

STATES OF JERSEY



DRAFT NON-PROFIT ORGANIZATIONS (JERSEY) LAW 200- (P.63/2008): SECOND AMENDMENTS (P.63/2008 AMD.(2))– COMMENTS

**Presented to the States on 3rd June 2008
by the Council of Ministers**

STATES GREFFE

COMMENTS

The Law has been drafted with the intention that its impact on our Non-Profit Organisations would be as small as possible whilst assisting Jersey to comply with international standards. The Council of Ministers is firmly of the view that most of these amendments would have a material impact on the implementation of international standards and should therefore be rejected.

However, the Council of Ministers can see no reason to object to those amendments which do not have such an impact and so recommend the acceptance of the proposed amendments 2 and 3 to Articles 3 and 8 respectively.

Amendments 1 and 9

These amendments propose increasing the *de minimis* limit for registration to £5,000. The arguments against increasing the *de minimis* limit from £1,000 are clear. There is no basis in the relevant international standard Special Recommendation VIII for any form of exemption. However, a £1,000 exemption level has been introduced to match that currently in place for the Charity Commission of England and Wales. This is already likely to exclude a greater proportion of activity in Jersey than it does in the UK, but may be defensible against the IMF assessors by reference to a major regime which has received a “Largely Compliant” rating. A higher limit would be very hard to defend and should be rejected. These amendments are therefore opposed.

Amendment 2

This amendment is a minor rewording and, in the view of the Council of Ministers, may be safely accepted.

Amendment 3

This amendment inserts a right to ask the Commission to reconsider a refusal to register an NPO. The Council of Ministers has no objection to this.

Amendment 4

This amendment makes provision for the costs of an appeal (against a refusal to register as an organization as an NPO) to be paid from public funds. If an NPO successfully appeals against a refusal, then the costs would ordinarily be ordered to be paid by the Commission, and so the NPO would not be out of pocket. If the NPO is unsuccessful, then it is not clear why the costs should be paid from the public purse. The Council of Ministers would not wish to encourage unmeritorious appeals and this amendment is therefore opposed.

Amendment 5

The result of amendment 5, if adopted, would be that the Commission would not have the power to monitor NPOs on an ongoing basis. The Commission needs to have the power to consider on a reactive basis the activities of any NPOs after registration in order to prevent the assistance of terrorism. For example, there could be concerns about the activity of a particular NPO which were serious but not sufficiently serious to warrant the police or Law Officers Department investigating. If the amendment was adopted the Commission would have no mechanism for reviewing those activities. If adopted, it is believed that the legislation would fail to meet international standards. This amendment is therefore opposed.

Amendment 6

This amendment alters the emphasis in relation to the requirement that the purpose for which a copy is requested must be lawful/must not be unlawful. This is not in itself a significant change, but the amendment also removes the requirement that the request should be reasonable and potentially opens the Commission up to receiving unreasonable or frivolous requests. This amendment is therefore opposed.

Amendment 7

Amendment 7 also presents certain practical problems. Both the Minister (in order to administer the Law) and the Attorney-General (under his responsibility under the general customary law as the *partie publique* for charities) must be able to receive information about NPOs that is not limited to circumstances in which a suspected offence is being investigated, criminal proceedings instituted, or proceedings initiated. This amendment is therefore opposed.

Amendment 8

This amendment applies to the Commission's powers in relation to regulated NPOs, i.e. those with a director or trustee who is subject to the Commission's ordinary regulatory powers. The amendment would restrict the information the Commission could gather about those NPOs what is "necessary" to discharge the Commission's powers under the NPO Law. However, this would cause a problem if the Commission acquired information in this way which alerted it to a potential issue in relation to its ordinary regulatory functions. This amendment is therefore opposed.

Article 13

The proposal to delete Article 13– which involves the disclosure of information about a NPO by the NPO to the public on request – should also be rejected. Special Recommendation VIII is clear that some information concerning "significant" NPOs should be available to the general public, and the provision only requires very limited information to be given.

Final note

Finally, the Council of Ministers takes note that in his report Deputy Le Hérisier states that the broad intent of the legislation is necessary. The Council agrees with this view and believes that the draft NPO Law as amended by amendments 2 and 3 provides a workable balance between the needs of the local community and the requirements for Jersey to meet international standards.