there was no need to rush were threefold. First, the transitional arrangements on tax were in place; this gave assurance that as long as applications for registration were submitted by the end of the year, existing exemptions would be preserved for 2019 where a determination of the application had not been made during 2018. Secondly, we were conscious that it would take a bit of time to understand how best to consider applications once received, and especially how the charity test should properly and consistently be applied to what it was immediately clear would be a wide variety of entities and range of situations.

20. Thirdly, it was apparent even from the dummy runs that a fair number of applications were unlikely to be entirely straightforward. This might simply be because the information supplied was incomplete or the draft statements of charitable purpose and public benefit, that the Commissioner had to approve for entry in the public part of the register, infelicitous or uninformative, or maybe wanting in some other way. But it was also because it was soon evident that not all applications, at least in the form in which they had been submitted, looked to be in a position to meet the charity test.



21. The main problematic issues emerged quite quickly and included, for example:
- objects that were not, or might not be, exclusively charitable according to the Law, even though they had been accepted as such in the past (or, rather, not questioned) for tax exemption purposes. This included objects that might be intrinsically hard to implement, perhaps for being old-fashioned or awry in the face of modern conditions, or cast too broadly or imprecisely
  - claimed public benefit that might not be, or in some cases maybe clearly was not, entirely in line with giving effect to the stated objects
  - inability in some instances to show delivery of benefit in respect of all objects
  - uncertainty, or at least a question-mark based on the information provided, as to whether public benefit was being, or would be, provided to a reasonable degree (as required by the charity test and explained at some length in the guidance). In short, was enough actually being done and delivered in relation to the assets and scale of the entity?
  - prevalence in some cases of private benefit, within what was claimed to be public benefit, that appeared possibly to go beyond the incidental
  - undue restriction on access to benefit because of, say, restrictive membership schemes or untoward fees; and
  - the claimed provision of public benefit to some where it could be argued that there was an equal and opposite 'disbenefit' to others.

All these are things for consideration that flow from the way that the Law prescribes the charity test. They are all rooted in the common law of charity.

22. It is fair to say that in many, if not most or all, cases, to the extent that such things have emerged in applications they generally represent sins of omission not commission. With the passage of time constitutions may have been tucked away (and sometimes were rather hard to find again) and perhaps practices or activities of one kind or another had developed in a somewhat loose, but nonetheless not improper, way, in the sense that they were no doubt in response to perceived needs even if a bit athwart from stated objects. And some objects may have been overlooked altogether. All this can, and will, be managed but it does have the potential to sit a little ill with the directness, as it might be put, of the charity test, whose meeting the Law requires through the demonstrable matching of public benefit delivery with, and to, a charity's objects.

23. In many instances these kinds of issues are going to be resolvable through dialogue and further information, and through shared understanding of exactly what a given entity actually does. Or it may emerge that they are small in the context of the entire activity of an organisation. The test, and my guidance, gives me some discretion here, where things are purely ancillary or incidental to the main. On the other hand it may be that some types of organisations, or some operating in particular areas, are, almost by definition, not working in what has now become the statutory charitable space.



There are also a few entities that may well be in line to be approved for registration but for a statutory constraint such as ministerial control or constitutional provisions that require one or more of trustees to be members of the legislature or ministry. (Such provisions were imported by the States from the Scottish law.) For a number of applications, however, the problems do look as if they may be rather egregious. Consideration of those is ongoing and some more may emerge in the next period. As already noted, no application has yet been rejected; avenues to full understanding of the exact situation must be explored, and exhausted, first. But there will, I am sure, in coming months be some applications that it will be my duty to reject. If or when I do, I shall naturally give reasons, and my decisions will be subject to appeal to the Charity Tribunal.

24. The underlying truism here is that the charity test is not a formality. The States, in adopting a model from Scottish law which, somewhat unlike the position obtaining in England (and, perhaps confusingly, in Jersey too in respect of charitable trusts under the Trusts (Jersey) Law 1984 which are not seeking registration under the new arrangements), thereby put quite an onus on applicant entities to demonstrate at the outset, in an overt way, that their purposes were indeed charitable, whatever the historical position or happenstance over time, and that they delivered public benefit in the way, and subject to the rules, set out in the Law.

25. For many applicants, so far, this is not much of a problem, or indeed a problem at all, since their credentials are good, although in all cases careful prose on the part of their governors is warranted in order to describe with precision what their charities actually do, or plan to do. I suspect, however, that there were a few people who, as the legislation was developed, thought that, to all intents and purposes, the charity test might not be too far from being a formality; and such a view may perhaps have been influenced by what happened in Scotland in 2005, where the register was established without a requirement, such as has been imposed in Jersey, for all existing charities, as defined, to apply for registration afresh. In Scotland the charity test looks as if it is having to be tested, so to speak, over time, through the medium of annual returns and the Regulator's duty to keep the register under review. That offers the prospect of slow progress given that the register there has 20,000 entries or so.

26. Making the case for meeting the charity test, where it may not be obvious from the information first provided, is being worked on as we go along, in dialogue with applicants in turn. Many whose initial applications I was duty bound to query will meet the test but it is something on which I must be satisfied in each case if I am to meet my own duty to protect public trust and confidence in registered charities. In some cases I expect that, upon registration, I shall draw attention to what could maybe be described as a low pass mark, which would imply my being particularly vigilant when the first one or two annual returns are submitted in order to be sure that commitments made on public benefit have been kept and that the test continues to be met. This would be in line with the duty on charity governors in the Law to act in a manner consistent with the registered statements attaching to their charities and my power to require improvement if the test does not continue to be met. This is at the heart of the whole scheme. An entity should not be registered, whatever its circumstances, history or fame, if all its purposes are not exclusively charitable and if it is not, in the requisite manner, delivering public benefit as the legislature has defined it; and it will not be. As already observed, I believe that during 2019 there will, accordingly, be some applications for registration that are rejected but, equally, I do not think it will be a



very large number. Making good sense of the charity test is an art not a science and has to do, too, with my own learning, which has progressed as I have met with (now) quite a lot of applicants; and that is a key reason why I have in no instance wanted to rush to judgement.

## **Applications and Approvals Data**

27. At 31 December 2018 the position was as follows:

**434 applications had been received** of which 404 were for the general section and 30 for the restricted. 343 of these (79%) were received in November and December

**36 applications had been approved for registration** (of which two were restricted)

**None had been rejected or withdrawn**

**About a further 100 were 'in play' with applicants after initial consideration**, usually requiring further information or clarification to enable a determination of the charity test to be made

28. One point to note on the number of applications is that in quite a few instances there is more than one application per organisation. This is where, for example, there may be one trust holding property and another operating the business carried on at or in that property; or where there may be a more complex structure to meet particular needs. My judgement at present (but that's all it is for now) is that we shall end up at the end of the initial registration process with, in effect, about 350 or so registered charities which are able to be regarded as one, even though the number of entries on the register may be greater than that.

29. Looking only at the 36 registered charities as at 31 December 2018, the total value of the current and fixed assets held by them, broadly at the point of the registration of each and by reference to the core financial information they provided with their applications, was reported to me as being, in aggregate, some £76 million. The cohort is too small for meaningful further breakdown of that figure but it can already be discerned from the public register as it stands now that registered charities come in all shapes and sizes, and, taken together, dispose of considerable funds. It should be remarked in passing that a number of larger charities in fact disburse some of their resources among smaller and so there may be some double-counting in any such estimates. We shall have fuller knowledge in a year's time.

30. Among the 36, the principal statutory charitable purposes to which they are devoted are the *relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage* (this includes *relief given by the provision of accommodation or care*), *the advancement of health* and *the advancement of education*. The first of these is quite often combined with either the second or third. Each of these purposes has a wide canvas and, again, it would be premature to draw conclusions from this small, initial, group. The best way to learn about the purposes and operations of registered charities in the aggregate will be to scroll through the



statements of purpose and public benefit now to be found in the public part of the register.

31. Again taking the 36, 21 operate only in Jersey, 11 operate in both Jersey and the United Kingdom and four operate abroad although based in Jersey.

## **Learning and Communications**

32. I have already touched on the tremendous importance of this. For my own part as Commissioner, not only have I sought to steep myself in the intricacies both of the Law itself (and at 44 articles and two schedules it is intricate) and charity law generally, English and Scottish as well as relevant Jersey cases, but also I have had the opportunity to meet many people involved in the charity sector, in the country as well as in the UK, and to endeavour to communicate the essentials of the new regulatory regime, in which I find that many people are really very interested, and get feedback on it all. And how much does one thus learn about how much good, dedicated and voluntary work there is that goes on day by day, sometimes against odds! As this process of learning progresses, and I believe I speak for all the team, one definitely becomes more agile, adroit even, in addressing the individualities and peculiarities of each case; and in fact it has proved to be a good way of working to have given some applications, those generally that are not wholly straightforward, an initial consideration followed a while later by a second go, usually once extra insight from dialogue or further written materials has been gleaned. One learns, for instance, that while accounts may tell certain tales about activity undertaken, they don't always tell others. There is also, not surprisingly, a good deal of read-across from many cases one to the other. I sense that we are getting better all the time at actually dealing with cases appropriately and consistently, which is important for the period ahead.

33. I think that this learning is being shared by leaders in the charity sector itself and the professions that provide services to it. The implications of the new Law, and especially the requirement for established entities to apply for registration from scratch, have taken some time to get into people's consciousness but things seem to be changing for the governance of the whole sector as a result. This is not least because the requirement to apply for registration has obliged all those concerned to stop and think about governance, objects, purposes and, above all, outcomes from what they strive to do. I suppose it could all be characterised as a bit of a shake-up, which could be said to be usually a good thing from time to time in civil society. And if it also represents, or points towards, a certain revivification of the charity sector as a whole, then also well and good.

## **Where Things are Now, and Looking Ahead**

34. Although this is a report about 2018 it would hardly be duteous not to touch on progress to date (30 April 2019) and to look ahead briefly to the next period, which will be dominated on the one hand by the work necessary to determine all outstanding applications and on the other by putting in place the beginnings of the permanent system of monitoring registered charities and maintaining the public register – that is to say, putting on a long-lasting footing that which is necessary to ensure that public trust and confidence in registered charities is protected and sustained, and, as far as possible, can be seen to be. It would be strange if there were not some challenges ahead in doing this.



35. First, the resolution of applications is moving fairly steadily in the right direction. There are now 103 registered charities in the public part of the register (of which three are restricted) and I have already approved another 20 or so that will be registered in the next week or two. I expect a fair further number of registrations during May and June. The act of registration itself requires care, even once an application is approved, and we have instituted a 'four eyes' process for uploading anything to the register so that its accuracy is, as far as can be done, unquestionable.

36. Since the beginning of 2019 there have been 24 further applications on top of the 434 at the year's end. There have been four withdrawals. That means, taking account of the figures in the paragraph above, that at 1 May 2019 there will be some 330 still awaiting determination. Most of these, of course, are 2018 applications for which the transitional tax exemption was designed.

37. It is indubitable but that to get through such a number in the remaining two-thirds of 2019 presents a challenge. We shall have work hard and diligently to seek to get across the line. I do not think that part of the solution is simply 'more resources', which is so often these days the *cri-de-coeur*, but I am anxious to ensure that I am able keep that which I currently have in the face of pressure, which never really goes away, for its diversion to other arms of public service. If that came to pass it would certainly slow things down, and so I would resist it. The issue is that a goodly number of cases are requiring a fair amount of work mainly because the information presented is insufficient or unsatisfactory, for whatever reason, for the purposes of determining the charity test. This ranges from simple things like a need to obtain up to date accounts to harder ones where, say, the given charitable purposes appear to be either not charitable, or not exclusively so, or out of line with the activity that is actually being delivered. In such situations there may sometimes even be a need for objects to be rewritten or business plans changed, if rectification is practicable. These are rarely things amenable to hurriedness. In other cases, for example, there may well be a need on my part to consider whether restrictions on access to benefit may be undue, perhaps on account of cost; this kind of issue invariably requires iteration with the entity, perhaps over several rounds. That is, though, how casework in any regulatory sphere tends to go when decision-making requires the exercise of judgement and our task is to deal with it. But I am conscious all such things can slow down the overall rate of progress and it is important that I flag that.

38. One or two interested parties (but who or which could maybe have a vested interest) have suggested that if there is indeed a problem arising from the volume of applications the approach to registration should be changed such that existing charities (no doubt, as defined by reference to existing tax exemption status as granted by the Comptroller over the years) should be automatically registered without having to make an application from scratch – that is to say, the Scottish approach. The big drawback there, of course, was that the public was faced with a new, large, register in which it didn't know whether or not it could have entire confidence as to the *bona fides* of all the entries in it, and, crucially, the Regulator ditto. Its, the latter's, reviewing all the entries *post hoc* will be the work of decades. In England and Wales things are different: in essence, the decision on whether an entity is charitable is very much for trustees themselves, in which case they must register their entity. But that doesn't work where the role of a regulator in that decision is mandated, as in Jersey (and, of course, Scotland). Nor could it readily fit the concept of the restricted register which



the States, wisely, decided should be a feature of Jersey's regulatory scheme for reasons of economic policy. And nor might such an adjustment, which would certainly be a fundamental one, find favour with the great majority of applicants which would have had their applications for registration approved long before such a change could even be begun to be progressed, even as it might find favour with those who fail, or think they may fail, to meet the *ante hoc* charity test. As already indicated, if there is a challenge during 2019 from the volume and complexity of applications – and of course there will be – then the best remedy is for my team and me to work harder to get through them, without, of course, in any way compromising the quality of decision-making. But I raise the matter here since I am aware that it has lately been a topic of discussion among some with an interest.

39. There is, however, arguably a slight anomaly in the transitional tax rules in that if during 2019 I reject an application for registration and the applicant appeals to the Tribunal against my determination, the transitional relief may continue beyond 2019 until the appeal is resolved. But the relief ends in December 2019 if a given application is simply undetermined at that point, whether the reason is my having failed to deal with it in a timely way or a genuine need for more work on an applicant's part in order to get over the charity test hurdle.

40. For many entities the tax benefits of registration are fortunately marginal but one can see that it could be problematic at the end of 2019 if there was a residual group of applications, undetermined for whatever reason, whose exemptions expired, while there was another group whose applications had been rejected but whose exemptions perhaps carried on into a possibly lengthy appeal phase, merely because of the fact of an appeal (for which course of action there might be little disincentive since the process would impose no direct costs on an appellant). Whether or not such a situation, if it came to pass, could be characterised as a consequence of 'resources', the inherent unfairness it possibly suggests might not, perhaps, make for the best public policy. In truth the position is not clear at the moment and it may turn out to be perfectly manageable; but I shall keep the issue under review in the next months to see whether I would be justified in requesting the Minister to consider the case for instituting a plan to address the matter, as a contingency. In the meantime, notwithstanding, we are aiming to step up our work rate so that, if later in the year it looks as if there may be a residual number of undetermined 'hard' cases, it will be as small as possible.

41. One other thing to look forward to, starting in September 2019 but gathering pace only in 2020, is the first round of annual returns. All registered charities will be obliged to submit a return once a year and this will be the principal means by which the basic information in the register is kept up to date, and indeed, the register's continuing legitimacy is preserved. The process each year will also involve fresh public benefit statements that set out, succinctly but pellucidly, what a charity has done in the year past and how that matches its objects. Annual returns will be the key tool in the Commissioner's work-box for checking, over time, that registered charities are continuing to meet the terms of the charity test by which they were registered in the first place. The Law gives the Commissioner certain powers to require this of the governors of registered charities and the assessment of returns will become the main ongoing regulatory task once the applications for registration are done. I shall be issuing a draft guidance note on this subject, probably in July, for public consultation.



## Conclusion

42. In 2018 good progress was made across all fronts in developing the regulatory scheme for charities in Jersey envisioned by the passage of the Law in 2014, when, broadly, it was well received by almost everybody who had a point of view on it. The charity register was made ready and began to operate, necessary secondary legislation was put in place, guidance on the operation of the Law was published, and resources secured to get things going well. By the end of the year, no less than 434 applications for registration had been made, perhaps a slightly remarkable number for so small a country, and the process of registration was in train.

43. Some remembrance is warranted that the purpose of the exercise is not regulation for its own sake but for the protection of public trust and confidence in the country's charities. That is what the Law says about the Commissioner's role and it a genuinely important objective for the health of Jersey's civil society. Already at the end of 2018 the register revealed assets available to, then, but 36 Jersey registered charities which were nearer a hundred than fifty million pounds; extrapolating that to the likely eventual steady-state number of registrations, say, somewhere between 350 and 400, the asset base of the charity sector may, overall, be a billion pounds. We never quite knew this, and the details will have to wait for another year, but it may go some way to explaining why the voluntary sector in the country is, generally speaking, as vibrant and varied as it is, even as the taxpayer struggles to fund so much else.

44. Certain events a little while ago in England served to reveal that public trust and confidence in charities is something whose hanging thread can be quite slender and prone to unravel or snap if stressed. It was therefore quite good to look at what the Jersey Opinions and Lifestyle Survey, published on 6 December 2018 by Statistics Jersey, had to say on the subject. It shewed that 71% of adults in the country 'had confidence in Jersey charities' (and that is before registration had barely begun), and that compared with, for example, 58% for the Judiciary, 37% for the 'media' and only 28% for 'government'. 11%, compared with the 71%, said that they did not have such confidence, and 19% didn't know. There was other interesting data in the survey on the quantum of giving to charity (for instance, 70% of people had given cash or bought lottery tickets) and about the prevalence of volunteering, neither of which was inconsiderable in scale.

45. The latest Charitable Giving Survey by Island Global Research, a leading local market research company, published on 8 April 2019, bears out the official view, notably the basic 'trust and confidence' statistic, albeit in respect of 'local' charities rather than UK or international ones. 89% of people in Jersey, moreover, thought that charities made an important or very important contribution to their country. But 71% of respondents said, perhaps not surprisingly, that "not being clear how the money received was being spent" would discourage them from giving. People in Jersey were uneasy about persistent fundraising, too little money raised actually going to the given causes, and 'too much money being spent on staff salaries' (in each case over half of respondents cited these). The company's overall conclusion from its survey was that local charities should be encouraged by the findings, though not complacent. Who could not say hurrah to both clauses of that sentence?

46. For instant purposes, both these surveys touch to a fair degree on the issue of 'public trust and confidence' that lies at the heart of the new arrangements in Jersey.



At the moment it is evidently reasonably good but the thread is obviously quite slender and it might, who knows, take only one or two bad episodes to weaken it to a breaking point. The survey results, though, do offer some comfort that the modest but sensible regulatory arrangements for Jersey charities that we are now building, together with the transparency afforded by registration, are policy changes pointing in exactly the right direction, towards that crucial end of protecting public trust and confidence by enabling people to see for themselves what charities are about. That's a very good reason for us to keep at our mandate and, with resolve, together with goodwill and flexibility from all parties, address and overcome any challenges and difficulties along the way.

A handwritten signature in black ink, appearing to be 'JM' followed by a stylized flourish.

John Mills  
Charity Commissioner  
30 April 2019