



The Charities (Jersey) Law 2014 (the “**Law**”) was passed in November 2014, with the intention of reforming Jersey charity law, previously a nearly unregulated field. The Law is being brought into force incrementally and as of today, much of the Law is still not in force. At present, the Law does little more than codify the customary law, with a few minor amendments, and allow for the appointment of a charity commissioner (the “**Commissioner**”) and for the creation of a charity tribunal (the “**Tribunal**”). However, a number of wide-ranging substantive changes are being brought into force in 2018, the most notable being the creation of a central register of charities (the “**Register**”). The new Law is similar, although not identical to, the Charities Act 2011, and as such English case law is likely to remain highly persuasive.

The law of charities has a fascinating history, deriving from the Statute of Charitable Uses 1601, usually called the Statute of Elizabeth. Lord Macnaghten’s judgment in *Income Tax Special Commissioners v Pemsel* [1891] AC 531 developed the law into a recognisable state, judging that for there to be charity two conditions must be fulfilled, namely that:

**1. the purpose must be one that is recognised as charitable, these being:**

- the relief of poverty;
- the advancement of education;
- the advancement of religion; and
- recognised purposes which did not explicitly fall within the first three heads but which were either within the preamble of the Statute of Elizabeth, or analogous to other purposes previously recognised as being within the preamble of the Statue of Elizabeth

;and

**2. that this purpose must be for a public benefit.**

The Pemsel test was endorsed by the Royal Court in *Meaker v Picot* [1972] JJ 2161 and for many years, Jersey’s charity law was run on this ad-hoc basis, with the Pemsel test and cases from England and other common law jurisdictions informing the jurisprudence of the Royal Court.

The Law introduces a statutory definition of charity, but in essence this statutory definition is a codification of the Pemsel test, albeit with some expansion on what can be considered a charitable purpose.

Article 5(1) states an entity meets the charity test if ‘*all of its purposes are charitable purposes*’ and if ‘*in giving effect to those purposes, it provides...public benefit in Jersey or elsewhere.*’

If an entity has non-charitable purposes then it cannot qualify as a charity unless those non-charitable purposes are ‘*merely ancillary or incidental to any of its charitable purposes*’. Ancillary or incidental non-charitable purposes are those which arise from the charitable purpose, but are themselves not charitable. It is important that those wishing to achieve charitable status be aware of this, as if any of those ‘*incidental*’ or ‘*ancillary*’ purposes are or become more than merely incidental, charitable status will be lost.

The case of *IRC v Glasgow Police Athletic Association* [1953] UKHL 1 is an illustrative example. Briefly, it



concerned a sports club for the Glasgow Police Force. The Association argued that it was charitable because it promoted the efficacy of the Police Force, which was a valid charitable purpose under the fourth head of the Pemsel. However, the House of Lords held that, in fact, the private benefit to members could not be seen as mere *'unsought consequences'* and therefore *'disregarded as incidental'*, but rather the private benefit was what Lord Normand called *'an end in itself'* and therefore the Association was not charitable.

Article 6 (1) contains a greatly expanded list of charitable purposes, many of which are new; for example, Article 6 (1)(h) allows *'the advancement of participation in sport'*. However the impact of these new charitable purposes should not be overstated, as many were already deemed to be charitable under one of the existing Pemsel heads or were deemed charitable via the fourth head. The Law maintains the flexibility of the customary law, via Article 6(1)(p), which states that if the purpose *'can reasonably be regarded as analogous to [any of the other charitable purposes]'* then it shall be deemed to be a charitable purpose.

It was previously thought that where there was a valid charitable purpose under the first three heads of Pemsel *viz.* Education, Religion or Poverty, then there was a presumption that there was public benefit, and that only charities falling under the fourth head of Pemsel would need to actively show the public benefit arising from the charity. This presumption, so far as it existed, has been abolished by Article 7(3) of the Law. Anyone wishing to start a charity must show that there is a public benefit and that the benefit is not unduly restricted to a certain section of the public. The Law gives a great deal of discretion to decide whether there is public benefit to the Charity Commissioner, the Charity Tribunal, or the Court, as the case may be. Given the relative dearth of detail in the Law itself, English case law, and in time, advice issued by the Jersey Charity Commissioner is likely to determine Jersey's charity law in this area.

The Law provides for a Jersey Charity Commissioner, to be appointed by the Chief Minister. Recruitment has begun for this role. He shall have a number of responsibilities, including, *inter alia*,:

- the administration of the aforementioned charity test;
- to operate the Register;
- to enforce the requirements restricting the use of certain terms to only registered charities;
- to supervise and oversee the conduct of charity governors; and
- to publish guidance on the operation of the Law;

Of these, the most imminent is the establishment of the Register. A press release by the Jersey Government has stated that the Charity Commissioner's first task *'will be to establish the [Register], which is planned to go live during the first half of 2018.'*

This Register, along with the other reforms, is meant to help revitalise public trust and confidence in charities in Jersey, whilst being flexible enough to assist the Island's development as a centre for philanthropic endeavours. Those entities which elect to register will enjoy significant tax benefits, namely, an exemption from income tax and GST, entitlement to recover income tax on certain donations (such as in a lump payment), reduced rates of stamp duty, and reduced rates of land transaction tax.

If an entity wishes to become a registered charity, the entity shall, pursuant to Article 11, provide the following information to the Commissioner:



- a copy of the applicant's constitution;
- drafts of its registered charitable purposes and registered public benefit statement;
- evidence that it is a Jersey entity, that it intends to carry out, in or from within Jersey, a purpose that, in the Commissioner's opinion, is a charitable purpose and is of public benefit and has a principal address in Jersey;
- details of the entity's status, the governors' names, and the entity's address in Jersey from which the entity undertakes any activity; and
- details of the entity's financial accounts and payments made to any of the entity's governors in the 12 months before the application.

The Commissioner will, if satisfied, issue a certificate of registration to the entity.

The Register shall have three sections: the general section, which is intended to for charities intending to solicit donations from the public; the restricted section, which is intended for privately funded charities who, for whatever reason, do not wish to disclose information; and the historic section, which will contain details of de-registered charities.

The general section of the Register will contain the following information:

- the entity's registered name and number;
- details of the entity's status;
- the names of the entity's governors;
- registered charitable purposes and registered public benefit;
- the entity's registration date;
- reference to any required steps served on the entity or on the governors; and
- details of any previous registered names.

The Register will be voluntary: there is no obligation for foundations or other charitable entities to register as charities, indeed exemption from Jersey income tax will continue upon satisfaction of certain conditions. Those entities which do not wish to register may continue as they currently are, unless they have either the word '*charity*' or '*Jersey charity*' in which case they shall have to change it, as Part 6 of the Law states that only registered charities will be allowed to use those terms.

With such major changes to the law on the horizon, we advise that any charity seeking further information on how the changes affect them or any entity wishing to become a registered charity seek specialist advice. This is a matter in which Voisin have a great deal of experience and expertise, and we will be able to answer any queries arising from the changes to the law.

For further information on this matter or specific advice, please contact [Ian Strang](#) or [Jeffrey Giovannoni](#) of Voisin.



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*This note is intended to provide a brief rather than a comprehensive guide to the subject under consideration. It does not purport to give legal or financial advice that may be acted or relied upon. Specific professional advice should always be taken in respect of any individual matter.*