

Guidance by the Jersey Charity Commissioner on the Operation of the Charities (Jersey) Law 2014

Guidance Note 3a: Applying to Register as a Registered Charity

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In this Guidance Note the Charities (Jersey) Law 2014, together with, generally, any Orders or Regulations made under it, is referred to as “the Law”. The Law, together with all the orders and regulations, and the Commissioner’s guidance on the operation of the Law, can be viewed on or accessed from the website.

The Law uses the word ‘governor’ to describe trustees or directors of a charity and that term is used throughout. It includes such officers of entities applying for registration.

The term ‘applicant entity’ is used to describe any organisation of any kind in the position of applying, or seeking to apply, for registration as a registered charity.

Although this Note aims accurately to set out and reflect what the Law says, it is not a substitute for it, and interested parties should, if they will, satisfy themselves accordingly as to the Law’s precise requirements.

All references to ‘the Commissioner’ include her or his designated staff and any professional advisers, save in respect of registration decisions, which may not be delegated.

John Mills CBE
Commissioner

Introduction

1. This Guidance Note covers the requirements under the Law for applications for registration in the General Section of the charity register and indicates the information provided by applicants that will be entered in the public part of the register. It is also relevant for applications for the Restricted Section of the register but in that case applicant entities should also refer to Guidance Note 3b which outlines certain additional requirements which must be satisfied for registration in that Section, and also addresses those aspects of this Guidance Note which are not, or possibly not, germane to Restricted Section applications. It also addresses certain issues regarding what the Law terms 'excepted foreign charities', UK-based charities that, if they so choose, will not need to register in order to be able to continue to be called 'charities' in Jersey.

2. Applicant entities are encouraged to regard carefully both this Guidance Note and Guidance Note 2 (on the charity test), in the course of preparing their applications. This applies particularly in respect of their registered statements of charitable purposes and public benefit, which must be submitted to the Commissioner as drafts. The various parts of the application form available on the website are, where appropriate, 'signposted' to the guidance.

3. Registration is a voluntary act, and no fee is payable by any applicant entity, the costs of registration being borne by taxpayers. From 1 January 2019, however, any Jersey entity currently styling itself as a 'charity' may no longer do so unless it has become a registered charity under the Law or has, before that date, made an application to the Commissioner but which has not yet been determined. The same goes for any non-Jersey entity that is not registered (nor has applied for registration), which from that date must not refer to itself as a 'charity' in connection with any of its activities in Jersey. The one exception is if the non-Jersey entity in question is able to be treated as an excepted foreign charity for the purposes of the Law – see paragraphs 5, and 65-71, below.

Who may apply to become a Registered Charity?

4. Any entity may apply for registration, whether or not it is an existing 'charity' (in the sense that it is currently entitled to charitable tax exemptions by decision of the Comptroller of Taxes) or a trust for charitable purposes, or otherwise holds itself out at the point of application to be, or to have the intention to be, a 'charity' that would or might meet the charity test set out in the Law and described in Guidance Note 2. It may be an existing entity or one newly-formed for the purpose. It may, or may not, be a Jersey entity but if it is not it will have to satisfy the Commissioner that the activities it intends to carry out in, or from within, Jersey will be substantial. (Guidance on what the Commissioner will take that to mean is at paragraphs 114-115 of Guidance Note 2.) It makes no difference of principle if the applicant entity intends to provide public benefit elsewhere than in Jersey though in that case, especially, the draft public benefit statement will need, depending on the subject matter, to describe the nature and

extent of the intended public benefit in a way that can be clearly comprehended by a 'local' audience once it is entered in the public part of the register. That means both the Commissioner, for the purposes of the charity test, citizens in Jersey and people elsewhere (say, in a 'destination' country) who may wish to consult the Jersey register themselves.

5. Notwithstanding paragraph 3 above, the Law makes provision for 'excepted foreign charities' to continue to style themselves or be called 'charities' in Jersey despite having chosen not to seek to be registered locally. Such entities will be those that are entitled by the law of the United Kingdom, or a constituent country of the same, to be called a 'charity' and which are wholly or mainly managed from one of those territories. This is explained more fully at paragraphs 65-71 below.

6. The Law prescribes that **an applicant entity may be any of the following:**

- a person or persons, taken together, who are trustees of a trust ('person' not being confined to natural persons), or who are fideicommissaires of a court-approved fideicommiss. A trust is defined in the Law as a trust over which the court has jurisdiction under Article 5 of the Trusts (Jersey) Law 1984. (This definition therefore includes trusts that have only one trustee.)
- such persons, taken together, who for the time being form an unincorporated body or association of persons (other than a partnership)
- a foundation, a company or an incorporated '1862 association'
- a body corporate established by an enactment, by an Act of the States or by a Royal Charter in relation to Jersey
- a body incorporated under, but not by, any enactment other than the Companies (Jersey) Law 1991
- a body incorporated under, but not by, an Act of Parliament or Order in Council, as such Act or Order is extended to, or applicable in, Jersey; or,
- an entity substantially similar to any in this list that is established under the law of another country.

7. The Commissioner's expectation is that this statutory list should be broad enough to cover most, if not all, eventualities. If, however, an applicant entity comes forward that does not fall within any of the above definitions (and is not a partnership) it is open to the Commissioner to recommend to the Minister that an Order is made to extend the list accordingly.

8. It is emphasised that all entities wishing to become registered charities must make an application to the Commissioner in accordance with the rules and arrangements set out in the Law and described in this Guidance Note. Unlike, for example, the position in Scotland when its charity register was established in 2005, there is no provision under the Law for 'automatic' registration, pending later review, of any existing entity that already describes itself as a charity, or is so styled by reference to any statutory, tax or other legal provisions in Jersey.

Making an Application

9. The preferred method for making an application is through the Commissioner's website, www.jerseycharitycommissioner.je. All necessary information to guide applicant entities is available there including a form for online submission (but which may be printed for manual submission). The common requirement for all applications is that they are prepared and submitted in a manner that addresses all the information requirements prescribed by the Law, as described in this Guidance Note. The application form itself indicates the essential requirements. In all cases the Commissioner is empowered to request further information, documents or evidence in order to determine an application. The Commissioner is always open to informal dialogue before an application is actually submitted and can be contacted through the website.

Information Requirements

10. **There are fourteen separate information requirements for applications for registration in the General Section of the register.** They are set out in paragraphs 11-52 below. They are to a large extent straightforward. Key points are given in bold text and those elements of the requisite information which will be entered in the public part of the register are noted. The information requirements are also specified on the application form. Any differing information requirements for registration in the Restricted Section of the register are set out in Guidance Note 3b.

First Requirement

11. **An applicant entity must confirm what type of entity it is by reference to the list in paragraph 6 above. This information will be entered in the public register.**

12. If it is a company, or a body incorporated under, but not by, either any enactment other than the Companies (Jersey) Law 1991, or an Act of Parliament or Order in Council, as such Act or Order is extended to or applicable in Jersey, or is substantially similar but established under the law of another country, the applicant entity must confirm whether or not it is a trust.

13. If it is not either a trust, a fideicomis, an incorporated '1862 association', a foundation or a company, or is unincorporated, an applicant entity must supply details of the Act, Royal Charter, Order in Council or foreign law by virtue of which it falls within one of the descriptions set out in paragraph 6.

Second Requirement

14. **An applicant entity must confirm that it is a Jersey entity, or not as the case may be, and give its principal address in Jersey. The Commissioner must be satisfied that the entity has such a principal address. That address**

(as defined in the next paragraph) will be entered in the public part of the register.

15. An applicant entity will be a Jersey entity if it falls within one of the definitions in the list in paragraph 6 above except the last one, and has a **principal address in Jersey**. The latter will be either a registered office or business address, if the entity's constitution requires it to have one, or otherwise the address of the main premises at or from which its activities in Jersey are managed, controlled or undertaken. If, however, the main premises are a private residential address, that should not be disclosed, and instead the address in Jersey of one of the governors should be given as the principal address. **That governor's address will, in that case, be entered in the public register.** The address of any other premises in Jersey, other than a private residential address, at or from which any other activity is to be undertaken by the entity upon registration must also be stated in the application. No addresses relating to Restricted Section registered charities will be entered in the public part of the register.

16. **If the applicant entity is an unincorporated body or association of persons**, the law governing the relationship between those persons, acting in that capacity, must be the law of Jersey; and **at least one of those persons**, as a governor, **must be either a natural person resident in Jersey or a Jersey entity** pursuant to the relevant definitions set out in paragraph 6 above.

17. **If an applicant entity is not a Jersey entity**, that is to say, it falls under the last definition in the list in paragraph 6, **it may be registered only if the Commissioner is satisfied that it intends to carry out, in or from within Jersey, an activity that is, in the opinion of the Commissioner, substantial.** The Commissioner must publish and maintain guidance on how he or she will determine whether or not an activity is substantial (and it can be found in Guidance Note 2, at paragraphs 114-115). In such a case, an applicant entity should put in writing to the Commissioner how, in its view, it would intend to meet the 'substantial activity' test were it to become a registered charity.

Third Requirement

18. **The names of each of the governors of the intended registered charity must be given.** These will be entered in the public part of the register, subject to the Commissioner's discretion where there may be any security or safety considerations in relation to any particular entity. The names of governors of Restricted Section charities will not be available in the public part of the register.

19. A governor is, as the case may be (and noting the list of types of entities in paragraph 6 above):

- a trustee or fideicommissaire of a trust or fideicommiss
- a member of the council of a foundation

- a director of a company
- a member of the management committee of an unincorporated entity; or
- a person who, under the constitution of the applicant entity, has the general control and management of its administration whether solely or as one of a number of governors

20. A person is not a governor merely by virtue of exercising general control and management on behalf of another person who has that responsibility under the constitution of the entity. In other words, **an employee of a charity does not need to be listed under this requirement unless that person is, in her or his own right, a governor** under the constitution as well as being a paid employee. This also applies in respect of the tenth requirement (payments to governors) at paragraph 40 below.

Fourth Requirement

21. **An applicant entity must submit its constitution, or equivalent founding document, with its application.** This must be a written document. If there is any doubt about whether a particular document is or is not an applicant entity's constitution, there is a full definition of the meaning of that term, covering all the types of entity described in paragraph 6 above, at Article 2(4) of the Law. The constitution will **not** be entered in the public part of the register.

22. Where a potential applicant entity is an unincorporated body or association of persons, in order to meet this requirement it should first establish a constitution that conforms to the model constitution for this purpose which is published on the Commissioner's website. The Commissioner should be contacted in a case of any doubt or uncertainty about this.

23. The written constitution is the key item of information to enable the Commissioner to be satisfied that an entity can indeed lawfully be regarded as a charity. The objects clause will normally be the most significant in this regard. Other aspects of it, however, may also be relevant to the Commissioner's determination of the charity test, such as, for example, whether a membership structure, if there is one, may be insufficiently open to the public or there are, perhaps, restrictions on the scope of its activities that could possibly call meeting the charity test into question. In some cases, moreover, the constitution may reveal elements of control, for example by a Minister, which would be expressly contrary to the charity test. All such considerations are addressed in Guidance Note 2 on the charity test.

Fifth Requirement

24. **A draft statement of registered charitable purposes must be submitted as part of the application. This must be accurately drawn from the applicant entity's objects in its written constitution. The Commissioner**

must be satisfied as to its accuracy in relation to the objects of the entity. Upon successful registration the statement will be entered in the public part of the register. This applies equally to a Restricted Section charity, the statement, however, being identified by its registration number not its name.

25. The accuracy of this statement in relation to an applicant entity's objects is very important since, once agreed by the Commissioner, it - and them all together, publicly available to view - will form a principal means of seeking to ensure the protection of public trust and confidence in registered charities. They will say for the public record what a charity is actually set up to do. The draft purposes statement should, therefore, state or effectually summarise the entity's objects as set out in its written constitution in a way that will enable users of the public register readily to see for themselves what a particular registered charity is indeed established to do.

26. Public confidence depends equally on assurance that the entity's purposes are indeed charitable purposes, so a draft statement should, after stating or summarising the entity's objects, then refer to the statutory charitable purpose or purposes to which, in the view of the applicant entity, its objects relate. The list of statutory charitable purposes, taken directly from the Law, is available on the website or can be found in Guidance Note 2 at paragraph 36. There is also a drop-down list of the statutory charitable purposes within the application form. For each application the Commissioner will review the draft purposes statement in order to be satisfied as to its accuracy and that the linkage with the statutory list is properly made.

27. The Commissioner will also scrutinise the written constitution and draft statement in order to establish whether there are or may be any purposes that are not charitable, or may potentially not be. If there are any such, it will not affect meeting the charity test if they are clearly purely ancillary or incidental to the stated charitable purposes. (How the Commissioner will approach defining that is explained in Guidance Note 2, at paragraphs 26-33.) If, however, any non-charitable purposes cannot reasonably be regarded as purely ancillary or incidental, that is to say, there are substantive non-charitable purposes in the entity's objects alongside those that are charitable, the charity test is unlikely to be met without, at least, careful further consideration as to the exact objects and purposes of the applicant entity.

28. Applicant entities are advised to consult Guidance Note 2 in order to get a fuller understanding of the statutory charitable purposes, including the limitations imposed on some of them by the Law, and the Commissioner's intended approach to determining the purposes element of the charity test. If they are in doubt about how the totality of their objects fit within the 'charitable purposes' context prescribed by the Law they are encouraged to seek advice from the Commissioner before an application is submitted.

Sixth requirement

29. A draft registered public benefit statement must be submitted as part of the application. This should set out in a clear, straightforward, manner (a) the public benefit to be provided by the registered charity and (b) the means by which it intends to ensure that it provides that public benefit. The public benefit to be provided must be to give effect to the purposes set out in the registered charitable purposes statement (including any purely ancillary or incidental purposes as referenced in paragraph 26 above). Once approved by the Commissioner, and upon successful registration, the statement will be entered in the public part of the register. (That includes the public benefit statements of Restricted Section charities, but identified by number not name.)

30. The draft statement needs to show, clearly but concisely, what it is that the entity is actually going to do as a registered charity, and how, in order to pursue and give effect to its stated charitable purposes. The Law expressly requires the Commissioner not to presume that any particular charitable purpose is for the public benefit, which is taken to mean that no charitable purpose is presumed automatically to provide public benefit. The intended public benefit, and how it is to be achieved, needs to be demonstrated, in a manner as overt as reasonably practicable. There is thus made a direct link between the public benefit statement and the registered charitable purposes statement, and, for the purpose of the registration decision, the Commissioner will consider them side by side. The aim is that people viewing the register should readily be able to get a good sense from the two statements about the purposes and activities of any registered charity.

31. Applicant entities should refer to Guidance Note 2 for further information about the rules and requirements in the Law relating to public benefit and the Commissioner's intended approach to determining that element of the charity test.

32. A further reason for the importance attaching to the two registered statements in that the Law imposes a general duty on governors of registered charities in good faith to act in a manner consistent with them. So they will provide a benchmark, so to speak, for continued compliance with the charity test. The two statements do not need to be long but they should be succinct and written in a manner comprehensible to, and informative for, all likely users of the public register, the one matching with the other. The Commissioner will approach her or his approving the two registered statements with such considerations closely in mind.

Seventh Requirement

33. The applicant entity's most recent financial accounts must be submitted with the application, if it has any. There is no requirement in the Law as to the form such accounts should take, or that they should have been formally audited, and it is accepted that in many cases accounts will be relatively simple

documents but nonetheless important as providing an accurate view of the entity's finances. The Commissioner will expect to receive accounts as a whole, in whatever form they take, rather than abstracted details. **Financial accounts will not be entered in the public part of the register** (it being recognised, though, that in a number of instances applicant entities' accounts will be publicly available by other means).

34. Where an applicant entity is registered with the Jersey Financial Services Commission (JFSC) as a non-profit organisation (NPO), such financial accounts should be akin to the financial records which it is required to keep by virtue of that other registration.

Eighth Requirement

35. **An applicant entity must provide the following core financial information for the most recent calendar year before the date of its application, notwithstanding having supplied financial accounts under the preceding requirement. This core financial information will be entered in the public part of the register:**

- **total income for the year**
- **total expenditure for the year**
- **total value of money and valued assets** (that is to say, assets whose value is supported by an appropriate valuation, including a market valuation if applicable) **held at the start of the year**
- **total value of money and valued assets held at the end of the year**
- **a list of any other assets, or classes of assets, held at the end of the year, giving addresses for land or other assets that have an address and brief descriptions of other assets or classes of assets**

'Asset' in the above context means an asset of any form, without taking account of any liabilities. 'Valued asset' means an asset of whose value an applicant entity is aware or to which is attached an estimated value for accounting purposes. If an applicant entity came into being less than one year prior to the date of its application, the information should relate to the period from that starting date up to a day not more than 28 days prior to the date of the application.

Ninth Requirement

36. **This requirement concerns only any applicant entity that is not already registered as an NPO at the date when it applies to be registered as a registered charity, if it ought to be so registered but is not. (See Appendix 1 for further information, which includes details of certain types and size of entity that do not need to be registered as NPOs.) Whether or not a**

registered charity is registered under the NPO law is a statement of fact that will be entered in the public part of the register.

37. The Commissioner's understanding of the main relevant requirements of the Non-Profit Organizations (Jersey) Law 2008 (the NPO law) is set out for ease of reference at Appendix 1. Governors of applicant entities, however, who think that this requirement may apply to them are advised to consult any JFSC guidance on NPO registration. They are also welcome to discuss the issue with the Commissioner if that would be helpful. It may well be that consideration of this is triggered if an applicant entity is unable to answer the question on the application form about its NPO registration number.

38. An applicant entity to which the ninth requirement applies must provide, as part of its charity registration application, any other financial information (over and above that which is stated in paragraph 35 above), and any other additional information, that it would be required to provide to the JFSC were its application an application for registration under the NPO law.

39. In so providing such information as part of its charity registration application, the applicant entity must request of the Commissioner that it wishes to be registered under the NPO law too. The Commissioner is required to pass such a request to the JFSC, and the Law requires that the latter must treat the request, with the information and documents provided, as an application for registration under the NPO law.

Tenth Requirement

40. Details must be provided of any payment made to a governor of the applicant entity in the twelve months preceding the date of the application. These details will be entered in the public part of the register. The Commissioner will permit appropriate latitude in an entity's meeting this requirement so that, for example, such information can be reproduced from an entity's last set of annual accounts rather than provided precisely for the 'last twelve months'.

41. The precise definition of a payment for this purpose is set out in the Charities (Additional Information) (Jersey) Order 2018, which may be viewed on the Commissioner's website, and any applicant entity to which this requirement applies or might apply is advised to look carefully at the terms of Article 2 of the Order which gives the definition in full. In essence, however, it includes payments in both money and kind.

42. There is no requirement to state upon application any future intentions regarding payments to governors, but such information will be captured retrospectively, for entry in the public part of the register, from registered charities' subsequent annual returns.

43. The Commissioner has a discretion to not to enforce this requirement if, in her or his view the amounts involved are insignificant. This will be considered on a case-by-case basis including having regard to the applicant entity's size and scale generally, but the Commissioner's starting-point in any such consideration will be that the payment of any amounts to governors is a matter of legitimate interest in protecting public trust and confidence in registered charities, regardless of the size or individual significance of individual payments.

44. Information should, as necessary, be provided in respect of anyone whose name is included in the list of governors that will be submitted under the third requirement (paragraphs 18-20 above), and also anyone who may have held such office at any time during the twelve months preceding the application but had vacated it before the date

Eleventh Requirement

45. An applicant entity must confirm that it has received declarations from all its governors (as defined under the third requirement) to the effect that no 'reportable matters' arise in respect of any of them.

46. Reportable matters are defined principally in Article 19 of the Law and include a range of things relating to individual conduct and misconduct. They are set out at Appendix 2 for ease of reference. Some, relating, for example, to offences arising under the Law itself, are not relevant at the point of application. Applicant entities should ensure that all their governors have had the contents of Appendix 2 drawn to their attention, and are responsible for confirming as part of their applications that they have had declarations from all governors named in their applications pursuant to the third requirement as set out in paragraphs 18-20 above. Appendix 2 also sets out the powers of the Commissioner, and the Court upon application by the Commissioner, in relation to the resolution of reportable matters.

47. A model declaration for the use of applicant entities' governors can be found on the Commissioner's website. (There will be a further model declaration for use from 2019 in respect of the reporting requirements for annual returns.)

48. If there is any relevant reportable matter relating to a governor of an applicant entity, he or she must also, separately, report the fact to the Commissioner at the point of application. The applicant entity itself must do likewise. It should be noted that this is also an ongoing requirement once registration has been achieved.

49. Applicant entities or individual governors in any doubt about these particular matters are invited to communicate with the Commissioner ahead of an application's being submitted.

Twelfth Requirement

50. This relates to any further information, documents and evidence that the Commissioner requests in order to assist her or him in determining an application. This may arise in the case of any application where, for example, there is or may be uncertainty or insufficient information or evidence regarding any relevant matter. Information, if so requested, must be provided by an applicant entity. **No further information, or similar, will be entered in the public part of the register.**

Thirteenth Requirement

51. An applicant entity must state if, at the date of its application, it intends to take over the property or functions of an existing registered charity and, if so, which one. This may be unlikely to elicit a positive answer from any applicant entity in the first round of registration applications. It will, however, be helpful for the Commissioner's general functions for her or him to know if an applicant entity has, in the twelve months before its application, taken over such property or functions from a 'pre-registration' charity.

Fourteenth Requirement

52. An applicant entity must state whether or not it has a website or other source of electronic communication of information about it and, if so, how that may be accessed by the public. This information will be entered in the register.

Name of Charity

53. The Commissioner must be satisfied that the name of an applicant entity, upon its becoming a registered charity, is not undesirable. The Law states that a name would be undesirable if, in the Commissioner's opinion, it is the same as, or too similar to, the name of any other registered charity; is likely to mislead the public as to the purpose, activities or identity of the applicant entity; gives the impression that the applicant entity is connected to any person to which, however, it is not connected (whether in Jersey or elsewhere); or is offensive.

54. The Commissioner will approach the exercise of her or his discretion in respect of this requirement having regard especially to the need to protect public trust and confidence in registered charities. It is important, for example, that names of registered charities, or key words within those names, and the way they are presented are sufficiently distinctive one from another for the avoidance of confusion, especially in fund-raising situations. The Commissioner's approach will also take into account the interests of, and the public's interest in, charities that are, under the Law, excepted foreign charities in Jersey through being managed wholly or mainly in the United Kingdom and which are thus not registered Jersey charities.

55. It may be noted that, once registered, **a registered charity must not use any name but its registered name.** It may, however, apply to the Commissioner for permission to change its registered name or to add an alternative registered name. The Commissioner must refuse such a request if, in her or his opinion, any of the considerations in paragraph 53 above were likely to obtain as a result of the proposed change.

56. The Commissioner will aim to take a robust but balanced approach where any sense emerges, or could reasonably arise, that a particular name is, or could be seen as, offensive. By ‘offensive’ is meant causing, likely to cause or potentially able to cause offence, displeasure or moral injury to the public at large or a reasonably large section of it. Such a test, however, might not be met if those kinds of effects were seen as reflecting the opinion or views of only a relatively small section of the public or in practice potentially impacted upon only one or a few particular interest groups or a distinct set of interest groups or persons. A similar balanced approach will be adopted where a name could reasonably be seen to be likely, or have the potential, to mislead people as to the charitable purposes of the entity and the way it intends to seek to give effect to those purposes.

57. This question of name is addressed fully in Guidance Note 2, at paragraphs 112-113.

Registration

58. An applicant entity having successfully met the charity test, **the Commissioner must register it provided** he or she is satisfied that

- **its constitution is a written document**
- **it is a Jersey entity or, if it is not, that it intends to carry out, in or from within Jersey an activity that is substantial** (having regard to the Commissioner’s guidance on that, referenced at paragraph 17 above)
- **it has a principal address in Jersey** (as defined in paragraph 15 above); and
- **its name is not undesirable** (paragraphs 53-57 above refer).

Upon registration the Commissioner will allocate a registered charity number to the entity. The Commissioner will issue to each registered charity a certificate of registration, confirming the registered name and number, and the date of registration. The certificate will be suitable for public display, though such display is not prescribed.

59. To summarise, **upon registration the following information will be entered in the public part of the charity register in respect of entities registered in its General Section:**

- **the registered charity’s name and the date on which it was registered**

- **its registration number**
- **its principal address in Jersey and the address of any other premises in Jersey at or from which it undertakes any activity**
- **its status as an entity** (the list at paragraph 6 above refers) with appropriate supporting information as necessary
- **the names of each of its governors**
- **whether or not it is registered under the Non-Profit Organizations (Jersey) Law 2008**
- **a statement of its registered charitable purposes**, in the form that will have been approved by the Commissioner
- **its registered public benefit statement**, also as approved by the Commissioner
- **its core financial information** as defined in paragraph 35 above
- **details of any payments made to any governors** in the twelve months prior to its application (paragraphs 40-41 above refer)
- **details of its website, if it has one, or other source of electronic communication.** In practice, this should be a list of all its social media pages.

60. The above list will be somewhat different for charities registered in the Restricted Section of the register. See Guidance Note 3b.

61. The Commissioner will inform the Comptroller of Taxes of successful registrations, for the purpose of Art.115 (a) of the Income Tax (Jersey) Law, as amended by the Law [exemption from income tax for registered charities], and any other tax laws relevant to registered charities as the Comptroller may determine . In each case the Comptroller will be given the registered charity's name, its registration number and the date of registration, and details of any payments made to governors. The Commissioner will also, in January 2019, give to the Comptroller a list of those applicant entities which had applied for registration by 31 December 2018 but whose applications were not yet determined or were under appeal on that date [*per* Article 2(1) (b) of the Charities (Transitional Provisions) (Jersey) Regulations 2018, which can be viewed on the Commissioner's website]. (The preceding sentence has no application from 1 January 2019.)

62. The Commissioner may designate, in respect of a particular registered charity, that a matter should not be entered in the public part of the register if, in her or his view, the safety or security of any person, property or premises would be significantly put at risk by public access to information about that matter. So the list above may be adjusted in such a case. This provision applies equally to Restricted Section charities,

to the extent that it may be relevant to them. Any such case that arises will be treated by the Commissioner with all due consideration, taking account of both the relevant sensitivities and having regard to her or his overall duties and responsibilities, while bearing in mind the purpose of the public part of the register, by reason of the transparency it provides, to help protect public trust and confidence in registered charities.

Applicant Entities not established in Jersey

63. An applicant entity not established in Jersey may nonetheless seek registration, subject to meeting the ‘substantial activity’ rule referred to in paragraph 17 above and enlarged upon in Guidance Note 2 (paragraphs 114-115), and other relevant requirements set out in this guidance note, along with the requirements of the charity test itself. If it is successfully registered then, in line with all other registered charities, it will be able to style itself as a ‘charity’ in Jersey and accrue such other benefits and advantages as may arise from that appellation and the status it confers.

64. There may, however, be instances where such an entity does not wish to apply for registration, perhaps, but not necessarily only, because it perceives that it may not readily meet the ‘substantial activity’ test or, indeed, other aspects of the charity test and the requirements of the applications process. In that case, the unregistered entity, like any other such, may **not**, from 1 January 2019, refer to itself as a ‘charity’ in connection with any of its activities in or from within Jersey, and must not cause or permit another person to refer to it in that regard using that appellation.

Excepted Foreign Charities

65. The Law makes an exception in the matter of title for certain charities established elsewhere than in Jersey and which do not seek to become registered charities. The exception applies to an entity that is established under the law of the United Kingdom, or of any jurisdiction part of the same, that is entitled under its domestic law to refer to itself as a ‘charity’ (or by any equivalent term in a language other than English used in the given jurisdiction). The entity in question must be managed wholly or mainly from the jurisdiction within the United Kingdom under the law of which it is established.

66. Such an entity may refer to itself, and be referred to, as a ‘charity’ in respect of any of its activities in or from within Jersey. The ‘substantial activity’ test, absent an application for registration in Jersey, is not applicable.

67. The Law as written limits this exception to charities established in, and managed from, the United Kingdom that are not separately registered as charities in Jersey. There is, however, a power in the Law to enable the rules of the exception to be varied either generally or in a particular case. First, the States may, by Regulations, make changes as to the conditions that are to be met for the exception to apply. Secondly, the Minister may, by Order, prescribe another jurisdiction apart from the United Kingdom or one of its parts from where an excepted foreign charity may be

established. The Minister may also prescribe by Order an exception that the entity concerned need not be entitled to be called a 'charity' in the given jurisdiction (or any equivalent term used in or by the same). Such an entity, however, would still have to meet the test of being managed wholly or mainly from that other country, and not be a registered charity in Jersey; the Minister has no power to adjust those requirements. It is impermissible for an excepted foreign charity to refer to itself as being registered in Jersey, or cause or permit another to refer to it as so being.

68. It is not unlikely that a case may arise where a country other than the United Kingdom or one of its constituent parts comes into play for the purposes of the excepted foreign charities test. Subject to the facts of the matter in each case, the Commissioner will always be ready to entertain advising the Minister as to whether he or she should make an Order in respect of a specified entity established and managed from another country, or not as the case may be. Relevant factors in such advice would include the activities carried out, or to be carried out, in Jersey, and the nature and efficacy in whatever country of the regulatory regime for entities of the kind that under Jersey law would be eligible to become registered charities. Where such a regime is, whether manifestly or seemingly, of a dissimilar, that is to say, lower, standard than that in Jersey, particularly in relation to the various elements of the charity test, the Commissioner would normally expect that to be a not insignificant factor in the advice he or she might offer to the Minister. Any decision, though, would be a matter for the latter not the former.

69. It should be noted that offences by governors of registered charities as referred to in paragraph 46 above and Appendix 2 also include such offences in relation to excepted foreign charities.

70. Attention is also drawn to paragraphs 30-32 of Guidance Note 1 as to the Commissioner's seeking confirmation from an excepted foreign charity that it is fully compliant with relevant anti-discrimination legislation in its own land.

71. The Commissioner will take what steps he or she reasonably can to invite entities that are, or believe they are, excepted foreign charities, to make themselves known so that relevant information about their activities in Jersey can be gathered alongside information about registered charities. This is clearly important for protection of public trust and confidence in charities generally in Jersey, and it will also support the Commissioner's duty to seek to encourage all forms of charitable giving and contribute towards the effective exercise of her or his general function to advise the Minister as to the nature of charities in Jersey and as to the merits of any proposal for further regulation of the same. The Commissioner may also get to know about excepted foreign charities if any such seek tax exemptions or repayments in respect of Jersey income and expenditure but are found by the Comptroller of Taxes not to be on the list of registered charities that the Commissioner will have supplied to the former as noted at paragraph 61 above.

72. This Guidance Note will be kept under review by the Commissioner.

Appendix 1

Relevant Requirements of the Non-Profit Organizations (Jersey) Law 2008 (NPO law)

1. This note sets out, for ease of reference, the Commissioner's understanding of the main relevant provisions of the NPO law. It is not to be regarded as a definitive statement of that law.
2. The NPO law provides that any legal entity, including a body of persons whether or not incorporated and persons acting as trustees of a trust, is an NPO for its purposes if:
 - (a) it is established solely or primarily for charitable, religious, cultural, educational, social or fraternal purposes, with the intention of benefiting the public or a section of the public; and
 - (b) it raises or disburses funds in pursuance of those purposes.
3. Such an entity must be registered with the Jersey Financial Services Commission (JFSC) if it is established in Jersey or is administered in or from it. This does not apply to an NPO if the funds it has raised during the preceding twelve months have not exceeded £1000.
4. Nor does it apply to 'regulated NPOs', that is to say, NPOs that are provided with a prescribed service by a trust company business under the Financial Services (Jersey) Law 1998.
5. An NPO with funds raised above the £1000 threshold must keep financial records and retain the same for at least five years. In certain specified circumstances (but not generally) the JFSC may require an NPO to make those records available to it.
6. 'Financial records' is defined as records of an NPO's transactions, both within and without Jersey, that are sufficient to show that its funds have been utilised in a manner consistent with its purpose, objectives and activities as shown in the register.
7. 'Funds' is defined as assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form 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 and letters of credit.
8. An NPO must, on request, provide people with details of its purpose, structure, objectives and intended activities.
9. The JFSC must, on request, inform a person if a name specified by that person appears on the register as the name of an NPO. If so, the former must provide the registration number of the NPO and details of how it may be contacted.

Appendix 2

Reportable Matters [paragraphs 45-46 above refer]

Introduction

1. The Law sets out a range of ‘reportable matters’ in relation to the conduct of charity governors. They apply equally both to governors of applicant entities and, on an ongoing basis, to governors of registered charities. **The focus of this appendix is ‘reportable matters’ in relation to governors of applicant entities in the initial phase of applications under the Law.** Most, however, of the requirements concerning reportable matters at the point of application apply equally once an applicant entity has become a registered charity but there are some others which come into play only after registration and those will be the subject of further guidance by the Commissioner.

2. This appendix is based mainly on Articles 2(10) and 19 of the Law. It aims to reflect those provisions accurately but it is not a substitute for the Law itself, which should be consulted in any case of doubt on the part of an applicant entity or any of its governors.

3. A particular point to note is where a person is a governor of more than one applicant entity or registered charity. Where her ‘first’ applicant entity has been registered but not her ‘second’, her reportable matters declaration in respect of the second will have to take account of her position as already a registered charity governor of the first.

Key Requirements for Governors of Applicant Entities

4. **A governor of an applicant entity must report any reportable matter arising in respect of her or him both to the Commissioner and to the entity.**

5. **Where there is no reportable matter to report, a governor of an applicant entity must provide a declaration to that effect to it, the entity. This must be done before an application for registration is made by the entity.**

6. **The applicant entity must state in its application that it has such declarations from all its governors, save for any who will have made a declaration under paragraph 2 above.**

7. **An application for registration is not complete without these things having been done.**

The Reportable Matters

8. The law specifies **seven reportable matters** in relation to governors of applicant entities, being, in each case below, the fact that the person in question

(i) **has engaged in misconduct as a governor of a registered charity.** See paragraph 9 below for full details of this

(ii) is the subject of a disqualification order, or of any other restriction on her

(iii) has a conviction, whether or not spent, either for an offence under the Law or for her acting as a governor, imposed under the Law

(The three requirements above could potentially or theoretically impact upon a person described in paragraph 3 above but not on any other potential registered charity governor whose entity was not yet registered.)

(iv) has been disqualified from, or for being, a charity trustee under the law of any part of the United Kingdom, or from holding any equivalent position under the law of any other country

(v) has been disqualified from being a company director, or has been made subject to any equivalent disqualification under the law of any country other than Jersey

(vi) is bankrupt or otherwise insolvent, whether under the law of Jersey or elsewhere; or

(vii) has an unspent conviction for any of the ‘misconduct’ offences described in the next paragraph.

Definition of ‘Misconduct’

9. Further to paragraph 8(i) above, ‘misconduct’ is defined in the Law as

(i) a contravention by a registered charity or any of its governors of:

- any provision of the Law or any enactment under it
- the constitution of the registered charity in question
- the constitutional law of the charity in question, that is to say, as the case may be, the Trusts (Jersey) Law 1984, the Loi of 1862, the Foundations (Jersey) Law 2009, the Companies (Jersey) Law 1991, or any other law by (but not under) which an entity is an incorporated body
- a Required Steps notice issued by the Commissioner under the Law; or
- a court order under the Law or the constitutional law of the registered charity, or under any enactment under such laws; or

(ii) the commission of an offence, in relation to a registered charity, an excepted foreign charity or an entity equivalent to a registered charity under the law of a country other than Jersey:

- under the constitutional law of any of the entities noted immediately above

- under any of the Jersey laws in the list at the end of this appendix
- under any other enactment, being an offence relating to money laundering or terrorist financing
- under any other enactment or under customary law, being an offence involving deception or dishonesty, or
- under the law of a country other than Jersey, being an offence similar to those indicated in the four bullet points above.

(Apropos (i), fourth bullet point, above, Required Steps notices are a means under the Law by which the Commissioner can require a registered charity to take certain steps to remedy a matter prompting the service of such a notice. Such matters include misconduct and failure to meet the charity test.)

10. If a reportable matter is reported by an applicant entity or one of its governors, the Commissioner must make inquiries so as to determine whether the person concerned is a fit and proper person to be a governor of a registered charity. The Commissioner may not determine the application for registration until the reported matter is wholly resolved and any resulting order or notice has been complied with.

11. The Commissioner may, if he or she judges that it is the right thing to do having regard to all the circumstances, apply to the Court to determine the matter. The Court may make any order it sees fit, including dismissing the Commissioner's application or giving permission for a governor to act as such despite there being a reportable matter, or ordering that an applicant entity may not be registered as a charity or that it must suspend or remove the person in question as a governor.

12. If the Commissioner considers that an application to the Court is not necessary, he or she must, on determining the issue:

(a) either notify the applicant entity that its application will be refused unless the governor is removed

(b) or give permission for the governor to act as a governor, either unconditionally or subject to any condition or time limit that appears to the Commissioner to be necessary. Any such permission must be by a notice in writing which will be entered in the register.

Note: List of Jersey Laws (paragraph 9(ii) above, second bullet point, refers)

The Collective Investment Funds (Jersey) Law 1988
 The Banking Business (Jersey) Law 1991
 The Insurance Business (Jersey) Law 1996
 The Financial Services (Jersey) Law 1998

Any Regulation or Order made under any of the above
The Income Tax (Jersey) Law 1961
The Goods and Services Tax (Jersey) Law 2007
The Taxation (Land Transactions) (Jersey) Law 2009
The Alternative Investment Funds (Jersey) Regulations 2012

Ends