CONSULTATION DRAFT,
30 APRIL 2018

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

Purpose of consultation

To consult on the Charity Commissioner’s draft guidance on the operation of the Charities (Jersey) Law 2014 (‘the Law’). The consultation will close on 30th May 2018.

Summary

All Commissioner’s guidance on the operation of the Law, new or varied, will be subject to public consultation in draft. This Guidance Note should be read in conjunction with Guidance Note 3a on the applications process generally. All the information requirements set out in the latter apply equally to Restricted Section applications. This note sets out the additional requirements for Restricted Section registration and certain related matters pertaining to such applications.

In this Guidance Note the 2014 Law together with regulations and orders made under it, is referred to as ‘the Law’. It, and all regulations and orders, can be accessed on or via www.charitycommissioner.je.

Although this Guidance Note is based on, and reflects, the Law, any relevant statement expressed in it is at all times subject to the Law itself and the regulations and orders issued under it. Reference to them should be made for their full meaning and effect.

References in it to the Commissioner include her or his designated staff and professional advisers where the context warrants it.

Who should respond?

We would like to hear from:

• members of the public
• members of the legal profession
• voluntary and community sector organisations
• financial services organisations.

**What we would like to know?**

We would like to know whether you think:
• the draft guidance is appropriate for Jersey
• anything is missing from the guidance, or is included in the draft guidance which should not be

**How to respond to the consultation**

You can submit your comments:
• via our website www.charitycommissioner.je
• by email: info@charitycommissioner.je
• by posting your comments in writing

**Write to:**

Jersey Charity Commissioner
1st Floor
Lincoln Chambers
31 Broad Street
St Helier
Jersey
JE2 3RR

**Your submission**

If you are writing or emailing please provide the following information with your response:
• your name and contact details
• whether you are responding on behalf of a voluntary and community sector organisation,
• a financial services organisation, another company or organisation or as a member of the public.

Please note that consultation responses may be made public (sent to other interested parties on request, quoted in a published report, reported in
the media, published on www.charitycommissioner.je, listed on a consultation summary etc.). You need to tell us if you:

- agree that your comments may be made public and attributed to you
- agree that your comments may be made public but not attributed (i.e. anonymous)
- do not want your comments made public.
Introduction

1. The Law makes provision for a **Restricted Section** of the register of charities. Information on the public register about entities registered in the restricted section will not be identifiable by reference to the name of the entity concerned, but only by its registration number. This number will be allocated by the Commissioner upon successful registration and will be known only to her or him and the entity concerned. The number will be shown on the register but it will not be linked to the name of the entity.

2. Applicant entities wishing to seek registration in the Restricted Section must submit **all the information described in the first eleven of the twelve requirements listed in Guidance Note 3a**, in the same way as all other applicants for registration. All Restricted Section applicant entities must meet the charity test described in Guidance Note 2.

3. This Guidance Note goes a little beyond purely the application process for the Restricted Section, in order to enable potential applicant entities to appreciate the wider rules and arrangements that apply to registered charities in this category.

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

4. The purpose of the Restricted Section is, in essence, to provide for entities wishing to become registered charities but which will not be, so to speak, public-facing. That is not, however, to say that there is not an equal requirement for any such applicant entity to meet the charity test and ensure that its work is, like that of any charity, of an essentially public character and that its assets are put to work in giving effect to its charitable purposes. And governors of Restricted Section charities will, equally with all others, be under a duty to act in a manner consistent with their registered charitable purposes and public benefit statements (see Guidance Note 4).

5. Entities seeking registration in the Restricted Section of the register of charities may well be those that are already endowed with resources with which to deliver their purposes and do not wish to (or may not need to) seek support from the public at large and engage generally in fundraising activities of the kind familiar to most people. That is not to exclude the prospect of donations; but they are likely to depend upon a particular relationship – say, a family or professional relationship - between the entity and a donor. **It is a condition of Restricted Section registration that there must be no fundraising of the kind accessible to any member of the public on a ‘casual’ or ordinary basis or as the result, for instance, of advertising.**

---

1 The only exception to this is the financial information described in paragraph 27 of Guidance Note 3a which is required where an applicant entity does not have any financial accounts. That is regarded by the Commissioner as likely to be pertinent only to a relatively small number of applicant entities for the public register and which are generally likely to be small in size. It is the Commissioner’s expectation that most, if not all, applicant entities for the restricted section will have financial accounts in one form or another that can be submitted with an application; if not, the Commissioner may or will request equivalent information in order to determine the application.
6. The Commissioner’s duty is to seek to protect public trust and confidence in registered charities, in a manner compatible with all forms of charitable giving and voluntary participation in their work. The duty remains firmly in place in respect of the Restricted Section even if perhaps taking on a slightly different hue because of the confidentiality provisions. The Commissioner will always aim to ensure, through the information and knowledge he holds privately about Restricted Section registered charities, or seeks from them in the course of the administration of the Law, that the duty is pursued equally across all registered charities regardless of category. Attention is drawn in this regard to paragraph 25 below, which outlines the Commissioner’s power to decline to register an entity in the Restricted Section if doing so would, in her or his opinion, prejudice the duty.

**Additional Restricted Section Information Requirements**

7. There are two particular information requirements for Restricted Section applications beyond those set out in Guidance Note 3a:

- **first**, a **summary of reasons for registration in the restricted section** must be provided, and the Commissioner must be satisfied with this. The summary needs to show how the applicant entity intends to meet the **Funding Condition** described at paragraph 15 below. This summary will be on the public register, referenced by the entity’s charity number; and

- **secondly**, 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 public register**. It should be noted that this statement must be provided at the point of application; its having to be provided is without prejudice to an applicant entity’s entitlement to appeal to the Charity Tribunal against a registration decision of the Commissioner. This statement will not be on the public register.

8. Notwithstanding the Commissioner’s ability to request further information, evidence or documents in order to determine any application [the twelfth information requirement described in Guidance Note 3a], a Restricted Section application must be supported generally by information and evidence to the satisfaction of the Commissioner. This will include 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 a particular case, the Commissioner may request at this point details of any anticipated donors and into which ‘disregard’ category they fall (paragraphs 21-23 below).

9. Especially where structures may be large or complex, potential applicant entities may wish to contact the Commissioner before submitting an application in order to go over things informally first, notably proposed statements of charitable purposes and public benefit, so that a view can be taken as to the need for any further information. This may be a particularly useful process where intended public benefit is to be delivered elsewhere than in Jersey. 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 on the Public Register concerning Restricted Section Registered Charities?

10. The Law provides that the following information about a Restricted Section charity will in all cases be available to view on the public register of charities:

- its registration number (but not its name or address)
- a note of its status as an entity, per paragraph 6 of Guidance Note 3a
- its approved statement of charitable purposes
- its approved registered public benefit statement
- its summary of reasons for registration in the Restricted Section;

and, post-registration,

- confirmation whether an annual return has or has not been filed, and
- if a required steps notice has been served by the Commissioner on the registered charity or on a governor of it, a note of that fact or a copy of the notice.

The last two points above are addressed in Guidance Note 5 on post-registration matters.

11. There is a power in the Law for the Minister to add to the above list by Order, but the Commissioner is not aware of any intention in this regard. There is no power to reduce the scope of the list. For the avoidance of doubt, all the items listed above will be referenced on the public register only by the number assigned to the registered Restricted Section charity. The charity name associated with that number will be known only to the Commissioner and, of course, the entity itself along with its authorised representatives.

12. It is the responsibility of an applicant entity to take the care necessary in preparing its application materials so that they do not, whether by inadvertence or otherwise, assist or enable its identity to be revealed or surmised by means of the statements required for the public register. The Commissioner, however, will always seek to be alert to this potentiality too.

What will not be on the Public Register

13. The following information about a Restricted Section registered charity will not be available to view on the public register of charities but will be held in confidence by the Commissioner:

- its registered name or any previous registered names
- the names of its governors
- its principal address
• 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 an application
• financial information required upon application
• its written constitution or other founding document (this applies to all registered charities); and
• its statement of intentions as outlined at paragraph 7 above

(The same obtains, after registration, in respect of information required for annual returns and relevant notifications. See Guidance Note 5.)

The Funding Condition

14. It is a condition of registration in the Restricted Section that an applicant entity meets the Funding Condition prescribed by the Minister by Order. The Minister has made such an Order: the Charities (Restricted Section of Register) (Jersey) Order 2018 (the Order). It may 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 nonetheless encouraged to look carefully at it both before submitting an application for registration and, as necessary, once registered to ensure that they fully comply with its provisions. As already noted, the Commissioner may require specific information arising from it in order to determine an application.

15. The Funding Condition is as follows:

• an applicant entity, once registered, must not solicit donations from any person whom or which the applicant entity 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 20-23 below. ‘Person’ in this context includes entities as well as natural persons; and,

• an applicant entity, once registered, must take all reasonable steps to avoid soliciting donations from any such person

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

Definition of ‘Solicit’

17. ‘Solicit’ is taken to mean asking a person to make, or consider making, a donation, whether expressly or by implication. The concept includes making available public information about how a donation may be made and holding an event in order to
enable or encourage persons 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. It also includes endorsing or permitting another person so to act. Whether or not the action results in a donation is not relevant. It would not normally include an ‘out of the blue’ donation or donation proposal but it is important that enquiry is made as to how that donor became aware of the charity. The Commissioner may ask for further information and should be consulted in cases of doubt.

**Definition of ‘Donation’**

18. ‘Donation’ is defined in the Law as the giving of anything of value (whether money, property or anything else) but does not include the giving by an individual of her or his labour or time.

19. There is a narrow exception to these rules where an item is (a) not given for no consideration and (b) is given by a person who is either unaware that the entity is a registered charity or is uninfluenced by that fact. 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 is 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 application to its charitable purposes in accordance with its registered public benefit statement.

**Permitted Solicitation of Donations**

20. 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’**.

21. There is a **relevant connection** for this purpose if the person in question from 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 guarantor 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.

22. An applicant entity (or, later, as a Restricted Section registered charity) may apply to the Commissioner to be permitted to accept donations from another person or group of persons who or which the Commissioner considers has or have either sufficient connection with the entity or sufficient understanding of financial matters in relation to charities; or where some other sufficient reason applies. The Commissioner will make her or his decision, taking account of the terms of the Order, based on the facts and circumstances of each particular case.

23. A person is a relevant professional 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)
- an employee of such regulated person or private trust company, if he or she is engaged in the carrying on of its regulated financial services business or investment activity, respectively
- a director or partner of the same, if the entity is a company or partnership, respectively; or
- another person who acts as a professional investor in respect of a professional investor regulated scheme (as defined in the relevant legislation)

24. An applicant entity for which the definitions and rules outlined in preceding paragraphs may be of moment is advised to take account of the exact words of the Order. Post-registration notification requirements regarding the funding condition are addressed, together with all other continuing notification requirements, in Guidance Note 5.

**The Determination**

25. The Commissioner may refuse an application for entry in the Restricted Section 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. Any exercise of this discretion would normally be exceptional, both intrinsically and since, by definition, the applicant entity would otherwise meet the
charity test. In any such case the Commissioner will give reasons for her or his decision in as full a manner as practicable.

26. Presuming, however, that the requirements set out in this Guidance Note are duly met by an applicant entity, along with those applicable to 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.

Application Procedure and Confidentiality

27. Rigorous arrangements are in place in order to ensure that no information that is not for the public eye is unwittingly placed on the public register in a manner that could identify the 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 on the public register is suitably written and presented in order to prevent or inhibit identification.

General Information about Restricted Section Registered Charities

28. While all details of Restricted Section registered charities will be known only to the Commissioner, anonymised, aggregate, information about them and what they do, including financial information, will be compiled by the Commissioner for annual reports and other communications about the size, state and nature of the charity sector in Jersey. Attention is drawn to paragraph 12 of Guidance Note 1, where the Commissioner’s general powers in this regard are described.

29. This Guidance Note will be kept under review.

ENDS