

Charities consultation
Cyril Le Marquand House
PO Box 140
St Helier
Jersey
JE4 8QT

30 August 2013
Via email: charities@gov.je

Dear Sir,

Developing charities law and regulation in Jersey

I am pleased to submit the Institute's response to the above consultation and trust the comments are useful to your deliberations on the development of charity law and regulation in Jersey.

About ICOSA

The Institute of Chartered Secretaries and Administrators (ICSA) is the professional body qualifying and supporting governance and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, HR, company law, administration and governance, which enable them to add value to any organisation.

ICSA is a leading international voice on corporate governance and delivers a professional education that gains its strength in the breadth of the syllabus. The qualification is designed to assist boards and work with senior managers to identify and maximise opportunities within relevant legal frameworks and established best practice.

The Institute has some 10% of UK Members directly employed in the not for profit sector, with many more involved on a voluntary basis in capacities such as trustees and school governors. In formulating the Institute's response to the above consultation document, Members were approached for their views given the depth of their knowledge of the sector, complying with relevant legislation and the importance of sound governance arrangements in effecting a change within the communities they operate.

General comments

ICSA welcomes the opportunity to comment on the States of Jersey consultation regarding the development of charity law and regulation. Given our experience and input into charity law development in England, Wales, Scotland, Northern Ireland, and Eire we believe we are well placed to inform your thinking regarding the introduction of formal registration and regulation of charities in Jersey.

It appears that charity law in Jersey has been based on many of the statutes that influenced charity law in Britain, and as such needs to be updated to reflect modern society. When considering the options available to the States of Jersey, ICOSA would urge greater thought as to the impact of the legislation and regulation on those charities that operate across national boundaries. Wherever possible, we would recommend that regulatory activity makes the most of cross-border co-operation with other regulatory bodies (Charity Commission, OSCR, Companies House etc).

By undertaking collaborative arrangements with relevant organisations, the aim would be to minimise unnecessary bureaucracy on charities, limit the opportunity for confusion amongst the public, and to ensure that regulation is proportionate and risk focussed.

Response to consultation questions

Definition of charity:

Q1. Do you think the legal definition of charity should be updated?

The dual approach of maintaining fluidity and flexibility in the evolution of what constitutes a charity and charitable purposes is to be commended by keeping the wealth of experience generated by case law and by not establishing a fixed definition of charity in legislation.

Q2. Do you agree with the proposed list of charitable purposes?

The 16 heads of charity are a welcome development and it is noted that these are the same as detailed in the Charities and Trustee Investment (Scotland) Act 2005.

Q3. Do you think there is anything missing from the proposed list?

Within the Charities Act 2011, charitable purposes include the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services. Perhaps something similar would be appropriate within the proposed legislation for Jersey?

Q4. Are there things included on the proposed list that should not be?

As mentioned above, the list of charitable purposes reflect those in legislation covering charities in Scotland. As such, the list has been tried and tested in Scotland and other countries that have emulated that legislation.

Registration process:

Q1. Do you think a charities register should be set up in Jersey?

To encourage and maintain public trust in charities, ICSA welcomes the establishment of a charities register in the States of Jersey. We would urge that any introduction of a register, and the attendant regulation, is proportionate to the size of the sector, the charities covered and the risks facing such charities.

Q2. Do you think an organisation should register as a charity in Jersey if it wants to:

- a) Receive charitable tax exemptions?
- b) Call itself a charity?
- c) Make public appeals for charitable donations?

Where an organisation, established as a charity, wishes to benefit from the public purse (in the form of tax exemptions), individuals or foundations, in the form of donations and benefits in kind, it is only appropriate that certain standards of public accountability are met.

In addition to the public accountability of charities registered on a publicly available document and subject to appropriate and proportionate regulation, charities will benefit from formal recognition of their status. Within England and Wales it has been noted that charities below the threshold of registration are keen to register as a charity number provides kudos and legitimacy when applying for funds from organisations and the general public. Likewise, many organisations and individuals will look for a charity registration number before donating.

Formal entry on a charity register is therefore likely to benefit both charities and the wider public by enhancing public trust and confidence.

Q3. Do you think that the proposed information needed to register is appropriate?
ICSA believes that the information required from a charity to register is appropriate.

Q4. Do you think that the proposed information to be made publicly available via the register is appropriate?

It would be appropriate to outline under what circumstances the names of trustees would be kept private. For example, a refuge for the victims of domestic abuse may wish to keep the names and addresses of trustees out of the public domain. This may extend to the premises of the charity itself, where the trustee's address is used as the primary contact.

Q5. Are there any types of charities or organisations that you think should be on the charities register but on a confidential basis?

All organisations that have exclusively charitable purposes and meet the public benefit test should be entered onto the public register. ICSA is unaware of any circumstances which would merit the registration of a charity being kept out of the public domain. However, there will be circumstances where the details of individual trustees of certain types of charity should be kept confidential, as mentioned above.

Q6. Do you think that there should be a single registration process?

A single registration process for charity status and tax exemptions would be of benefit to those organisations that desire the benefits of the tax system.

Charities commissioner:

Q1. Do you think a charities commissioner should be appointed?

The Institute endorses the proposal to appoint a charities commissioner. The objectives of the commissioner should be set out plainly, but in a manner that maintains their relevance over the passage of time.

In all matters relating to the regulation of charities, ICSA would expect that the charities commissioner be encouraged to act proportionately and fairly given the size of the sector. The Institute recommends a requirement for the charities commissioner to have due regard for accepted best practice in good governance for its own affairs and hopes that this is sufficient to encourage the commissioner to adopt those measures that are practical and applicable.

Q2. Do you agree that a charities commissioner should be completely independent of the States of Jersey or any other organisation in Jersey?

ICSA agrees with the proposal that the charities commissioner should be independent of the States of Jersey or any other organisation of the state.

Q3. Do you think a charities commissioner should have the power to:

- a) Decide if an organisation is a charity?
- b) Investigate and remove an organisation from the register if it no longer meets the requirements to be deemed a charity?

Within the stipulations of charity legislation, the charities commissioner should be given the power to decide whether an organisation meets the charitable purposes and public benefit test. Where a charity no longer meets those requirements, and has been given sufficient time to rectify the matter, the commissioner should have the powers to remove the organisation from the register.

Q4. If you have any comments on the proposed appeals process, please tell us.

ICSA welcomes the proposal for an appeals process within the regulation of charities. Any system should be proportionate, cost effective and relatively swift to ensure that limited resources are not unduly committed to a bureaucratic system of appeal.

Trustees:

Q1. Do you think that the duties and responsibilities of charity trustees should be set out in law?

For the benefit of trustees, and potential trustees, it would be advantageous to have the duties and responsibilities of trustees established in law, and preferably in a single piece of legislation. Where other legislation imposes duties on charity trustees, these should be included in charities law, for convenience.

Q2. Do you agree with the proposed basic duties and responsibilities for charity trustees?

ICSA anticipates that the duties of charity trustees in the States of Jersey would be analogous to those in England, Wales, Scotland and Northern Ireland. We would be willing to offer our expertise in drafting guidance for trustees on these duties, and attach a guidance note on the subject for your interest.

Q3. Do you think there should be regulations to ensure charities are not run by a single person or members of the same family?

In order to ensure charities are run in the best interests of the organisation, current and future beneficiaries and in pursuing its charitable objects, we agree that there should be a number of independent charity trustees governing the charity. We would urge that the proposed legislation outline a minimum number of trustees to ensure that decisions are made in an appropriate, sensible and transparent manner.

Q4. Do you think that there should be restrictions on who can act as a charity trustee?

The tax benefit available to charities, along with the public trust and confidence the sector attracts, undoubtedly means that any person in a position of responsibility within the organisation should be seen to be 'fit and proper'. As such, this will mean that some restrictions will be required to ensure that the assets and reputation of the sector are protected.

Regulation:

Q1. Do you think that charities should be regulated?

In principle, charities should be regulated as they benefit from the public purse in the form of tax exemptions, and from the public trust and confidence in the form of donations, gifts in kind and volunteering. Any regulation should, however be proportionate, equitable, fair and targeted on those areas of greatest risk.

Q2. Do you think that charities should provide members of the public with information about how they spend their money?

To encourage and maintain public trust and confidence in the sector, charities should be required to provide the public with information pertaining to their charity's activities, income, expenditure and plans.

Q3. Do you think charities should publish an annual report?

Yes, charities should be required to provide information about their charities income and activities in a manner that is proportionate and meaningful to those wishing to read that information.

It is hoped that the above comments are useful to you in your deliberations relating to the development of the charity register. Should you wish to discuss any points in further detail, or how ICSA may be able to assist you in your endeavours on this topic, please do not hesitate to contact me.

Yours faithfully,

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