



Jersey

CHARITIES (RESTRICTED SECTION OF REGISTER) (JERSEY) ORDER 2018

Arrangement

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CHARITIES (RESTRICTED SECTION OF REGISTER) (JERSEY) ORDER 2018

*Made**26th April 2018**Coming into force**1st May 2018*

THE CHIEF MINISTER, in pursuance of Articles 9(2) and (3) and 39(1) of the Charities (Jersey) Law 2014¹, orders as follows –

1 Interpretation

In this Order –

“Law” means the Charities (Jersey) Law 2014²;

“restriction request” means a request submitted by an entity under Article 9(2) of the Law.

2 Funding condition and additional ground for refusal of request for entry in restricted section of register

- (1) The funding condition, for the purpose of Article 9(2)(a) of the Law, is that the entity –
 - (a) will refrain from soliciting a donation from any person whom the entity knows to be, or can reasonably be expected to suspect to be, of the description set out in Article 4; and
 - (b) will take all reasonable steps to avoid any person of that description being among the persons from whom the entity solicits donations.
- (2) For the purpose of Article 9(3)(a) of the Law, the Commissioner may refuse a restriction request on the additional ground that, in the exceptional circumstances of that restriction request, its acceptance would, in the opinion of the Commissioner, prejudice the performance of the Commissioner’s duty under Article 4(4)(a) of the Law.
- (3) No other grounds are prescribed for the purpose of Article 9(3)(a) of the Law for refusal of a restriction request, and accordingly the Commissioner must accept a restriction request if the Commissioner is not required to refuse it by Article 9(6) of the Law as read with paragraphs (1) and (2) of this Article.

3 Donation and soliciting defined

- (1) For the purposes of Article 9(2)(a) of the Law, and of Article 2(1) of this Order –
- “donation” means, subject to paragraph (2), the giving of anything of value (whether money, property or anything else), but does not include the giving by an individual of that individual’s labour or time;
- “soliciting” means –
- (a) asking, expressly or impliedly, a person –
 - (i) to make a donation,
 - (ii) to consider making a donation, or
 - (iii) to forward to another person a request to make or consider making a donation;
 - (b) providing or publishing, in such a way as to be likely to come to the attention of persons who might make donations, any material that gives information as to –
 - (i) how donations may be made, or
 - (ii) where further information may be found in order to make a donation;
 - (c) holding an event that, despite not involving any act falling within sub-paragraph (a) or (b), has as one of its purposes to enable or encourage persons attending the event, or watching or listening to the event, to make donations; or
 - (d) endorsing or permitting an act by another person, if that act falls within any of sub-paragraphs (a), (b) or (c).
- (2) Despite the definition “donation” in paragraph (1), a person does not make a donation by giving a thing of value (the “item”) to an entity if –
- (a) the person does not give the item gratuitously; and
 - (b) the person –
 - (i) is unaware of the entity’s charitable status, the entity’s purposes, and the use to which the entity will put the item, or
 - (ii) is otherwise not influenced by any of those matters in deciding whether to give the item, or whether to enter into any obligation to give the item.
- (3) For the purpose of the definition “soliciting” in paragraph (1), it is irrelevant by what means the request is made, the material is provided or published, or the event is attended, watched, or listened to, including –
- (a) whether by spoken word, in writing, by images, or otherwise;
 - (b) whether in the presence of the potential donor, by electronic communication, or otherwise; and
 - (c) whether by means of an advertisement or statement in a newspaper, in a film or radio or television programme, in a poster or other display, in a leaflet, letter, email or webpage, or otherwise.
- (4) Nothing in paragraph (1) is to be read as limiting any reference to soliciting a donation to a case in which a donation is actually made.

4 Persons from whom donations are not to be solicited, and persons disregarded for that purpose

- (1) The description of persons from whom an entity is not to solicit donations, for the purpose of Article 2(1), is any person other than one who is to be disregarded under either or both of paragraphs (2) and (5) of this Article in relation to that entity.
- (2) A person is to be disregarded for the purpose of paragraph (1) if the person –
 - (a) has a relevant connection to the entity, within the meaning of paragraph (3); or
 - (b) is a relevant professional, within the meaning of paragraph (4).
- (3) A person has a relevant connection to the entity if the person is –
 - (a) a governor, an employee, or a former employee of the entity;
 - (b) a member of the family of a governor or employee of the entity;
 - (c) if the entity has a membership who are not all governors, a member of the entity;
 - (d) if the entity is a trust, any other person who –
 - (i) is an enforcer of that trust,
 - (ii) is named, under the terms of the trust, as a protector in relation to the trust for the purposes of the customary law, or
 - (iii) is the settlor, or one of the settlors, who provided (whether directly to that trust or through any other entity or entities) the first trust property of that trust or the first substantial trust property of that trust;
 - (e) if the entity is a foundation, any other person who is a founder or guardian of that foundation;
 - (f) if the entity is a body corporate, any other person who –
 - (i) owns or controls the entity,
 - (ii) is a body corporate that is owned or controlled by the entity, or
 - (iii) is a body corporate that is owned or controlled by a third body corporate that also owns or controls the entity.
- (4) A person is a relevant professional if the person is –
 - (a) a charity registered in the restricted section of the register;
 - (b) a person carrying on regulated financial services business;
 - (c) a private trust company, being a person carrying on business for which that person would be required to be registered under the Financial Services (Jersey) Law 1998³ but for an exemption under paragraph 4 or 4A of the Schedule to the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000⁴;
 - (d) any other person who acts as a professional investor in respect of a professional investor regulated scheme, within the meaning of those terms in the Financial Services (Investment Business

- (Restricted Investment Business – Exemption)) (Jersey) Order 2001⁵;
- (e) an employee of a person falling within sub-paragraph (b) or (c), if the employee is engaged in the carrying on of regulated financial services business by that person, or in the investment activity of that person, respectively; or
 - (f) a director or partner of a person falling within sub-paragraph (b) or (c), if that person is a company or partnership respectively.
- (5) A person is to be disregarded for the purpose of paragraph (1) if the Commissioner, on a ground set out in paragraph (6), considers that, despite the entity being or applying to be entered in the restricted section of the register, it is appropriate for the entity to solicit donations from that person, or from a group or description of persons that includes that person.
- (6) The grounds are that, in the opinion of the Commissioner –
- (a) the person, despite not falling within paragraph (3), is a member of a group that has a sufficient connection with the entity for members of that group not to be treated as members of the public in relation to the entity;
 - (b) the person, despite not falling within paragraph (4), is of a description that can be expected to be reasonably likely to have, or to be able to obtain, sufficient understanding of financial matters in relation to charities for persons of that description not to be treated as members of the public in relation to the soliciting or making of donations to that entity; or
 - (c) the person is otherwise of a description for which there is some other sufficient reason not to treat such persons as members of the public in relation to the soliciting or making of donations to that entity.

5 Citation and commencement

This Order may be cited as the Charities (Restricted Section of Register) (Jersey) Order 2018 and comes into force on the coming into force of Article 9 of the Charities (Jersey) Law 2014⁶.

SENATOR P.F. ROUTIER, M.B.E.

*for and on behalf of
Chief Minister*

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- 1 *chapter 15.070*
 - 2 *chapter 15.070*
 - 3 *chapter 13.225*
 - 4 *chapter 13.225.55*
 - 5 *chapter 13.225.35*
 - 6 *chapter 15.070 and R&O.17/2018*