



# **ANTI-MONEY LAUNDERING/ COUNTERING THE FINANCING OF TERRORISM STRATEGY GROUP**

## **FEEDBACK ON CONSULTATION PAPER NO. 1 2008**

### **REGISTRATION AND MONITORING OF NON-PROFIT ORGANIZATIONS**

**Proposals to enhance the Island's legislative framework to  
counter the use of non-profit organizations in terrorism**



# CONSULTATION FEEDBACK

This paper reports on the responses received by the Anti-Money Laundering/Countering the Financing of Terrorism Strategy Group (“**the AML/CFT Strategy Group**”) on Consultation Paper No. 1 2008: Registration and monitoring of non-profit organisations.

The AML/CFT Strategy Group would like to thank all respondents for the time they have taken to consider its proposals and for the feedback provided, and issues highlighted, in relation to these proposals. Due to time constraints, the AML/CFT Strategy Group does not propose to reply individually to all respondents, but invites any respondent or interested party to contact it should there be an area requiring further discussion.

A list of respondents to the consultation paper is attached as Appendix A.

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# GLOSSARY OF TERMS

Anti-Money Laundering and Countering the Financing of Terrorism Strategy Group	<b>the AML/CFT Strategy Group</b>
Association of Jersey Charities	<b>the AoJC</b>
Consultation Paper No. 1 2008: Registration and monitoring of non-profit organisations	<b>the consultation paper</b>
Draft Non-Profit Organizations (Jersey) Law 200-	<b>the draft NPO Law</b>
Financial Action Task Force	<b>FATF</b>
Financial Services (Jersey) Law 1998	<b>the Financial Services Law</b>
Jersey Financial Services Commission	<b>the Commission</b>
Minister for Economic Development	<b>the Minister</b>
Non-profit organization	<b>NPO</b>
FATF Special Recommendation VIII	<b>SR VIII</b>
An NPO that has a director or trustee that is registered with the Commission under the Financial Services Law and the director or trustee provides that service as part of its trust company business	<b>regulated NPO</b>
Terrorism (Jersey) Law 2002	<b>Terrorism Law</b>
Trusts (Jersey) Law 1984	<b>Trusts Law</b>
the Collective Investment Funds (Jersey) Law 1988; the Banking Business (Jersey) Law 1991; the Insurance Business (Jersey) Law 1996; and the Financial Services (Jersey) Law 1998	<b>regulatory legislation</b>

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# CONSULTATION FEEDBACK

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# 1 OVERVIEW

## BACKGROUND

- 1.1 In January 2008, the AML/CFT Strategy Group published Consultation Paper No. 1 2008: Registration and monitoring of non-profit organisations (the “**consultation paper**”).
- 1.2 The purpose of the consultation paper was to consult on a proposed legal framework to provide for the registration and monitoring of non-profit organizations (“**NPOs**”) established in, or administered in or from Jersey.
- 1.3 The Island needs such a legal framework to enable it to implement an oversight regime that will meet Financial Action Task Force (“**FATF**”) Special Recommendation VIII (“**SR VIII**”). The FATF is the inter-governmental body responsible for setting international standards for combating money laundering and the financing of terrorism.

## FEEDBACK ON THE CONSULTATION PAPER PROPOSALS

- 1.4 The AML/CFT Strategy Group wishes to thank all respondents for taking the time to consider the policy and draft legislation. A list of those that responded to the consultation paper is provided as Appendix A to this paper.
- 1.5 Considerable feedback has been received on both policy and the draft NPO Law. In total the AML/CFT Strategy Group received 38 responses from 46 respondents - a mixture of NPOs, NPO representative bodies, individual members of the public, and the Jersey Law Commission.
- 1.6 Respondents to the consultation paper provided comments and raised concerns on all aspects of policy and the draft NPO Law, not all of which were covered by the six questions posed in the consultation paper.
- 1.7 The AML/CFT Strategy Group has considered all responses received, which are summarised and presented in this paper in two parts:
  - 1.7.1 Section 2 presents the general comments and concerns raised by respondents, along with the response of the AML/CFT Strategy Group; and
  - 1.7.2 Section 3 presents the comments and concerns raised in response to the six questions posed in the consultation paper, along with the response of the AML/CFT Strategy Group.

## SUBSTANTIVE CHANGES MADE TO THE DRAFT NPO LAW AND PROPOSED POLICY

- 1.8 The AML/CFT Strategy Group has noted the strength of feeling expressed by some sections of the non-profit sector and members of the public and, in formulating its feedback responses and amending the draft NPO Law, it has been mindful of this.

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- 1.9 In particular, very early in the consultation process, the Chief Minister announced that no fees would be charged under the draft NPO Law. This means that the ongoing costs of administering the draft NPO Law will be covered by the Jersey Financial Services Commission (the “**Commission**”).
- 1.10 Also, whereas previously it had been proposed that certain obligations would be placed on all NPOs, e.g. the obligation to prepare and provide a financial statement, “lower risk” NPOs would be relieved of such obligations, and the basis for such relief would be set out in an Order to be made by the Minister, the draft NPO Law reverses this approach - so that certain obligations will be imposed only on “significant NPOs”. See paragraphs 1.14 to 1.17.
- 1.11 In addition, the following substantive changes have been made to the draft NPO Law and proposed policy:
- NPOs with annual income of £1,000 or less will not have to register with the Commission. Nor will they be required to comply with any requirements in the draft NPO Law (see paragraph 2.23).
  - NPOs that are serviced by a person that is registered under the Financial Services (Jersey) Law 1998 (“**Financial Services Law**”) will not be required to register or provide information or documents under the draft NPO Law (see paragraphs 2.27 to 2.28).
  - The definition of NPO now includes a “public benefit” test to ensure that private arrangements are excluded from the scope of the draft NPO Law.
  - The format of the application form is set by the draft NPO Law (in a schedule to the law). It will be possible for the States of Jersey (the “**States**”) to amend this form by Regulations (see paragraph 2.34).
  - The draft NPO Law will provide for NPOs that are part of a group or affiliation to submit one application for registration that covers all of the NPOs in the group or affiliation.
  - NPOs will have up to three months (rather than 28 days) to notify the Commission of changes to the information previously submitted to the Commission.
  - The requirement for all NPOs to submit a financial statement (where already prepared) before registration has been removed (and also, consequently, the Minister’s power to limit the application of this requirement).
  - Only “significant NPOs” (see 1.14 to 1.17) will be required to submit a financial statement to the Commission after registration, and submit details of officers to the Commission and members of the public after registration.
  - The Commission will have the power to require provision of financial records - but only in order to determine if an NPO is assisting or being used to assist terrorism. See paragraphs 1.18 to 1.21. The draft NPO Law no longer provides the Attorney General or States Police Force with additional powers - as both will rely on powers under existing legislation.

- An NPO cannot be found guilty of an offence for failing to comply with an obligation under the draft NPO Law where it has a reasonable excuse for the failure (see paragraphs 2.48 to 2.51). This is particularly relevant where an NPO has failed to update the information that it has previously submitted to the Commission – where the Commission will not refer such a matter to the Attorney General if there has been a genuine administrative oversight. At the time of publication of this feedback paper, some other changes to Part 4 (offences) of the draft NPO Law were under consideration.
- Where an NPO (whether incorporated or unincorporated) commits an offence under the draft NPO Law, individual officers or individual members of the NPO can only be found criminally liable for the offence where it is proved that it was committed with their consent or negligence (see paragraph 2.52).
- The Commission will not have the power to de-register an NPO (except where asked to do so by an NPO or ordered to do so by the Royal Court or the Minister for Economic Development (“**Minister**”)) (see paragraph 2.55).
- The Trusts (Jersey) Law 1984 (“**Trusts Law**”) will not be amended to make a Jersey trust that is an NPO invalid unless it is registered under the draft NPO Law.
- All information provided to the Commission will be held on a private basis (although, where any person enquires of the Commission as to whether a specific NPO is registered, the draft NPO Law will require the Commission to advise that person: (i) whether the name of the NPO appears in the register; and if it does - (ii) the registration number of the NPO; and (iii) how to contact the NPO).

1.12 Appendix C to this paper provides a summary of the obligations placed on NPOs in the draft NPO Law, including those NPOs raising funds equal to or less than £1,000 and regulated NPOs.

1.13 A current draft of the NPO Law (as it stands at the time of publication of this paper) is attached as Appendix D.

## SIGNIFICANT NPOS

1.14 Following registration, the draft NPO Law provides for certain additional obligations to apply to NPOs (or classes thereof) (but not regulated NPOs) that are prescribed by an Order of the Minister. These obligations are considered in section 5 and are to provide:

1.14.1 the Commission with a financial statement;

1.14.2 the Commission with additional prescribed information; and

1.14.3 any member of the public with additional prescribed information – upon request.

1.15 SR VIII says that countries should pay particular attention to NPOs that account for a significant portion of the funds under control of the NPO sector and also a substantial share of the sector’s international activities. This means that the relevant Orders of the Minister that will set additional obligations are likely to name the individual NPOs that will have to



provide a financial statement and additional information (details of officers) – once the size of the NPO sector in Jersey (domestic and international) has been established.

- 1.16 Notwithstanding this, it is clear that certain types of NPO will not be prescribed. These are:
- 1.16.1 Those NPOs that disburse funds (which may be net of expenses incurred in operating the NPO) only to benefit residents of Jersey<sup>1</sup>, benefit other NPOs that are registered in Jersey<sup>2</sup>, deliver a form of public entertainment<sup>3</sup> in or from within Jersey, or invest in and maintain land and immovable property in Jersey - on the basis that these operations are purely domestic.
  - 1.16.2 Those NPOs that are established to fund a branch, parent body or affiliate<sup>4</sup> NPO that is registered as a charity or NPO in another part of the British Isles - on the basis that the ultimate disbursement of such funds is controlled by that branch, parent, or affiliate.
  - 1.16.3 Those NPOs that are part of a church that is established (or a part of it is established) in the British Isles, which disburse funds to that church (on the basis that the ultimate disbursement of such funds is controlled by that church), and which may also make modest donations to charitable causes outside the British Isles.
  - 1.16.4 Those NPOs that provide physical commodities<sup>5</sup> outside Jersey (for example, “shoebox” appeals) - on the basis that the monetary value of such commodities is unlikely to be significant.
  - 1.16.5 Those NPOs that are established by a law of the States and which are accountable to the States - on the basis that there is no need to duplicate supervision and monitoring (which will already be exercised by the States). This will include the Overseas Aid Commission.
  - 1.16.6 Those NPOs that are registered as a charity or NPO elsewhere in the British Isles - on the basis that the disbursement of funds (within the British Isles or elsewhere) is likely to be controlled by that other charity.
- 1.17 Subsequent references to the term “significant NPO” should be understood as referring to an NPO that will be prescribed – based on paragraphs 1.14 to 1.16.

## COMMISSION’S OVERSIGHT ROLE

- 1.18 The draft NPO Law provides for the Commission to help to determine if an NPO is assisting or being used to assist terrorism.
- 1.19 In particular, the draft NPO Law provides for the Commission with powers to:

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<sup>1</sup> Disbursement may be direct, or indirect, e.g. to pay for goods or services to be used by a beneficiary.

<sup>2</sup> This will include service clubs, such as Lions and Rotary, which raise funds for the benefit of other NPOs.

<sup>3</sup> This will include performances of theatrical and musical societies and agricultural and horticultural shows.

<sup>4</sup> An ‘affiliate’ NPO will be one that recognises the Jersey NPO as an official fundraiser on its behalf.

<sup>5</sup> Excluding any form of weapon (or spare parts thereto), ammunition, armour and/or controlled drug.

- 1.19.1 request additional information and documents at the time of registration – where this is necessary and reasonable to enable it to assess the extent to which (if any) an NPO could be, or is being used to facilitate terrorism;
  - 1.19.2 request financial records to enable the Commission to carry out its functions under the draft NPO Law, again where this is necessary and reasonable; and
  - 1.19.3 request the person that has provided the financial records, or any person that appears to be in possession of relevant information, to provide an explanation of the records.
- 1.20 In fulfilling its functions, it is anticipated that the Commission will exercise its powers on a reactive basis, and it is not intended that its powers should be routinely applied.
- 1.21 Further, the draft NPO Law does not provide the Commission with a power to enter premises - and its oversight will be desk-based.

### **CHARITIES COMMISSION**

- 1.22 In March 2008, the States agreed to a request for the Chief Minister to undertake a feasibility study into the creation of a Jersey charities commission.
- 1.23 If the study proposes the creation of such a commission, then full consideration will be given to:
- 1.23.1 folding the draft NPO Law into the legislation that would establish a charities commission; and
  - 1.23.2 giving the charities commission (instead of the Jersey Financial Services Commission) the role of helping to determine if an NPO is assisting or being used to assist terrorism.

### **ONLINE FILING**

- 1.24 In order to facilitate the submission of registration information to the Commission (and any subsequent changes), it will be possible to submit such information and changes electronically.

### **SUBORDINATE LEGISLATION**

- 1.25 If the States considers it appropriate to approve the draft NPO Law in its current format, the Minister will – once the law has been registered – have the power to make a number of Orders. Section 5 describes the Orders that the AML/CFT Strategy Group intends to recommend to the Minister.
- 1.26 Before any of the Orders referred to in section 5 are recommended to the Minister, the AML/CFT Strategy Group will consult publicly on their content.

**IMPACT OF THE DRAFT NPO LAW ON INDIVIDUALS**

- 1.27 The draft NPO Law will have no impact on individuals that organise or participate in fund-raising events for NPOs.

**IMPLEMENTATION IN OTHER JURISDICTIONS**

- 1.28 In finalising the draft NPO Law, regard has been had to the position in the following jurisdictions: the Bahamas, Bermuda, the Cayman Islands, England and Wales, Gibraltar, Guernsey, Ireland, the Isle of Man, and Singapore.
- 1.29 The Bahamas and the Cayman Islands do not have legislation in place that requires NPOs to register. All of the other jurisdictions, with the exception of Guernsey, rely on charities legislation and a charities commission (or are proposing to introduce such legislation and establish such a commission). Guernsey has implemented SR VIII in a similar way to Jersey, but using the Administrator of Income Tax to register and monitor, rather than the Guernsey Financial Services Commission.

## 2 SUMMARY OF RESPONSES RECEIVED – GENERAL COMMENTS

- 2.1 As mentioned in paragraph 1.6 respondents to the consultation paper did not restrict themselves to providing responses to the questions posed by the AML/CFT Strategy Group in the consultation paper. Respondents provided comments and raised concerns on both policy proposals and the draft NPO Law, as well as commenting on the consultation process.
- 2.2 This section provides a summary of the general comments and concerns received from respondents, which do not correspond to one of the six questions included in the consultation paper. The section also contains, in italicised text, how the AML/CFT Strategy Group has addressed the matters raised in the responses.

### CONSULTATION PROCESS

- 2.3 A number of respondents were supportive of the need to legislate in the area of NPOs. However, there were many who forcefully expressed concern with respect to the length of the consultation period. Concern was expressed that the consultation process was “illusory” and that no time had been allowed for proper consideration of any comments provided.
- 2.4 Respondents went as far as to comment that the policy and draft NPO Law were a “fait accompli” and presumed that the draft NPO Law would be approved and lodged and that the States were obliged to pass it. The timescale was considered a slight by the Government on the contribution made by charities, not only to the social well being of the community, but also to the large financial contribution made annually by voluntary efforts.
- 2.5 *These comments were noted by the AML/CFT Strategy Group and as a result the Chief Minister's Department issued a News Release on 8 February 2008 announcing that the comment period had been extended by 2 weeks to 22 February 2008 and that the legislation would be lodged “au Greffe” by the latest at the end of March. Lodging has subsequently been delayed until the end of April.*
- 2.6 *The AML/CFT Strategy Group wishes to assure respondents that any perceived slight on the contributions made by charities was not intended.*
- 2.7 Respondents were also very critical of the research undertaken and the process employed by the AML/CFT Strategy Group in the production of the consultation paper. Respondents opined that the policy, and associated draft NPO Law, were compiled with undue haste and published without proper engagement of the impacted population.
- 2.8 Some respondents felt that the Island was “front running”, “going beyond the requirements of SR VIII” or applying the “gold standard” of requirements. Additionally, other respondents called for a comparison of the Island's proposals against the position/proposals of competitor jurisdictions.

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- 2.9 A number of respondents also referred to a preference for the establishment of a charities commission and commented that they did not feel a body geared to regulate the finance industry was the appropriate body to oversee the non-profit sector.
- 2.10 *One of the difficulties facing the AML/CFT Strategy Group when considering the requirements of SR VIII was the lack of comprehensive information currently available in the Island relating to NPOs - upon which to base its research and engage in discussion.*
- 2.11 *Regarding the application of the “gold standard” or “front running”, an assessment of the work undertaken/being undertaken in a number of the Island’s major competitor jurisdictions has been completed and it is the view of the AML/CFT Strategy Group that the draft NPO Law, if implemented as proposed, would place the Island around the middle of the group.*
- 2.12 *Regard has been had to the position in the following jurisdictions: the Bahamas, Bermuda, the Cayman Islands, England and Wales, Gibraltar, Guernsey, Ireland, the Isle of Man, and Singapore.*
- 2.13 *The Bahamas and the Cayman Islands do not have legislation in place that requires NPOs to register. All of the other jurisdiction, with the exception of Guernsey, rely on charities legislation and a charities commission (or are proposing to introduce such legislation and establish such a commission). Guernsey has implemented SR VIII in a similar way to Jersey, except that the Administrator of Income Tax will perform the registration and monitoring function, rather than the Guernsey Financial Services Commission.*
- 2.14 *The consultation paper quite clearly stated that the draft NPO Law was only designed to address the possibility of NPOs assisting or being used to assist terrorism. It has never been the intention that the legislation should be in lieu of the establishment of a charities commission.*
- 2.15 *The Commission has extensive experience in overseeing organizations to assess their systems and controls for countering the risk of being abused by those who seek to finance terrorism.*
- 2.16 Some respondents also opined that the proposal to introduce the draft NPO Law signified a vote of no confidence in the Proceeds of Crime (Jersey) Law 1999, Drug Trafficking Offences (Jersey) Law 1988 and Terrorism Law and the ability of the Island authorities to enforce those laws.
- 2.17 *The AML/CFT Strategy Group considers that there are shortcomings with the current regime in so much as it does not specifically address the non-profit sector.*
- 2.18 *This will be addressed through the draft NPO Law, which will also clarify that the term “employment” in the Terrorism Law covers work undertaken on behalf of an NPO on a voluntary or unpaid basis.*

## **DEFINITION OF NPO**

- 2.19 Many respondents commented that the definition of an NPO, as presented in the draft NPO Law, was unacceptably wide and open to different interpretations.
- 2.20 Respondents also questioned the ability of the Commission to practically capture all trusts governed by Jersey law, but which otherwise had no connection with Jersey which would be required to register because they are “established in Jersey”.

2.21 Other comments included calls for:

- 2.21.1 the definition of NPO to be refined so that charitable trusts administered by a person regulated under the Financial Services Law would be outside of the scope of the draft NPO Law;
- 2.21.2 the exclusion of private trusts, e.g. those set up to disburse monies for the education of a settlor's children;
- 2.21.3 a turnover threshold to be included so that small NPOs would be exempt from compliance with the draft NPO Law;
- 2.21.4 sports clubs to be exempt from compliance with the draft NPO Law;
- 2.21.5 Anglican churches to be exempt from compliance with the draft NPO Law because they are already regulated - with churchwardens having certain obligations;
- 2.21.6 limitation of the legislation to those NPOs that are of substance **and** which make significant payments internationally; and
- 2.21.7 the ability to register a central Jersey-based administrative body which has a "hub and spoke" structure in Jersey.

2.22 *The AML/CFT Strategy Group continues to take the view that there is no alternative to requiring NPOs to register, unless the NPO is a regulated NPO (see paragraph 2.27) because registration is the only way that the Island can obtain timely information on the activities, size and other relevant features of the NPO sector in Jersey.*

2.23 *Notwithstanding this, any NPO that has raised £1,000 or less (in the past 12 months) need not comply with any requirements in the draft NPO Law. It is the view of the AML/CFT Strategy Group that the absence of information on this part of the NPO sector is unlikely to materially affect the analysis of the activities, size, and relevant features of the NPO sector in Jersey.*

2.24 *In addition, the definition of an NPO has been rewritten. See Article 1 of the draft NPO Law attached as Appendix D. In particular:*

2.24.1 *The carrying out of "good works" has been excluded from the definition of an NPO – as this was considered to be an unacceptably wide criterion, and there is now a requirement that the NPO must have the intention of benefiting its members, the public, or a section of the public.*

2.24.2 *The definition now also clearly extends to trusts.*

2.25 *In the case of a trust that has Jersey law as its governing law, confirmation has been provided that such a trust is not, solely by virtue of that fact, to be taken to be established in Jersey for the purpose of the draft NPO Law - unless it has at least one trustee who is ordinarily resident in Jersey.*

2.26 *A provision has been added to the draft NPO Law which will allow the Commission to treat as one NPO all the NPOs that make up a group or affiliation, even though they each fall within the scope of the legislation and are therefore subject to the provisions of the legislation.*

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- 2.27 *As noted above, where an NPO is a regulated NPO, it will not be required to register (or provide information or documents) under the draft NPO Law (though the NPO may register if it wishes to do so). The exemption has been drafted on the basis that a director or trustee of the NPO is already subject to requirements under the Financial Services Law and Money Laundering (Jersey) Order 2008, and reliance might be placed on the Commission's oversight of that person under the Financial Services Law to collect specific information on regulated NPOs.*
- 2.28 *To provide clarity that the Commission's powers could also be used to collect general information on regulated NPOs, an amendment to Article 8 of the Financial Services Commission (Jersey) Law 1998 will provide that the Commission may require a trust company business to provide information in respect of the NPOs to which it provides services. It is expected that the Commission will gather information from trust company businesses on an aggregate basis.*

## **BURDEN ON NPOS**

- 2.29 Many respondents to the consultation paper felt it necessary to comment on the additional, and in their view unnecessary, administrative burden placed on individuals in the non-profit sector. Many also expressed the view that the draft NPO Law would have a detrimental impact on the willingness of individuals to volunteer for the non-profit sector and potential detrimental effect on the, already limited, funds of the sector.
- 2.30 Other respondents were concerned that the draft NPO Law would prove to be the "thin end of the wedge" and that "regulatory creep" would occur thereby involving the non-profit sector in ever increasing amounts of administration providing more and more data to the Commission and being required to comply with ever increasing amounts of guidance and legislation.
- 2.31 Some respondents commented on the perceived requirement to conduct due diligence, akin to those required for money laundering purposes, on the donors and beneficiaries of the NPO.
- 2.32 The following areas were common to many respondents:
- 2.32.1 Expressions of concern that the information requirements might be confusing to small NPOs, e.g. "general indication of funds to be raised and disbursed".
  - 2.32.2 Statements that the draft NPO Law would only create worry and cost for a law abiding section of the population and would not catch those it needs to because those knowingly involved in assisting terrorism are not likely to register.
  - 2.32.3 Expressions of concern with respect to the Commission prescribing the form of and time frame in which financial information would be provided to the Commission. Concerns in this area were mixed - ranging from those that felt the information requirements might be too detailed or the time frame too short, through to others who thought that a requirement to provide formal financial statements was being introduced, to finally, one respondent recommending that NPOs should provide the Commission with annual audited financial statements.
  - 2.32.4 The requirement to advise the Commission on all changes of registered information was too onerous, given the nature of the information being collected on registration.

- 2.32.5 The Commission's powers to require information to be delivered were potentially extensive and intrusive and they should be limited to what is reasonably required and it should be deliverable within a reasonable timeframe.
- 2.33 *The AML/CFT Strategy Group believes that the general approach proposed to implement SR VIII is proportionate and that the administrative burden, on an ongoing basis, for most of the non-profit sector will be minimal.*
- 2.34 *A draft of the application form to be provided to the Commission is provided at Appendix B, and will be set out in a schedule to the draft NPO Law. It is anticipated that the vast majority of NPOs will only be required to provide:*
- 2.34.1 *The name (or proposed name) of the NPO.*
- 2.34.2 *Details of how the NPO may be contacted.*
- 2.34.3 *A statement of the actual (or proposed) purpose, objectives and activities of the NPO.*
- 2.34.4 *Details of the structure of the NPO. The form requests each applicant to place a tick alongside one of the following - to indicate whether it is: a trust; a limited company; an unlimited company; a fidéicomis or incorporated association; or other.*
- 2.34.5 *An estimate of the amount of funds to be raised and disbursed each year, both within Jersey and outside Jersey. The form requests each applicant to place a tick alongside one of the following monetary bands:*
- 2.34.5.1 *£0 - £1,000 (voluntary);*
- 2.34.5.2 *£1,001 - £19,999;*
- 2.34.5.3 *£20,000 - £99,999;*
- 2.34.5.4 *£100,000 - £499,999;*
- 2.34.5.5 *£500,000 - £999,999;*
- 2.34.5.6 *£1,000,000+.*
- 2.35 *The provision for a financial statement to be provided at the time of registration has been dropped. The draft NPO Law will, however, provide the Commission with a power to request additional information or documents - where it is reasonable and necessary for it do so to enable it to assess the extent (if any) to which the NPO could be used to facilitate terrorism. In some cases, this might include the provision of additional financial information.*
- 2.36 *Once registered, the majority of NPOs in Jersey will be expected only to:*
- 2.36.1 *keep the information requested at the time of registration up to date, including any movement from one monetary band to another (where an estimate of funds to be raised and disbursed each year changes);*
- 2.36.2 *keep financial records that are sufficient to show that its funds have been utilised in a manner that is consistent with the purpose of the NPO; and*
- 2.36.3 *keep those financial records for at least 5 years.*



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- 2.37 *Where there is a change to the information requested at registration – then an NPO will have 3 months in which to notify the Commission of this change, as opposed to the 28 days originally proposed. Such reporting will **not** require an NPO to disclose to the Commission the amount of large one-off donations or bequests.*
- 2.38 *In addition, “significant NPOs” (see below) will also be required to:*
- 2.38.1 *prepare and file, on an ongoing basis, a financial statement that provides a detailed breakdown of how the NPO has raised and disbursed funds; and*
- 2.38.2 *provide details on the officers that control or direct the NPO (see paragraph 5.11 and paragraphs 5.15 to 5.17).*
- 2.39 *In determining which NPOs will be “significant NPOs”, the overriding policy of the AML/CFT Strategy Group will be to focus on those NPOs that account for:*
- 2.39.1 *a significant portion of the funds under control of the sector; and also*
- 2.39.2 *a substantial share of the sector’s international activities.*
- 2.40 *The precise format of such a financial statement has yet to be agreed, but it will certainly not extend to the provision of a full set of accounts or audited accounts. As it is intended that the statement should be presented in such a way that it provides the Commission with an understanding of how funds have been raised and how they have been disbursed, it is very likely that existing accounts that are prepared for use by the NPO itself and for its stakeholders will be sufficient. If this is the case, then, at the request of an NPO, the Commission will be able to accept such accounts.*
- 2.41 *Appendix C to this paper provides a summary of the obligations relevant to NPOs, both at the point of registration and on an ongoing basis.*
- 2.42 *Whilst it is possible that SR VIII may be revised by the FATF at some future point, and the assessment later this year of Jersey’s framework to counter money laundering and terrorist financing by the International Monetary Fund may recommend changes to the draft NPO Law, no additional administrative obligations are under consideration by the AML/CFT Strategy Group. However, in line with SR VIII, the Commission will work with the non-profit sector to encourage NPOs to follow policies that promote transparency, integrity and public confidence.*
- 2.43 *For the avoidance of doubt, it should be noted that the draft NPO Law does not provide for due diligence to be conducted on donors or beneficiaries to whom funds are disbursed. Nor does it provide that NPOs should be required to apply the “customer due diligence” requirement that is set out in the Money Laundering (Jersey) Order 2008.*
- 2.44 *Use of the Commission’s powers is considered in section 3, page 24.*

## **OFFENCES**

- 2.45 Respondents to the consultation paper were particularly concerned at the number of instances where failure to comply with the draft NPO Law would be a criminal offence and noted that this may deter individuals from working in the non-profit sector because it could make criminals out of those who seek “to do good” but who make administrative mistakes.

- 2.46 Comments were also raised with respect to the lack of statutory defences contained within the draft NPO Law. Some respondents referred to the fact that the draft NPO Law could possibly include a general defence of taking reasonable steps to check that a donor/beneficiary is not involved with terrorist activities.
- 2.47 Other areas attracting comment were:
- 2.47.1 that the Commission having to refer a registration application to the Royal Court for refusal but having the right to deregister an NPO was inequitable;
  - 2.47.2 that the requirements of the draft NPO Law in respect of making public statements did not follow those applicable to the Commission when it exercises a similar power in regulatory legislation; and
  - 2.47.3 concern that the reporting offence under the Terrorism Law would not be limited to knowledge but extend to suspicion.
- 2.48 *The AML/CFT Strategy Group considers that, for the draft NPO Law to be effective, obligations set out therein must be supported by an offence. It recognises, however, the need for the application of those offences to be proportionate, and each of the offences set out in the draft NPO Law has been reviewed.*
- 2.49 *In the case of passing off as a registered NPO, an organization will have a defence if it did not know and could not reasonably have known that the organization was not a registered NPO.*
- 2.50 *Where false or misleading records or information are kept or provided, an offence will not be committed unless the information or records have been kept or provided with knowledge or reasonable grounds for knowing that they are false or misleading.*
- 2.51 *Additionally, a person cannot be found guilty of an offence for failing to comply with an obligation (that it is required to comply with) set out in the draft NPO Law, where it has a reasonable excuse for its failure to:*
- 2.51.1 *register as an NPO;*
  - 2.51.2 *advise the Commission of a change to registration information - within 3 months;*
  - 2.51.3 *provide the Commission with a financial statement (within 10 months of period end);*
  - 2.51.4 *keep financial records and retain those records for 5 years;*
  - 2.51.5 *make its financial records available to the Commission;*
  - 2.51.6 *provide the Commission with prescribed information;*
  - 2.51.7 *provide an explanation of a financial record; and*
  - 2.51.8 *provide certain information – on request - to a member of the public.*

- 
- 2.52 *In addition, the draft NPO Law also sets out who will be considered to be criminally liable where an NPO commits an offence.*
- 2.52.1 *In the case of an incorporated organization, where an offence is committed and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of a person who is a director, manager, secretary or similar officer, then that person will also be guilty and liable in the same manner as the NPO.*
- 2.52.2 *In the case of an unincorporated organization, where an offence appears to have been committed, and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of certain persons, those persons, and only those persons, will also be guilty and liable.*
- 2.52.3 *Any person who aids or abets the commission of an offence will also be guilty and liable.*
- 2.53 *The effect of these provisions is that those working in the voluntary sector will have little to be concerned about where they have made a genuine administrative mistake, particularly given that any decision to prosecute an offence under the draft NPO Law will first have to take into account the public interest in doing so.*
- 2.54 *Notwithstanding this, at the time of publication of this feedback paper, some other changes to Part 4 (offences) of the draft NPO Law were under consideration.*
- 2.55 *The draft NPO Law has been revised so that the Commission may remove an NPO from the register only where it is:*
- 2.55.1 *ordered to do so by the Royal Court (where an NPO's funds have been forfeited or it has been convicted of a terrorist offence);*
- 2.55.2 *ordered to do so by the Minister (where an NPO has persistently failed to comply with obligations under the draft NPO Law); or*
- 2.55.3 *requested to do so by any person with authority to do so.*
- 2.56 *The effect of this is that the Commission has no discretion in this area, though it will be permitted to refuse an application by an organization to be registered where:*
- 2.56.1 *it suspects that an applicant has or may have terrorist associations;*
- 2.56.2 *the name or proposed name of the NPO or proposed NPO is misleading or otherwise undesirable; or*
- 2.56.3 *the organization specified in the application form is not or will not be an NPO.*
- 2.57 *The exercise of each of the powers set out at 2.56 is subject to an appeal to the Royal Court.*
- 2.58 *In addition, the draft NPO Law has also been amended so that any person aggrieved by a decision to publish a statement or to remove the name of an NPO from the register may appeal to the Royal Court at any time (previously time limits of one month and 28 days respectively had applied).*

- 2.59 *No change has been made to the proposed application of Article 20 of the Terrorism Law to NPOs. Article 20 of that law applies where a person believes or suspects that another person has committed an offence under any of Articles 15 to 18 of the Terrorism Law and bases that belief or suspicion on information which comes to his or her attention in the course of a trade, profession, business or employment. It provides for a report to be made of that belief or suspicion.*
- 2.60 *Articles 15 to 17 of the Terrorism Law make it an offence to: (a) fund-raise for the purposes of terrorism; (b) use and possess property that is used or may be used for the purposes of terrorism; and (c) enter into or become concerned in an arrangement as a result of which property is made available or is to be made available to another, where a person knows or has reasonable cause to suspect that it will or may be used for the purposes of terrorism. Article 18 of the Terrorism Law makes it an offence to handle the proceeds of a terrorist offence<sup>6</sup>, which is referred to as “money laundering”. Under Article 18(2) of the Terrorism Law, it is a defence for a person to prove that he or she did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.*
- 2.61 *Article 20 already applies to many NPOs, and what is being suggested is that it should also apply to any person that, in the course of an NPO activity, whether or not that activity involves a trade, profession, business or employment, believes or suspects that another person has committed an offence under any of Articles 15 to 18 of the Terrorism Law. Note, however, that this obligation is relevant only where a person has a belief or forms a suspicion. If he or she does not have a belief or suspicion, then there is no obligation to report.*
- 2.62 *Note that the Terrorism (United Nations Measures) (Channel Islands) Order 2001 provides that any person who:*
- 2.62.1 *receives funds and intends that they should be used, or knows or has reasonable cause to suspect that they may be used, for the purposes of terrorism will be guilty of an offence; or*
- 2.62.2 *provides funds, and knows or has reasonable cause to suspect that they will or may be used for the purposes of terrorism will be guilty of an offence.*

## **DRAFT LAW**

- 2.63 *A number of respondents made specific comments in respect of the draft NPO Law provided as Appendix C to the consultation paper. These comments were varied and, due to their technical nature, have not been summarised or replicated as part of this paper.*
- 2.64 *The AML/CFT Strategy group wishes to thank respondents for these comments and would like to assure respondents that these comments have been considered in the production of the revised draft NPO Law.*

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<sup>6</sup> Entering or being concerned in an arrangement, which facilitates the retention and control by, or on behalf of, another person of terrorist property.

### 3 SUMMARY OF RESPONSES RECEIVED – QUESTIONS POSED IN THE CONSULTATION PAPER

- 3.1 The table presented in this section provides a summary of responses received to the six questions included in the consultation paper (references are to paragraphs in the consultation paper) and sets out, in italicised text, how the AML/CFT Strategy Group has addressed the matters raised in the responses.
- 3.2 In some instances, respondents provided comments/concerns relevant to a consultation paper question posed, but which did not directly respond to the question. These comments/concerns have been consolidated in the table with direct responses to the question.
- 3.3 Where respondents provided more general feedback on the proposed policy or draft NPO Law this has been considered in section 2 of this paper.

#### PAPER REF.

#### QUESTION AND SUMMARY OF RESPONSES

5.13.1

**Do you consider that a period of three months provides sufficient time for a NPO to make an application to the Commission and for the Commission to register that NPO? If not, what period do you suggest?**

Responses to this question were mixed. Responses ranged from agreement that three months was a sufficient time period through to a respondent who commented that the period should be extended to nine months.

Comments also included reference to the three month period only being appropriate if sufficient publicity was given to the requirement to register.

*The AML/CFT Strategy Group has considered the responses to this question and has decided to maintain the proposed time period for application – three months.*

*With respect to the comment regarding publicity, it is the intention of the AML/CFT Strategy Group that, if the States approve the draft NPO Law, sufficient attention will be given to the publication of the registration requirements. Refer to section 4 on “outreach”.*

*The AML/CFT Strategy Group has summarised and responded to the comments in respect of the offences associated with the failure to register in the general comments section of this paper (section 2, page 17).*

PAPER  
REF.

## QUESTION AND SUMMARY OF RESPONSES

5.19.1

**Do you agree with the proposal to levy - from 2009 - a nominal registration fee on NPOs that are considered to present other than a "lower" risk?**

The proposal that NPOs may have to pay a nominal registration fee produced some of the fiercest criticism of the proposed framework – not only in the written responses received by the AML/CFT Strategy Group but also in the media reporting associated with the consultation. However, it should be noted that some respondents commented that they were not totally averse to paying a fee but noted that the fee should be scaled to reflect the risk posed by a given NPO.

Other comments included: recommendations that the finance industry or the States should cover the cost of operating the proposed NPO registration and monitoring regime; concern that fees levied on the finance industry would have to increase to subsidise the NPO regime; and recommendations that all references to the ability to charge fees be removed from the draft NPO Law.

*Early in the consultation process the Chief Minister announced that no fee would be payable by NPOs. In response to this announcement the draft NPO Law has been amended such that all references to the ability to charge fees have been removed. In 2008, such costs will be covered by a grant from the Criminal Offences Confiscation Fund, and from 2009 will be covered by the Commission.*

5.21.1

**Do you agree that the Trusts (Jersey) Law 1984 should be amended so that, where a trust that is a NPO is governed by Jersey law, it would only be valid if registered under the draft NPO Law? If not, please set out why an amendment should not be made.**

Respondents to this question were mixed in their comments. A small proportion of respondents agreed that the Trusts Law should be amended as proposed but the majority were not in favour of the amendment.

Those not in favour of amending the Trusts Law set out a number of reasons against the amendment including:

- that it would introduce uncertainty regarding the validity of Jersey trusts;
- that it may have unwelcome tax consequences - with assets being returned to settlors as a consequence of trusts being declared invalid;
- that it would cause difficulty with respect to a trust created on the death of an individual, because it would not be possible to register the trust as an NPO before it exists, but it would be invalid as soon as it did exist; and
- that it would be inequitable because companies or other organizations that fail to register will be sanctioned but may continue to exist.

*The AML/CFT Strategy Group has considered the responses and has concluded that the Trusts Law should not be amended as had been suggested.*

PAPER REF.	QUESTION AND SUMMARY OF RESPONSES
5.23.3	<p data-bbox="284 320 1433 387"><b>Which other officers do you consider may control or direct the activities of a NPO and should be prescribed in a Ministerial Order?</b></p> <p data-bbox="284 416 1433 517">Respondents to this question provided suggestions of other individuals that might control or direct the activities of an NPO and therefore may need to be included in a Ministerial Order. Suggestions included:</p> <ul data-bbox="284 539 1433 931" style="list-style-type: none"> <li>• ordinary officers of an NPO that have a conflict, e.g. those that work for the Commission;</li> <li>• when considering the Anglican Churches - the incumbent, churchwardens, treasurer and secretary;</li> <li>• signatories on bank accounts (although this was noted as not being without problems because the signatories can change on a fairly frequent basis);</li> <li>• paid officers such as managers, Chief Executive Officer, Finance Director or the equivalent, by whatever name called; and</li> <li>• Deputy Chairmen.</li> </ul> <p data-bbox="284 999 1433 1171"><i>The AML/CFT Strategy Group has noted these suggestions and fully intends to consider them in more detail when drafting the relevant Ministerial Order (see paragraph 5.11 and paragraphs 5.15 to 5.17), which will be required should the States approve the draft NPO Law. Before any Order is recommended to the Minister, the AML/CFT Strategy Group will consult publicly on its content.</i></p> <p data-bbox="284 1193 1433 1227"><i>In any event, the requirement to provide details of officers will be limited to “significant NPOs”.</i></p>
5.28.1	<p data-bbox="284 1301 1433 1503"><b>Do you agree that the information that is collected by the Commission should be held privately on a central record or do you think that all of the information collected (as set out at [5.22 and 5.23.1]) should be available to the public through the Commission? If you think that information held should be available to the public, would you be prepared to pay a fee to access that information - based on the cost of providing such access?</b></p> <p data-bbox="284 1532 1433 1704">Again, respondents to this question were not unanimous because a small number felt that the information held by the Commission should be made available to the public. One respondent also noted that a reasonable charge could be applied for access to the information and that the Island could be open to criticism of secrecy should the information remain private.</p> <p data-bbox="284 1727 1433 1861">However, the majority of respondents preferred that the Commission held the information collected at registration on a private basis. Concerns about information being publicly available mainly centred on the protection of the privacy and security of those involved with the sector.</p> <p data-bbox="284 1935 1433 2036"><i>The AML/CFT Strategy Group has concluded that the registration information provided to the Commission should be held privately, except where any person enquires of the Commission as to whether a specific NPO is registered. Then the draft NPO Law will require that the</i></p>

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## QUESTION AND SUMMARY OF RESPONSES

Commission advise that person whether the name of the NPO appears in the register, and, if it does, provide:

- the registration or reference number of the NPO; and
- contact details for the NPO.

With respect to the provision of details on how to contact the NPO, the Commission's policy will be to provide the requesting person with a postal address. However, the Commission recognises that there will be circumstances where such information should not be divulged, for example where it may put a person at significant risk of harassment or intimidation. In such cases, an NPO will need to discuss such circumstances on an individual basis with the Commission.

Regarding criticism of secrecy, the draft NPO Law is not intended to be a substitute for a law to monitor charities, which, it is likely, would provide more comprehensively for disclosure of information by NPOs. Notwithstanding this, the draft NPO Law does provide for a registered NPO to provide any person with information, on request. All NPOs will be required to provide details of their purpose, objectives and intended activities, and structure. "Significant NPOs" will also have to provide the contact details of any person that controls or directs the affairs of the NPO (see also paragraphs 5.15 to 5.17).

Respondents also expressed concern in respect of the requirement that an NPO must make its financial records available to the Commission, the Attorney General or a member of the States Police Force, on demand. Suggestion was made that "reasonable suspicion of wrongdoing" should exist before access to the information is possible.

The draft NPO Law has been amended so that the Commission will have a power to require the provision of financial records - but only in order to determine if an NPO is assisting or being used to assist terrorism. The draft NPO Law will no longer provide the Attorney General or States Police Force with additional powers - as both will rely on powers under existing legislation.

It is anticipated that the Commission will exercise the power to demand that an NPO make its financial records available on a reactive basis and it is not intended that this power should be routinely applied. Also, the power to demand information is restricted to the financial records of an NPO - it does not include the power to demand access to all minutes of meetings or other similar documentation, e.g. general or tax correspondence files and membership records. Financial records are defined as: records of "transactions, both within and outwith Jersey, that are sufficient to show that [the NPO's] funds have been utilized in a manner consistent with its purpose, objectives and intended activities as shown in the register".

Further, the draft NPO Law does not provide the Commission with a power to enter premises - and its oversight will be desk-based. See also paragraphs 1.18 to 1.21.

Respondents also asked a number of questions in respect of the information to be held both by the Commission and by the NPO, as follows:

- (i) Will the Commission hold a central register of NPO officers?



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## QUESTION AND SUMMARY OF RESPONSES

- (ii) What sort of information will the NPO be expected to hold in respect of significant donors?
- (iii) What is “significant” in terms of a donation?
- (iv) How does the holding of this information sit with “anonymous donations”?

*In response to these specific questions:*

- (i) *The Commission does not intend to hold a central register of NPO officers.*
- (ii) *This will be covered as part of an outreach programme and any guidance provided will be non-statutory.*
- (iii) *As for (ii).*
- (iv) *As for (ii).*

5.29.4

**Are there any other characteristics of NPOs that you consider present a “lower” risk? If so, please list those characteristics, giving examples of the type of NPOs that have such characteristics.**

A number of respondents answered this question by suggesting that certain types of NPO should be exempt from the draft NPO Law. They suggested setting criteria that, if met by an NPO, would exempt that NPO from the proposed registration and oversight regime, and setting criteria where no risk was presented, rather than “lower” risk.

Otherwise, this question received one of the highest levels of response with respondents providing a number of specific suggestions as to the characteristics that could identify that an NPO presents a “lower” risk. These suggestions included:

- (i) any NPO that provides a “physical commodity” rather than financial aid;
- (ii) any NPO that is subject to an annual audit of its financial statements;
- (iii) any NPO that has demonstrated a “lower” risk track record;
- (iv) any NPO with a turnover per annum below a threshold, e.g. £10,000 or £20,000;
- (v) any NPO with a percentage of income or a specific monetary amount to be spent outside the Island below a certain threshold;
- (vi) any NPO serviced by a local financial institution – which will be monitoring payments and identifying risks of that NPO;
- (vii) any NPO that can clearly demonstrate a commitment to non-violence and the promotion of peaceful alternatives, particularly through education; and
- (viii) any NPO that is subject to some form of “self regulation”.

Respondents also commented on the approach to classifying the risk presented by an NPO. Respondents suggested that NPOs should be classified as “low”, “medium” and “high” risk rather than “lower” risk, and suggested that these categories be based on turnover thresholds.

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REF.****QUESTION AND SUMMARY OF RESPONSES**

Respondents asked for greater clarity of the “lower” risk categories provided within the consultation paper.

*The AML/CFT Strategy Group’s response to this question should be read in conjunction with the response in section 2 to the comments received regarding the definition of an NPO (see page 13).*

*It continues to be the intention of the AML/CFT Strategy Group that, with the exception of regulated NPOs and those NPOs raising funds equal to or less than £1,000, all organizations that meet the definition of an NPO will be required to register, to assist the Island in assessing the scope and size of the non-profit sector as required by SR VIII.*

*Notwithstanding this, the emphasis in the draft NPO Law has been amended so that a number of obligations will be applied only to “significant NPOs” (based on information requested at the time of registration). See section 5. This differs to the approach consulted on, which placed requirements on all NPOs, relieved “lower risk” NPOs of such obligations, and provided that the basis for such relief be set out in an Order to be made by the Minister.*

*This means that an Order of the Minister will name individual NPOs that have been identified as being “significant NPOs” - a more targeted approach. See also paragraphs 1.14 to 1.17.*

## 4 NEXT STEPS

### ORDERS

- 4.1 The Council of Ministers has resolved to lodge *au Greffe* the draft NPO Law by 22 April 2008, with a view to the States debating the law on 3 June 2008.
- 4.2 If the States approve the draft NPO Law, it will provide the Minister with the power to make a number of Orders. These are considered further in section 5.

### OUTREACH

- 4.3 SR VIII highlights that a diverse range of approaches in identifying, preventing and combating terrorist misuse of NPOs can be adopted and that a jurisdiction's approach should include four elements for it to be effective, the first of which is to work with the NPO sector. Paragraph 1.26 of the consultation paper identifies that paper as the start of this work.
- 4.4 The extent and nature of how the Commission will further work with the sector has yet to be agreed. However, in line with SR VIII, it will include the publication of additional information and running of training seminars, to highlight terrorist issues as well as encourage NPOs to follow policies that promote transparency, integrity and public confidence in the NPO sector.
- 4.5 The Commission will work in conjunction with relevant bodies and organizations, most notably the Association of Jersey Charities ("AoJC"). The Commission welcomes the AoJC's offer to assist it in this regard.

### COMPLETION OF APPLICATION FORM

- 4.6 "Outreach" will also extend to providing assistance with completion of the application form that is set out as a schedule to the draft NPO Law. A point of contact at the Commission will be available to help those requiring support in filling out the application form.
- 4.7 An example of how an NPO might complete the application form is attached as Appendix B.

## 5 SUBORDINATE LEGISLATION

### OVERVIEW

- 5.1 If the States considers it appropriate to approve the draft NPO Law in its current format, the Minister will – once the law has been registered – have the power to make a number of Orders. This section describes the Orders that the AML/CFT Strategy Group intends to recommend to the Minister: the policy behind these recommendations has been informed by feedback on the proposals contained in the consultation paper.
- 5.2 The overriding policy of the AML/CFT Strategy Group is that Orders would be used in such a way that the most significant requirements of the draft NPO Law focus on “significant NPOs”. See paragraph 1.14 to 1.17.
- 5.3 Before any of the Orders referred to in this section are recommended to the Minister, the AML/CFT Strategy Group will consult publicly on their content. The AML/CFT Strategy Group will also consult publicly on any future changes to the application form to be submitted to the Commission at the time of registration, which can be amended only by Regulations of the States.

### REGULATED NPOS

- 5.4 The draft NPO Law will provide that a regulated NPO, one to which a prescribed service is provided in the course of trust company business, need not be registered or provide information or documents to the Commission.
- 5.5 The AML/CFT Strategy Group intends to recommend to the Minister that an Order is made that prescribes the services as those of “acting as a director” or “acting as trustee”. In due course, if the States adopt the proposed law to allow Jersey foundations, the AML/CFT Strategy Group would intend to recommend to the Minister that “acting as a foundation council member” be added to the list of prescribed services.
- 5.6 In summary therefore, an NPO that has a director or trustee (and in due course, a foundation council member) provided to it by a trust company business registered with the Commission pursuant to the Financial Services Law, will not need to register or provide information or documents to the Commission under the draft NPO Law.
- 5.7 An Order dealing with regulated NPOs will need to be in place on the day that the draft NPO Law comes into force.

### INFORMATION AND DOCUMENTS TO BE PROVIDED TO COMMISSION

- 5.8 The AML/CFT Strategy Group intends to recommend to the Minister that the following obligations should be applied only to “significant NPOs”:
  - 5.8.1 preparation and provision to the Commission of a financial statement; and
  - 5.8.2 provision of prescribed information to the Commission – post registration.

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- 5.9 “Significant NPOs” will be determined on a case by case basis and this means that an Order of the Minister is likely to name individual NPOs. See paragraphs 1.14 to 1.17.
- 5.10 The likely content of the financial statement is considered at paragraph 2.40.
- 5.11 Prescribed information – post registration – will be the name and contact details of any person that controls or directs the affairs of the NPO. The AML/CFT Strategy Group is considering which persons should be considered to “control or direct” an NPO (informed by the responses to question 5.23.3 in the consultation paper) and will consult on this aspect further before the Order is made.
- 5.12 The Minister will not be requested to make Orders to require the provision of a financial statement or prescribed information to the Commission until after the three month registration “window” has closed.

### **KEEPING AND RETAINING FINANCIAL RECORDS**

- 5.13 The draft NPO will also provide the Minister with a power to exempt an NPO or any class of NPOs from the requirement to keep financial records and to retain those records for at least 5 years. Although the AML/CFT Strategy Group does not expect to recommend that such an Order is made<sup>7</sup>, it believes that the draft NPO Law should contain such an Order making power - to provide for future flexibility.
- 5.14 The view of the AML/CFT Strategy Group is that all NPOs (including regulated NPOs) should be required to maintain such financial records to enable any suspected assistance of terrorism to be properly investigated.

### **INFORMATION TO BE PROVIDED TO PUBLIC**

- 5.15 The draft NPO Law provides for the Minister to prescribe by Order what additional information must be provided by a prescribed NPO to any person on request.
- 5.16 The AML/CFT Strategy Group intends to recommend to the Minister that an Order is made that will require a “significant NPO” to provide the name and contact details of any person that controls or directs the affairs of the NPO to any person on request.
- 5.17 “Significant NPOs” will be determined on a case by case basis and this means that an Order of the Minister is likely to name individual NPOs. See paragraphs 1.14 to 1.17.
- 5.18 The Minister will not be requested to make such an Order until after the three month registration “window” has closed.

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<sup>7</sup> Note that in any event, any such Order could not override any other statutory requirement that may require an NPO to prepare and maintain financial records.

# APPENDIX A

## LIST OF RESPONDENTS TO THE CONSULTATION

- Amnesty International Jersey Group
- Beaulieu Convent School
- Duke of Edinburgh's Award Fund
- Family Nursing and Home Care
- Freemasons
- Hautlieu School
- Howard Law
- Jersey Association of Headteachers (through the Education, Sport and Culture Department)
- Jersey Astronomy Club
- Jersey Finance Limited
- Jersey Hospice Care
- Jersey Opera House
- Jersey Rights Association
- Jersey Society for the Prevention of Cruelty to Animals - Animals' Shelter
- Jersey Society of Chartered and Certified Accountants
- Jersey Spartan Athletic Club
- Les Amis Incorporated
- Methodist Churches
- Moore Stephens
- Nairobi Slum School Projects Trust
- Ogier (x2)
- Royal Bank of Canada Trust Company (International) Limited
- Shopmobility
- St. Andrew's Church
- St. Clement's Church
- St. John Ambulance, Jersey
- St. Paul's Church and Trustee of Good News! Trust
- The Association of Jersey Charities
- The Beaulieu Foundation
- The Dean of Jersey
- The Jersey Law Commission
- The John Lobb Trust
- The Phoenix Foundation
- Plus 12 responses from individuals

# APPENDIX B

## NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200- DRAFT APPLICATION FORM

Name (or proposed name) of NPO:	<b>Jersey Sailors Poverty Relief Trust</b>		
Contact details:	Name:	<b>Fred Smith</b>	
	Address:	<b>8 ABC Close St Brelade Jersey JE3 XXX</b>	
	Telephone number:	<b>12345678</b>	
	Email (if any):	-	
Purpose (or intended purpose) of the NPO:	<b>Charity</b>		
Objectives (or intended objectives) of the NPO:	<b>Financial support to Jersey sailors that have fallen on hard times</b>		
Activities (or intended activities) of the NPO:	<b>(a) Provide rent-free accommodation in 3 flats owned by the Trust for sailors that are no longer able to work due to ill health.</b> <b>(b) Pay essential bills for poverty stricken sailors.</b>		
Structure (or intended structure) of the NPO:  (Tick relevant box)	Trust		✓
	Limited company		
	Unlimited company		
	Fidéicomis or incorporated association		
	Foundation		
	Unincorporated association		
	Other (please describe)		
Estimate of the amount of funds to be raised and disbursed in each financial year of the NPO within Jersey:  (Tick relevant boxes)		Raised within Jersey	Disbursed within Jersey
	£0 - £1,000		
	£1,001 - £19,999		
	£20,000 - £99,999	✓	✓
	£100,000 - £499,999		
	£500,000 - £999,999		
£1,000,000+			
Estimate of the amount of funds to be raised and disbursed in each financial year of the NPO outside Jersey:  (Tick relevant boxes)		Raised outside Jersey	Disbursed outside Jersey
	£0 - £1,000		
	£1,001 - £19,999		
	£20,000 - £99,999		
	£100,000 - £499,999		
	£500,000 - £999,999		
£1,000,000+			

# APPENDIX C

## SUMMARY OF OBLIGATIONS UNDER DRAFT NPO LAW

Obligation	NPOs raising funds of £1,000 or less <sup>8</sup>	“Regulated NPOs” only (as defined in Article 1)	All NPOs <sup>9</sup>	Significant NPOs <sup>10</sup>	
Register with the Commission	No obligations set		✓	✓	
Application for registration to include: <ul style="list-style-type: none"> <li>– name</li> <li>– contact details</li> <li>– purpose, objectives and activities</li> <li>– structure</li> <li>– estimate of amount of funds to be raised and disbursed each year within and/or outside Jersey</li> </ul>			✓	✓	
Provide the Commission with name and contact details for each person that controls or directs the affairs of the NPO					✓
Notify the Commission within 3 months of changes in information provided in application for registration				✓	✓
File periodic financial statement with the Commission					✓
Keep financial records			✓	✓	✓

<sup>8</sup> Unless the NPO voluntarily registers, in which case the obligations in the column headed “All NPOs” would apply.

<sup>9</sup> Except NPOs with annual income of £1,000 or less, and “regulated NPOs”.

<sup>10</sup> As defined in paragraph 2.39.



Obligation	NPOs raising funds of £1,000 or less <sup>8</sup>	“Regulated NPOs” only (as defined in Article 1)	All NPOs <sup>9</sup>	Significant NPOs <sup>10</sup>
Retain financial records for 5 years	<b>No obligations set</b>	✓	✓	✓
Make financial records available to the Commission if requested			✓	✓
Provide any person on request with details of its purpose, objectives and activities			✓	✓
Provide any person on request with the name and contact details of any person that controls or directs the affairs of the NPO				✓
Paid employees, voluntary and unpaid workers of the NPO required to report to the Police actual knowledge or actual suspicion that a person has committed an offence under Articles 15-18 of the Terrorism Law		✓	✓	✓

# APPENDIX D



Jersey

# NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200-

## REPORT

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### Explanatory Note

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This Law will implement in Jersey Special Recommendation VIII of the Financial Action Task Force, which requires countries to enact legislation to combat any possible abuse of Non-Profit Organizations (in this Note and in the Law called NPOs) for terrorist purposes.

The purpose of the Law is not to regulate NPOs but to allow their activities to be monitored.

*Article 1* sets out what organizations are NPOs for the purposes of the Law.

*Article 2* exempts some NPOs from compliance with all or certain of the obligations imposed on NPOs by the Law.

*Article 3* sets out the meaning of certain other expressions used in the Law. The Commission means the Jersey Financial Services Commission, which will be responsible for administering the Law.

*Article 4* requires NPOs (other than those not required to do so) to be registered if they are established in Jersey or are administered in Jersey.

*Article 5* provides how an NPO may apply to be registered.

*Article 6* requires the Commission, on receipt of an application to register an NPO, to register the NPO, to seek further information or to refuse the application.

*Article 7* allows the Commission to seek further information and documents in respect of an application to register an NPO.

*Article 8* specifies the ground on which the Commission may refuse an application to register an NPO. It provides for an appeal to the Royal Court.

*Article 9* requires a registered NPO to notify the Commission of any change in its registered details.

*Article 10* requires certain NPOs to provide a financial statement to the Commission.

*Article 11* requires an NPO to keep financial records. The Minister may, by Order, exempt any NPO or class of NPOs from this obligation.

*Article 12* allows the Minister to require certain NPOs to provide the Commission with information in certain circumstances.

*Article 13* requires an NPO to supply certain information to a member of the public if requested to do so.

*Article 14* sets out the Commission's role in assessing the terrorist risk posed by each NPO and provides, in particular, what the Commission must do when it receives a financial statement from an NPO.

*Article 15* sets out what is to happen to financial records supplied to the Commission by NPOs.

*Article 16* allows the Commission to publish statements that an organization is an NPO that should be registered.

*Article 17* allows the Commission to publish a statement in respect of an organization posing as an NPO.

*Article 18* allows the Commission to publish a statement that an NPO is not complying with any of its obligations under the Law.

*Article 19* requires the Commission to give notice of an intention to publish a statement.

*Article 20* gives a right of appeal against the publication of a statement.

*Article 21* requires the Commission to keep a register of registered NPOs and to give to any person who applies the registration number or reference of any NPO on the register and details of how the NPO may be contacted.

*Article 22* provides how the Commission may or must make information that comes into its hands as a result of administering the Law available to others. It must not otherwise divulge the information.

*Article 23* sets out how the Commission may keep documents supplied to it under the Law.

*Article 24* allows the Commission to destroy those documents in certain circumstances.

*Article 25* allows the Commission to amend the registration or reference number of an NPO.

*Article 26* makes it an offence for an NPO, without reasonable excuse, not to be registered when it should be.



*Article 27* makes it an offence for an organization to claim to be a registered NPO when it is not. It is a defence to show that this was not done knowingly.

*Article 28* makes it an offence for a person to provide false information the person knows or should know is false.

*Article 29* makes it an offence for a registered NPO to fail, without reasonable excuse, to give to the Commission certain information when required to do so.

*Article 30* makes it an offence for an NPO to fail, without reasonable excuse, to supply to the Commission a financial statement. It is also an offence to supply false financial information.

*Article 31* makes it an offence for an NPO to fail, without reasonable excuse, to keep financial records. It is also an offence to keep false financial records, not to provide financial records to the Commission when required to do so or to provide false records.

*Article 32* makes it an offence for an NPO, when requested to provide certain information about itself by a member of the public, to fail to do so without reasonable excuse or to provide false information.

*Article 33* makes it an offence for a person not to give an explanation about financial records supplied under the Law. It is also an offence to give a false explanation.

*Article 34* provides who else is liable when an incorporated organization commits an offence under the Law.

*Article 35* provides who is or is not liable when an unincorporated NPO commits an offence under the Law.

*Article 36* provides that certain other persons may be liable when an offence is committed under the Law.

*Article 37* requires the Commission to deregister an NPO where the Royal Court makes certain orders in respect of terrorism.

*Article 38* requires the Commission to deregister an NPO in certain circumstances determined by the Minister. There is a right of appeal.

*Article 39* allow for the deregistration of an NPO on the application of a person the Commission is satisfied has the authority to make the application.

*Article 40* provides that a NPO ceases to be registered when its name is removed from the register.

*Article 41* clarifies the position of volunteers who work for NPOs when it comes to the Terrorism Law – they are to be treated as employees.

*Article 42* amends the Financial Services Commission (Jersey) Law 1998 in respect of certain NPOs.

*Article 43* allows States to amend the form set out in the Schedule to the Law by Regulations - it will need to be updated from time to time.

*Article 44* provides for the citation of the Law.

*Article 45* provides for the commencement of the Law.

It allows for a period of 14 days for any necessary Orders to be made. For example, those that will apply to regulated and more significant NPOs.

It then allows for a period of 3 months during which it will not be an offence for an NPO that is required to be registered not to be registered.

During this period the Commission can undertake the registration of existing NPOs.

If at the end of this period the Commission has not determined any application for registration made by an NPO during the period the Article provides that the NPO will not be guilty of the offence of being unregistered.





Jersey

## NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200-

### Arrangement

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Jersey

## NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200-

A **LAW** to provide for the registration and monitoring of non-profit organizations.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

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

### PART 1

#### INTERPRETATION

##### 1 Non-profit organization defined

- (1) An organization is a non-profit organization for the purposes of this Law if –
  - (a) it is established solely or primarily for charitable, religious, cultural, educational, social, or fraternal purposes with the intention of benefiting its members or the public or a section of the public; and
  - (b) it raises or disburses funds in pursuance of those purposes.
- (2) In paragraph (1) "organization" means a body of persons (whether incorporated or unincorporated), any legal entity and any equivalent or similar structure or arrangement and for the purpose of this Law the expression "organization" also includes persons acting as trustees of a trust.
- (3) The States may amend this Article by Regulations.

## 2 Exemptions

- (1) A non-profit organization need not comply with any requirement of this Law if the funds it has raised during the preceding 12 months (not including any period before the commencement of this Article) have not exceeded –
  - (a) the amount prescribed by the States by Regulations; but
  - (b) if no amount is prescribed, £1000.
- (2) A non-profit organization that is provided with a prescribed service in the course of trust company business under the Financial Services (Jersey) Law 1998 need only comply with those requirements of Part 2 that are expressed to apply also to regulated NPOs.
- (3) The States may amend this Article by Regulations.

## 3 General interpretations

- (1) In this Law, unless a contrary intention appears –

“Commission” means the Jersey Financial Services Commission established by the Financial Services Commission (Jersey) Law 1998;

“documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its provision or production include references to providing or producing a copy of the information in legible form;

“financial statement”, in respect of an NPO for a particular period, means a statement –

  - (a) that contains a detailed breakdown of the NPO’s income and expenditure (in each case, with any necessary explanations) during the period; and
  - (b) that sets out the state of its funds at the end of the period;

“financial records”, in respect of an NPO, means records of its transactions, both within and outwith Jersey, that are sufficient to show that its funds have been utilized in a manner consistent with its purpose, objectives and intended activities as shown in the register;

“funds” means –

  - (a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and
  - (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit;

“Minister” means the Minister for Economic Development;

“NPO” means a non-profit organization as defined by Article 1;

“organization” has the meaning given to that expression by Article 1(2);

“prescribed” means prescribed by Order made by the Minister;



“published” means published by the Commission in a manner that is likely to bring it to the attention of those affected and “publish” shall be interpreted accordingly;

“register” means the register kept by the Commission for the purposes of this Law;

“registered” means registered under this Law;

“regulated NPO” means an NPO to which Article 2(2) applies;

“terrorism” shall be construed in accordance with Article 2 of the Terrorism Law;

“Terrorism Law” means the Terrorism (Jersey) Law 2002.

- (2) Where, because of the nature, relationship or structure of a group of NPOs, the Commission considers it appropriate to do so, it may, for all or any of the provisions of this Law, treat as one NPO the NPOs that make up the group although they may also be separate NPOs for the purpose of this Law.
- (3) Where, for the purposes of this Law –
  - (a) an NPO is constituted by persons acting as trustees of a trust; and
  - (b) the trust has, as its governing law, Jersey law,the NPO shall not, solely by virtue of that fact, be taken to be established in Jersey unless it has at least one trustee who is ordinarily resident in Jersey.
- (4) The States may amend this Article by Regulations.

## **PART 2**

### **OBLIGATIONS OF AN NPO**

#### **4 Obligation of NPOs to register**

An NPO must be registered if –

- (a) it is established in Jersey; or
- (b) it is administered in or from Jersey,

whether or not it carries on any activity in Jersey.

#### **5 Application for registration**

- (1) An application to register an NPO or a proposed NPO may be made by sending to the Commission a completed application form in respect of the NPO or proposed NPO.
- (2) The application form must substantially follow the form set out in the Schedule.

## **6 Registration**

The Commission must, following the receipt of a completed application form in respect of an NPO or a proposed NPO, take one of the following actions –

- (a) register the NPO or proposed NPO by entering its name in the register and by giving it a registration number or reference;
- (b) refuse the application under Article 8;
- (c) require additional information or documents under Article 7 and, following receipt of the information or documents, take the action mentioned in sub-paragraph (a) or (b).

## **7 Obligation of NPOs to provide further information and documents**

- (1) The Commission may require an applicant for the registration of an NPO or a proposed NPO to supply additional information or documents in respect of the NPO.
- (2) However, the Commission must not do so unless it is necessary and reasonable for it to do so to enable it to assess the extent (if any) to which the NPO or proposed NPO is assisting or being used to assist terrorism or is likely to assist or be used to assist terrorism, as the case may be.

## **8 Refusal of application**

- (1) The Commission may refuse an application to register an NPO or a proposed NPO if the Commission is of the opinion that –
  - (a) the NPO or proposed NPO is assisting or being used to assist terrorism or is likely to assist or be used to assist terrorism, as the case may be;
  - (b) the name or proposed name of the NPO or proposed NPO is misleading or otherwise undesirable; or
  - (c) the organization specified in the application form is not or will not be an NPO.
- (2) If the Commission does refuse to accept an application, it must send notice of the refusal to the applicant.
- (3) The notice must –
  - (a) gives the reason for the refusal; and
  - (b) set out the applicant's right to appeal against the refusal under paragraph (4).
- (4) A person aggrieved by the Commission's refusal of an application may appeal to the Royal Court.
- (5) The appeal may be made on the grounds that the refusal was unreasonable having regard to all the circumstances of the case.
- (6) On the appeal the Court may –
  - (a) confirm the decision of the Commission to refuse the application; or



- (b) order the Commission to accept the application and to register the NPO or proposed NPO.
- (7) The Commission must not refuse an application under paragraph (1)(a) if to do so would be contrary to Article 35(4) of the Terrorism Law (tipping off).

## **9 Obligation of NPOs to give notice of change of registered information**

- (1) This Article applies if there is a change in –
  - (a) the information provided to the Commission in respect of a registered NPO prior to its registration; or
  - (b) that information as subsequently amended under this Article.
- (2) The NPO must give the Commission written notice of the change.
- (3) The notice –
  - (a) must be given at the first practical opportunity; but
  - (b) in any event, must be given within 3 months of the change.

## **10 Obligation of prescribed NPOs to prepare and provide financial statement**

- (1) A prescribed NPO or an NPO that belongs to a prescribed class of NPOs must prepare and provide to the Commission a financial statement for a period of not more than 18 months.
- (2) The period –
  - (a) must begin on or before the date the NPO became a prescribed NPO or an NPO belonging to a prescribed class of NPOs; but
  - (b) if the NPO has previously prepared and provided a financial statement under paragraph (1), must begin at the end of the period covered by its most recent financial statement.
- (3) The financial statement must –
  - (a) be in a form published or approved for the purpose by the Commission; and
  - (b) be provided to the Commission within 10 months after the end of the period covered by the statement.

## **11 Obligation of NPOs to keep and retain financial records**

- (1) An NPO must –
  - (a) keep financial records; and
  - (b) retain them for at least 5 years.
- (2) An NPO must make its financial records available to the Commission if required to do so to enable the Commission to carry out its obligations under this Law.
- (3) However, the Commission must not do so unless it is necessary and reasonable for it to do so to enable it to assess the extent (if any) to which

the NPO is assisting or being used to assist terrorism or is likely to assist or be used to assist terrorism.

- (4) The Minister may by Order, exempt an NPO or any class of NPOs from the obligations imposed on an NPO by paragraph (1).
- (5) The requirements mentioned in paragraph (1) also apply to regulated NPOs.

## **12 Obligation of prescribed NPOs to provide information to Commission**

- (1) A prescribed NPO or an NPO that belongs to a prescribed class of NPOs must provide prescribed information to the Commission if required to do so by the Commission.
- (2) However, the Commission must not require a prescribed NPO to provide the information unless it is necessary and reasonable for the Commission to do so to enable it to assess the extent (if any) to which the NPO could be, or is being, used to facilitate terrorism.

## **13 Obligation of NPOs to provide certain information**

- (1) An NPO must, upon being requested to do so, provide a person with –
  - (a) details of its purpose, objectives and intended activities;
  - (b) details of its structure (for example, whether it is an unincorporated body of persons, a trust, or an incorporated body and, if so, what type of incorporated body); and
  - (c) if it is a prescribed NPO or an NPO that belongs to a prescribed class of NPOs, such other information as may be prescribed.
- (2) An NPO must not charge for the provision of information under this Article.

# **PART 3**

## **FUNCTIONS OF THE COMMISSION**

## **14 Obligation of the Commission**

- (1) It is the role of the Commission to help to determine if an NPO is assisting or being used to assist terrorism.
- (2) Accordingly, the Commission –
  - (a) must as soon as practicable after it receives an application for the registration of an NPO or a proposed NPO consider if it raises any suspicion that the NPO or proposed NPO is assisting or being used to assist terrorism or is likely to assist or be used to assist terrorism, as the case may be;
  - (b) must as soon as practicable after it receives a financial statement from an NPO, consider if it raises any suspicion that the NPO is assisting or being used to assist terrorism; and



- (c) may otherwise monitor the activities of each NPO.
- (3) If the Commission considers that an NPO is assisting or being used to assist terrorism, it must immediately inform the Attorney General, giving any evidence it has for its suspicions.

## **15 Financial records held by the Commission**

- (1) This Article applies where –
  - (a) a person, acting on behalf of the Commission, has required an NPO to make its financial records available to the Commission under Article 11(2); and
  - (b) the NPO has complied with the requirement.
- (2) The person who required the records may –
  - (a) take copies of them or extracts from them; and
  - (b) request the person who provided them on behalf of the NPO or any other person who appears to be in possession of relevant information, to provide an explanation of them.
- (3) If original records have been provided –
  - (a) they may be retained for a year; but
  - (b) if within that year proceedings to which the records are relevant are commenced against any person, they may be retained until the conclusion of the proceedings.
- (4) If records are retained under paragraph (3), the Commission must, upon being requested to do so, provide a copy of them or any part of them to any person the Commission is satisfied is lawfully entitled to the records.
- (5) The Commission need not do so unless it is satisfied that the copy is reasonably required for a lawful purpose.
- (6) Any copy supplied by the Commission shall be supplied free of charge.

## **16 Publication of statement that registration is required**

If the Commission believes that an organization is an NPO that is required to be registered it may publish a statement setting out that belief.

## **17 Publication of statement that person or body of persons is not registered**

If the Commission believes that an organization that is not a registered NPO is holding itself out as a registered NPO, the Commission may publish a statement setting out that belief.

## **18 Publication of statement that NPO is not complying with its obligations**

If the Commission believes that an NPO has failed to comply with any of its obligations under this Law, it may publish a statement setting out that belief.

**19 Notice of intended publication of statement**

- (1) This Article applies where the Commission intends to publish a statement under Article 16, Article 17 or Article 18.
- (2) If it is reasonably practicable for the Commission to do so, it must, at least 7 days before it publishes the statement, serve on the NPO or organization to be mentioned in the statement, a notice of its intention to publish the statement.
- (3) The notice must –
  - (a) give the reason why the Commission intends to publish the statement;
  - (b) give the proposed date of publication of the statement;
  - (c) contain a copy of the statement;
  - (d) give details of the right of appeal provided under Article 20.

**20 Right of appeal against publication of statement**

- (1) A person aggrieved by a decision of the Commission to publish a statement under Article 16, Article 17 or Article 18 may appeal to the Royal Court against the decision.
- (2) An appeal may be made on the ground that the decision of the Commission is unreasonable having regard to all the circumstances of the case.
- (3) On an appeal the Court may make such interim or final orders as it thinks fit.
- (4) They may include an order that the Commission not publish the statement or, if the statement has been published, an order that the Commission –
  - (a) publish a further statement to the effect set out in the order; or
  - (b) stop any further publication of the statement.

**21 Commission to keep register and to provide certain information**

- (1) The Commission must keep a register for the purposes of this Law.
- (2) The Commission must, upon being requested to do so, inform a person if a name specified by the person appears in the register as the name of an NPO.
- (3) If it does, the Commission must give the person –
  - (a) the registration number or reference of the NPO; and
  - (b) details of how it may be contacted.
- (4) The Commission must not charge for the provision of information under this Article.





**22 Supply of information by the Commission**

- (1) This Article applies to information that has come into the Commission's possession as a result of it carrying out its obligations under this Law.
- (2) The Commission may, with the approval of the Minister, supply any information to which this Article applies to any person or any class of persons, whether in Jersey or elsewhere, approved by the Minister.
- (3) The Commission must, if required to do so by the Minister, supply to any person or any class of persons specified by the Minister, any information, specified by the Minister to which this Article applies.
- (4) Except as provided by this Law, the Commission must not otherwise divulge information to which this Article applies.

**23 Documents kept by the Commission**

A document delivered to the Commission under this Law may be kept by the Commission in any form that is capable of being reproduced in a legible form.

**24 Commission may destroy certain documents**

The Commission may destroy a document delivered to it under this Law that the Commission is not required to return if –

- (a) the Commission has recorded and kept the information in it in accordance with Article 23; or
- (b) the document relates solely to an NPO that has ceased to be registered or has ceased to be an NPO for at least 10 years.

**25 Commission may change the registration or reference number of an NPO**

- (1) The Commission may, for good cause, change the registration or reference number of a registered NPO.
- (2) If it does so, the Commission must, as soon as reasonably practical, give the NPO written notice of the change.

**PART 4****OFFENCES****26 Failure of NPOs to register**

An NPO that is required by this Law to be registered is guilty of an offence and is liable to a fine if, without reasonable excuse, it is not registered.

**27 Passing off**

- (1) An organization that is not a registered NPO is guilty of an offence and is liable to a fine if it holds itself out as being a registered NPO.
- (2) It is a defence for the organization to show that it did not know and could not reasonably have known that it was not a registered NPO.

**28 Supply of false information**

- (1) This Article applies where an NPO or a person supplies information or documents under –
  - (a) Article 5 (application for registration);
  - (b) Article 7 (supply of further information and documents)
  - (c) Article 9 (change of registered information); or
  - (c) Article 12 (information supplied by prescribed NPOs).
- (2) The NPO or person is guilty of an offence and liable to a fine if the NPO or person provides information or a document that the NPO or person knows or ought reasonably to know is false or misleading in a material way.

**29 Failure to provide information**

- (1) An NPO is guilty of an offence and is liable to a fine if, when required by Article 9 to give the Commission written notice of a change in the information registered in respect of the NPO, it fails, without reasonable excuse, to do so.
- (2) An NPO prescribed for the purpose of Article 12(1) is guilty of an offence and is liable to a fine if, when required under that Article to give the Commission prescribed information, it fails, without reasonable excuse, to do so.

**30 Offences in respect of financial statements**

- (1) An NPO is guilty of an offence and is liable to a fine if, without reasonable excuse, it fails to provide a financial statement to the Commission in accordance with Article 10(1).
- (2) An NPO is guilty of an offence and is liable to a fine if it provides to the Commission, in purported compliance with Article 10(1) a financial statement that it knows or ought reasonably to know is false or misleading in a material way.

**31 Offences in respect of financial records**

- (1) An NPO is guilty of an offence and is liable to a fine if, without reasonable excuse, it fails to keep financial records as required by Article 11(1)(a).



- (2) An NPO is guilty of an offence and is liable to a fine if it keeps, for the purpose of Article 11(1)(a), financial records that it knows or ought reasonably to know are false or misleading in a material way.
- (3) An NPO is guilty of an offence and is liable to a fine if, without reasonable excuse, it fails to retain financial records for 5 years as required by Article 11(1)(b).
- (4) An NPO is guilty of an offence and is liable to a fine if, without reasonable excuse, it fails to make financial records available to the Commission when required to do so under Article 11(2).
- (5) An NPO is guilty of an offence and is liable to a fine if it makes available to the Commission, in purported compliance with Article 11(2), financial records that it knows or ought reasonably to know are false or misleading in a material way.
- (6) In this Article “financial records”, in respect of an NPO, means the financial records of the NPO created or required to be created by the NPO subsequent to the commencement of this Article.

### **32 Offences in respect of supply of prescribed information by an NPO**

An NPO is guilty of an offence and liable to a fine of level 4 on the standard scale if, when requested under Article 13(1) to provide information, the NPO –

- (a) fails, without reasonable excuse, to provide the information; or
- (b) in purported compliance with the request, provides information that the NPO knows or ought reasonably to know is false or misleading in a material way.

### **33 Offences in respect of supply of an explanation by a person**

A person is guilty of an offence and liable to a fine of level 4 on the standard scale if, when required under Article 15(2)(b) to provide an explanation of a financial record, the person –

- (a) fails, without reasonable excuse, to provide the explanation; or
- (b) in purported compliance with the requirement, provides an explanation that the person knows or ought reasonably to know is false or misleading in a material way.

## **PART 5**

### **CRIMINAL LIABILITY**

### **34 Criminal liability in respect of incorporated organizations**

- (1) Where an offence under this Law is committed by an incorporated organization and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of –

- 
- (a) a person who is a director, manager, secretary or other similar officer of the organization; or
  - (b) a person purporting to act in any such capacity,
- the person is also guilty of the offence and is liable in the same manner as the organization to the penalty provided for the offence.
- (2) If the affairs of an incorporated organization 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 organization.

### **35 Criminal liability in respect of unincorporated organizations**

Where –

- (a) an offence under this Law appears to have been committed by an organization that is constituted by an unincorporated body of persons; and
- (b) the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of certain of those persons,

the persons mentioned in paragraph (b), and only those persons, are guilty of the offence and are liable to the penalty provided for the offence.

### **36 Other criminal liability**

A person who aids, abets, counsels or procures the commission of an offence under this Law is also guilty of an offence and liable in the same manner as a principal offender to the penalty provided for that offence.

## **PART 6**

### **DEREGISTRATION OF AN NPO**

#### **37 Deregistration of NPOs on order of the Royal Court**

- (1) The Commission must remove the name of an NPO from the register if the Royal Court orders the Commission to do so after the Court has –
  - (a) made a forfeiture order in respect of the funds of the NPO; or
  - (b) convicted the NPO of an offence under this Law, the Terrorism Orders or the Terrorism Law.
- (2) In this Article –
  - “forfeiture order” has the same meaning as in Schedule 3 to the Terrorism Law;
  - “Terrorism Orders” means –
    - (a) the Terrorism (United Nations Measures) (Channel Islands) Order 2001; and



- (b) the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002,  
of the United Kingdom.

### **38 Deregistration of NPOs on other grounds**

- (1) Except as otherwise provided by this Article, the Commission must remove the name of an NPO from the register if the Minister –
  - (a) orders the Commission to do so; and
  - (b) provides the Commission with his or her reasons for doing so.
- (2) The Minister must not order the Commission to do so unless the Minister is satisfied that the NPO –
  - (a) has persistently failed to comply with any of its obligations under this Law; or
  - (b) no longer exists or is not carrying out and is not likely to carry out the activity specified in the register in respect of the NPO.
- (3) Before acting under paragraph (2), the Commission, if it is reasonably practical for it to do so, must serve notice of its intention to remove the name of the NPO from the register.
- (4) The notice may be served on –
  - (a) the NPO;
  - (b) any person who constitutes or constituted the NPO; or
  - (c) if a body of persons constitutes or constituted the NPO, any person the Commission is satisfied represents that body of persons.
- (5) A notice under paragraph (3) must –
  - (a) give the reason why it is intended to remove the name of the NPO from the register;
  - (b) give the proposed date of its removal; and
  - (c) give details of the right of appeal provided by paragraph (8).
- (6) The Commission shall remove the name of the NPO from the register 28 days after the service of the notice unless, on appeal the Royal Court orders otherwise, whether before or after the determination of the appeal.
- (7) If the Commission finds that it is not reasonably practical to serve a notice under paragraph (4), the Commission may remove the name of the NPO from the register at any time.
- (8) Any person aggrieved by the removal or intended removal of the name of an NPO from the register under this Article may appeal to the Royal Court.
- (9) The appeal may be made on the grounds that the removal of the name of the NPO from the register was not or would not be reasonable in all the circumstances.
- (10) On the appeal, the Royal Court may –

- (a) confirm the decision of the Minister to order the Commission to remove the name of the NPO from the register;
- (b) order the Commission not to remove the name of the NPO from the register or, as the case may be, to restore the name of the NPO to the register; or
- (c) order the Commission to take such other action as the Court considers appropriate in the circumstances.

### **39 Deregistration of NPOs on request**

The Commission must remove from the register the name of an NPO if requested to do so by a person the Commission is satisfied has the authority to do so.

### **40 Deregistration**

An NPO ceases to be registered for the purpose of this Law when its name is removed from the register by the Commission in accordance with this Part.

## **PART 7**

### **MISCELLANEOUS**

### **41 Application of this Law to the Terrorism Law**

In its application to NPOs, Article 20 of the Terrorism Law shall have effect as if in Article 20(1)(b) “employment” included work undertaken on behalf of an NPO on a voluntary or an unpaid basis.

### **42 Amendment of Article 8 of the Financial Services Commission (Jersey) Law 1998**

The Financial Services Commission (Jersey) Law 1998 is amended by adding the following paragraph at the end of Article 8 –

- “(4) The Commission may require registered persons who provide services to regulated NPOs in the course of trust company business, to provide information in respect of those regulated NPOs to the Commission.
- (5) In paragraph (4) –
  - ‘registered person’ and ‘trust company business’ have the same meanings as in the Financial Services (Jersey) Law 1998;
  - ‘regulated NPO’ has the same meaning as in the Non-Profit Organizations (Jersey) Law 200-.”.

**43 Amendment of Schedule**

The States may, by Regulations, amend the form set out in the Schedule.

**44 Citation**

This Law may be cited as the Non-Profit Organizations (Jersey) Law 200-.

**45 Commencement**

- (1) This Law, other than Article 26, shall come into force 14 days after it is registered.
- (2) Article 26 shall come in force 3 months after the rest of the Law has come into force.
- (3) It shall be a defence for an NPO charged with an offence under Article 26 for the NPO to show –
  - (a) that it had made an application to the Commission for registration under Article 4 prior to Article 26 coming into force; and
  - (b) that at the time of the alleged offence the application had not been determined or withdrawn.

**SCHEDULE**

(Article 4(2))

**APPLICATION FOR REGISTRATION**

Name (or proposed name) of NPO:			
Contact details:	Name:		
	Address:		
	Telephone number:		
	Email (if any):		
Purpose (or intended purpose) of the NPO:			
Objectives (or intended objectives) of the NPO:			
Activities (or intended activities) of the NPO:			
Structure (or intended structure) of the NPO: <i>(Tick relevant box)</i>	Trust		
	Limited company		
	Unlimited company		
	Fid��icommis or incorporated association		
	Foundation		
	Unincorporated association		
	Other (please describe)		
Estimate of the amount of funds to be raised and disbursed in each financial year of the NPO within Jersey: <i>(Tick relevant boxes)</i>		Raised within Jersey	Disbursed within Jersey
	��0 - ��1000		
	��1001 - ��19,999		
	��20,000 - ��99,999		
	��100,000 - ��499,999		
	��500,000 - ��999,999		
	��1,000,000+		
Estimate of the amount of funds to be raised and disbursed in each financial year of the NPO outside of Jersey: <i>(Tick relevant boxes)</i>		Raised outside Jersey	Disbursed outside Jersey
	��0 - ��1000		
	��1001 - ��19,999		
	��20,000 - ��99,999		
	��100,000 - ��499,999		
	��500,000 - ��999,999		
	��1,000,000+		