

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

## **Guidance Note 3b**

### **The Application Process for Registration in the Restricted Section of the Charity Register**

---

**Published on [www.charitycommissioner.je](http://www.charitycommissioner.je) on 10 July 2018**

In this Guidance Note the 2014 Charities Law together with Regulations and Orders made under it, is referred to as ‘the Law’ save where there is a specific mention of one or other of those. The Law, together with all regulations and orders enacted under it, can be accessed on or from [www.charitycommissioner.je](http://www.charitycommissioner.je).

This Guidance Note should be read in conjunction with Guidance Note 3a on the application process generally. Broadly, all the information requirements for applications for registration in the General Section of the register set out in Guidance Note 3a apply equally to Restricted Section applications. This note sets out the additional requirements for applications for Restricted Section registration and certain related matters pertaining to such applications. It also describes what information about Restricted Section registered charities will be entered in the public part of the Restricted Section register, identified in each case by the registered charity’s number not name; and, by extension, what will not be in the public part.

It should also be read in conjunction with the Charities (Restricted Section of Register) (Jersey) Order 2018, and with Guidance Note 2 on the Charity Test., both available on the website. The statutory rules relating to the Restricted Section are in Article 9 of the Law.

Although this Guidance Note is based on, and reflects, the Law, any relevant statement in it is at all times subject to the Law itself. Direct reference to it should be made by applicant entities if they will.

References to the Commissioner include her or his designated staff and professional advisers where the context warrants it. The Commissioner may delegate any of her or his functions to staff save for the registration decision itself.

John Mills CBE  
Commissioner

## Introduction

1. The Law makes provision for a **Restricted Section** of the charity register, separate from the General Section of the register. Both sections have a public part, where certain information about registered charities will be freely available to public view. The Law prescribes the information that must be entered in each public part but **any such information about Restricted Section registered charities will be identified there by reference only to a registration number**, allocated in confidence to the applicant entity upon successful registration. The name of the registered charity concerned will not be revealed and there will be no means of linking a number as shown on the register to any particular entity. The Commissioner, however, must inform the Comptroller of Taxes of the name of all entities that become registered charities, without which confirmation a registered charity would be unable to claim any tax exemption or repayment due to it.

2. Applicant entities seeking registration in the Restricted Section must submit **all the information described in the first thirteen of the fourteen information requirements listed in Guidance Note 3a**, in the same way as all other applicants for registration. (The ninth requirement, however, may not apply if the applicant entity is a 'regulated NPO' [as described at paragraph 4 of Appendix 1 to Guidance Note 3a].)

3. They must also submit the **additional information** described in paragraphs 11-12 below, and demonstrate to the Commissioner's satisfaction that they meet the **Funding Condition** set out at paragraphs 18-30 below. Restricted Section applicant entities must, like all others, meet both elements of the charity test as laid out in Guidance Note 2.

4. This Guidance Note goes a little beyond purely the application process for the Restricted Section, in order to help enable potential applicant entities to cognise as a whole the rules and arrangements pertaining to registration in that section.

### **Purpose of the Restricted Section of the Register**

5. The purpose of the Restricted Section is, in essence, to provide for entities that wish to become registered charities, and are so eligible subject to meeting the charity test, but which do not wish, need or intend to be, so to speak, public-facing. Once registered, they may not solicit donations from the general public and must take reasonable steps to avoid doing so. That, however, is not to say that there is not an equal requirement for any such applicant entity, in meeting the charity test, to seek to ensure that its work is, like that of any charity, of a public not a private character, and that it utilises its resources to provide public benefit to a reasonable degree in giving effect to its registered charitable purposes.

6. Governors of Restricted Section charities will, equally with governors of all registered charities, be under a duty to act in a manner consistent with their registered charitable purposes and public benefit statements. Those statements form part of the limited information about a Restricted Section charity that will be in the public part of the register, albeit identified not by the name of the charity but only its number.

7. Entities seeking registration in the Restricted Section of the register may well be those that are already endowed with resources with which to give effect to their charitable purposes and thus neither wish nor need to seek support from the public at large or engage generally in fundraising activities of the kind which would by definition mean that they were in the public eye. That is not to exclude the prospect of donations; but they will arise from particular relationships – say, a family or professional relationship - between the entity and a donor. There are specific rules about this: see paragraphs 26-28 below.

**8. It is a condition of Restricted Section registration that there must be no fundraising of the kind accessible to, or aimed at, any member of the public on a ‘casual’ or ordinary basis, or as the result, for instance, of advertising or other forms of marketing.**

9. The Commissioner’s duty is to seek to act in a way that, as far as reasonably practicable, protects public trust and confidence in registered charities, in a manner compatible with the encouragement of all forms of charitable giving and voluntary participation in the work of registered charities. The duty applies equally in respect of the Restricted Section even if perhaps taking on a slightly different hue because of the confidentiality that obtains. **The Commissioner has a discretion to decline to register an applicant entity in the Restricted Section if, in the exceptional circumstances of the particular application, its acceptance would, in her or his opinion, prejudice this duty.** See further at paragraphs 31-32 below.

### **Additional Restricted Section Information Requirements**

10. There are two additional information requirements for Restricted Section applications beyond those required for all applications as set out in Guidance Note 3a as modified by paragraph 2 above.

#### **First Additional Information Requirement**

11. Applicant entities must submit a **summary of the reasons for registration in the Restricted Section**, with which the Commissioner must be satisfied. **This summary, as agreed by the Commissioner, will be entered in the public part of the register**, referenced by the entity’s charity number. The summary needs to reflect the relevant contents of this Guidance Note in an appropriate way, and in each case the reasons adduced will be carefully reviewed by the Commissioner and additional information or evidence sought if necessary. The summary should be succinct but informative as to the reasons its purpose is to explain, and effectual, to the applicant entity’s satisfaction, in averting revelation of the applicant entity’s identity.

#### **Second Additional Information Requirement**

12. An applicant entity must **state its intention, in the event of the Commissioner’s declining to enter it in the Restricted Section, whether in that case its application should be treated either as withdrawn or as an application for entry in the General Section of the register.** It should be noted that this statement must be provided at the point of application but this is without prejudice to an applicant entity’s entitlement to appeal to the Charity Tribunal against

a registration decision of the Commissioner. Presuming successful Restricted Section registration, the statement of intention will **not** be entered in the public part of the register.

13. Notwithstanding the Commissioner's ability to request further information, evidence or documents in order to determine any application [the twelfth information requirement in Guidance Note 3a], a Restricted Section application must be supported generally by information and evidence to the satisfaction of the Commissioner. This includes financial information, and information about how the applicant entity intends to meet and follow the **Funding Condition** described in this guidance note. Subject to the facts of any particular case, the Commissioner may request at this point details of any anticipated donors and into which 'disregard' category they fall (see paragraphs 26-28 below).

14. Especially where structures may be large, complex or unusual, potential applicant entities or their representatives may wish to **contact the Commissioner** before a Restricted Section application is submitted in order **to go over things informally** first, especially so that a view can be taken as to the need for any further information or evidence to facilitate the determination of an application. The Commissioner will always endeavour to be as informative and helpful as possible in such exchanges but they will naturally always be informal and without prejudice to the eventual registration decision he or she has to take. This may be a particularly useful process where the intended public benefit is to be delivered elsewhere than in Jersey, or where the putative applicant is not (or possibly not) a Jersey entity [on which, see paragraph 17 of Guidance Note 3a]. But it is for an applicant entity itself to decide how it wishes to proceed prior to an application's actually being made.

### **What will be entered in the public part of the Restricted Section Register?**

15. The Law provides that **the following information** about a Restricted Section registered charity **will be entered in the public part of the Restricted Section register** at the point of first registration, in all cases referenced by number not name:

- the registration number itself
- a note of its status as an entity (*per* Guidance Note 3a, paragraph 6)
- its approved statement of registered charitable purposes (ditto, 24-28)
- its approved registered public benefit statement (ditto, 29-32); and
- its summary of reasons for seeking registration in the Restricted Section (paragraph 11 above).

There is a power in the Law for the Minister to add to the above list by Order, a power which has not been exercised. There is no power to reduce the scope of the list. The one other main thing that will, post-registration, be in the public part of the register, referenced by the charity number, is confirmation that a Restricted Section registered charity has submitted its annual return.

16. It is the responsibility of an applicant entity to take the care necessary in preparing its application materials so that they do not, whether through inadvertence or otherwise, serve to assist or enable its identity to be surmised by means of the information required for entry in the public part of the register. The Commissioner, will equally seek to be alert to any such potentiality too. In this regard, the attention of applicant entities is also drawn to paragraphs 34-37 below.

**What will not be entered in the public part of Restricted Section Register but, rather, held only by the Commissioner?**

17. The following information received by the Commissioner from a Restricted Section applicant entity will **not** be entered in the public part of the register:

- its written constitution or other founding document
- its registered name
- the names of its governors
- its principal address in Jersey
- the address of any other premises in Jersey at or from which it undertakes any activity
- the date on which it was registered
- any further information requested by the Commissioner in order to determine its application
- financial information required upon application including the core financial information (*per* Guidance Note 3a, paragraph 35)
- any other information or evidence requested by the Commissioner in order to determine an application
- details of its website, if it has one; and
- its statement of intentions (paragraph 12 above refers).

The same applies after registration in respect of information required for annual returns. (Note for contrast that, in the case of General Section registered charities, the first six items above, plus the core financial information and website details, will be entered in the public part of the register but not the other things.)

**The Funding Condition**

18. **It is a condition of registration in the Restricted Section that an applicant entity meets the ‘Funding Condition’.** This is prescribed in the Charities (Restricted Section of Register) (Jersey) Order 2018 (‘the Order’) which can be viewed on the Commissioner’s website. The following paragraphs seek accurately to set out or reflect the terms of the Order but Restricted Section applicant entities are advised to look carefully at the Order itself both before submitting an application for registration, and, as necessary, once registered, in order to satisfy themselves that they fully comply with its provisions and will continue to do so. The Commissioner may

require specific information relating to compliance with the provisions of the Order for the purpose of determining an application.

19. The **Funding Condition** is that an applicant entity, once registered

- **must not solicit donations from any person** whom or which it knows to be, or can reasonably be expected to suspect to be, a person **who does not fall within the ‘permitted categories’ described in paragraphs 26-29 below**. ‘Person’ includes entities as well as natural persons; and
- must take all reasonable steps to avoid soliciting donations from any such person

20. The essence of the Funding Condition, therefore, is that **a Restricted Section registered charity may not solicit donations from the general public, or from the public at large**.

### **Definition of ‘Soliciting’**

21. The Order defines ‘soliciting’, for the purpose of the Funding Condition, at Articles 3(1), (3) and (4). The next paragraph is the Commissioner’s summary of those.

22. **‘Soliciting’ means asking a person to make, or consider making, a donation, whether expressly or by implication; or asking a person to forward such a request to another**. The concept includes making available public information about how a donation may be made and holding an event where persons may be enabled or encouraged to make a donation (even if that is not a principal purpose of the event). The soliciting could be by any means such as social media, statements or advertisements in the press, or public notices of any kind. The definition also includes endorsing or permitting another person so to act. Whether or not the action in question actually results in a donation is not relevant.

23. The Commissioner’s view, taking account of the definition in the Order, is that **the restriction on soliciting a donation would not normally include an ‘out of the blue’ donation or donation proposal** (that is to say, one which was entirely unexpected) but it is important that enquiry is made by the registered charity as to how that donor got to know of it for assurance that the Funding Condition will not have been breached. The Commissioner may ask for further information and should be consulted in cases of doubt.

### **Definition of ‘Donation’**

24. The Order defines ‘**donation**’, for the purpose of the Funding Condition, at Article 3(1) and (2). **It is the giving of anything of value (whether money, property or anything else) but not including the giving by an individual of her or his labour or time**.

25. The definition does not include a person’s (that is to say, not only a natural person’s) giving an item of value where the item is not given for no consideration and

the person is unaware that the entity is a registered charity, of its purposes and of the use to which the item may be put; or is otherwise not influenced by those matters. So, for example, if a Restricted Section registered charity chases up a payment from a bank, that might, technically, be a 'solicitation' from 'the public' (in this case, the entity that is the bank). The payment, however, would not be regarded as a 'donation' since it would not be gratuitous and the bank would be uninfluenced by the fact that the entity is a registered charity. This exception will also be likely to apply in various portfolio management situations and, perhaps, where social investment loans and the like are involved. The essential requirement is that any such payments go on to form part of the registered charity's assets for giving effect to its charitable purposes in accordance with its registered public benefit statement.

### **Permitted Solicitation of Donations**

26. A Restricted Section registered charity may solicit donations from a person who or which either has a **relevant connection to the entity** or is a **relevant 'professional'**.

27. There is a **relevant connection** for this purpose if the person in question from or by whom or which a donation is, or is to be, solicited or made is:

- a governor, employee or former employee of the registered charity
- a family member of either a governor or employee of the registered charity
- a member of the registered charity, where members are not all governors
- where the registered charity is a trust, any other person or persons who is an enforcer of that trust, is named as a protector of it, or is the settlor or settlors who provided its first, or first substantial, trust property
- where the registered charity is a foundation, any person who is a founder or guardian of the foundation
- where the registered charity is a body corporate, any person who controls or owns it, or is a body corporate owned or controlled by the registered charity or is a third body corporate that also owns or controls the registered charity.

28. A person is a **relevant professional** for this purpose if he, she or it is:

- a charity registered in the restricted section of the register
- a person carrying on regulated financial services business
- a private trust company (as defined in the relevant legislation, and see Article 4(4)(c) of the Order)

- an employee of such regulated person or private trust company, if he or she is engaged in the carrying on of her, his or its regulated financial services business, or in the investment activity of that person, respectively
- a director or partner of such regulated person or private trust company, if either of those is a company or partnership, respectively; or is
- any other person who acts as a professional investor in respect of a professional investor regulated scheme (as defined in the relevant legislation, and see Article 4(4)(d) of the Order).

### **Certain Exceptions to the Above**

29. A Restricted Section registered charity, or a registered charity in the General Section of the register applying to be entered in the Restricted Section, may apply to the Commissioner to be permitted to accept donations from another person or group of persons, not described in paragraphs 27-28 above, from whom or which the Commissioner considers it is appropriate for the entity to solicit donations. The provisions of the Order relating to this exception are at Articles 4(5)-(6). The criteria are, in essence, that the person is a member of a group that has a sufficient connection with the entity such that the members of the group can be treated as not being members of the public, or can be expected to be reasonably likely to have sufficient understanding of financial matters in relation to charities; or where some other sufficient reason applies for not treating a person or persons as members of the public. The Commissioner will make her or his decision, upon application by the relevant registered charity, taking into account the terms of the Order and having regard to the facts and circumstances of any particular case in the light of the Commissioner's general duty noted at paragraph 9 above.

30. An applicant entity or existing registered charity for which the definitions and rules relating to the Funding Condition may be of moment is advised to take account of the exact terms of the Order and, if necessary, contact the Commissioner before making an application or taking a particular step.

### **The Determination**

31. As noted in paragraph 9 above, the Commissioner may refuse an application for entry in the Restricted Section of the register if, in the circumstances of that particular request, its acceptance would, in her or his opinion, prejudice the performance of the Commissioner's duty to seek to act in a way that protects public trust and confidence in registered charities and is compatible with all forms of charitable giving and with voluntary participation in the work of registered charities.

32. The Commissioner would expect any exercise of this discretion normally to be exceptional, both intrinsically and since, by definition, the applicant entity in question would otherwise meet the charity test. So for a rule that could override that, the regulatory bar needs to be quite high while still capable of being reached in an exceptional circumstance where public trust and confidence in registered charities

could be considered by the Commissioner to be at risk. One situation where it could be envisioned that action might be warranted in this regard might be where an entity sought to get the benefit of the privacy afforded by the Restricted Section while yet, in practice, in effect maintaining, or presenting, a public profile. That could have the potential to undermine public trust and confidence since the Commissioner would be unable to confirm or deny publicly whether the entity was or was not a registered charity. Another might possibly be where an applicant entity perhaps exhibited a degree of nonchalance as to its statement of intentions under paragraph 12 such that it appeared to be indifferent as to registration in one section of the register or the other. That could tend to undermine confidence in the integrity of the registration scheme established by the Law and, equally, serve to undermine public trust and confidence in registered charities.

33. Presuming, however, that the requirements set out in this guidance note are duly met by an applicant entity, along with the requirements for all applications as set out in Guidance Note 3a, the Commissioner must register the applicant entity in question as a registered charity in the Restricted Section of the register.

### **Applications Procedure and Confidentiality**

34. The application form for Restricted Section registration may be completed and submitted online in the usual way or else it can be printed for signature and delivery to the Commissioner, along with other requisite information materials. Upon submission, a Restricted Section application will generate a 'confidential' flag on the system so that it cannot be mistaken for a General Section application. Materials sent for delivery by mail or other means should be clearly marked 'RS confidential'. An application may be submitted absent the application form itself, if preferred, as long as all requisite information is provided in an ordered and comprehensible way. A Restricted Section application having been approved, the information about the registered charity in question which must be entered in the public part of the register (as described in paragraph 15 above) will be duly entered in that part by the Commissioner, identified by the registration number that will have been allocated. The rest will be kept securely by the Commissioner.

35. Rigorous arrangements are in place in order to ensure that no information that is not for public view is unwittingly entered in the public part of the register in a manner that, of itself, could identify the Restricted Section registered charity concerned. As already noted, however, it is for an applicant entity itself to ensure that the information pertaining to it that will be entered in the public part of the register is suitably drafted and presented in order to prevent or inhibit identification. This may be a matter for consideration when the Commissioner comes to approve the draft statements of charitable purposes and public benefit.

36. The application process described in this guidance note will be kept under review and the Commissioner will always be content to hear the views of interested parties in order to ensure an efficient and effective applications process.

## **General Information about Restricted Section Registered Charities**

37. While all details of Restricted Section registered charities will be known only to the Commissioner (and the Comptroller of Taxes for its particular purposes) anonymised, aggregate, information about them and what they do, including financial information, will be compiled for annual reports and other communications about the size, state and nature of the charity sector in Jersey as a whole. Attention is drawn to paragraph 12 of Guidance Note 1, where the Commissioner's general powers in this regard are described.

ENDS