

**Foundations (Guernsey) Law, 2012 (Amendment –
Record Keeping, etc) Regulations, 2023**

Made 12th September, 2023

Coming into operation See regulation 6

Laid before the States , 2023

THE COMMITTEE FOR ECONOMIC DEVELOPMENT, in exercise of the powers conferred on it by section 51 of, and Schedules 1, 1A and 2 to, the Foundations (Guernsey) Law, 2012^a, and all other powers enabling it in that behalf, and after consultation with the Registrar, hereby makes the following Regulations:-

Amendment of Schedule 1 to the Foundations Law.

1. (1) Schedule 1 to the Foundations (Guernsey) Law, 2012 is amended as follows.

(2) In paragraph 1 (name of foundation), in subparagraph (1)(a) for "certificate of establishment" substitute "certificate of registration".

(3) After paragraph 2(2), insert –

^a Order in Council No. I of 2013; this enactment has been amended.

"(2A) A foundation that fails to comply with paragraph (1), or sections 22(1), (1A) or (1B) is guilty of an offence and liable to civil penalty."

(4) At the end of paragraph 3 (Registrar of Foundations), insert –

"(3) Without prejudice to the generality of subparagraph (2), and for the avoidance of doubt, the provisions of the Companies Law relating to the Registrar's functions applying *mutatis mutandis* to the Registrar's functions conferred by or under this Law, together with associated penalties and offences and other ancillary, incidental and supplemental provision include (but are not limited to) the offences created at section 508G (failure to comply with request or requirement under sections 508A to 508F) and 509A (tipping off), and the following functions, powers and duties conferred and imposed on the Registrar–

- (a) the functions conferred under section 499 (functions of Registrar),
- (b) the powers conferred under section 500 (ancillary powers of Registrar),
- (c) the duty imposed by section 500A (co-operation with foreign authorities),
- (d) the power to make regulations conferred by section 501 (fees payable to Registrar),
- (e) the powers and duties conferred and imposed by sections 503 (disclosure and publication of confidential information) and 504 (publication of non-confidential information),

- (f) the powers conferred by section 505 (general power of Registrar to reject applications etc),
- (g) the duties imposed under section 506 (reports) and 507 (financial and accounting provisions),
- (h) the powers conferred by section 508 (power of Registrar to apply for directions),
- (i) the functions conferred by sections 508A – 508F (information powers of the Registrar), and
- (j) the functions conferred by sections 518A – 518E (private reprimands, public statements etc.),

and without prejudice to the generality of the foregoing, in such provisions of the Companies Law, for these purposes unless the context otherwise requires references to an officer of a company shall be construed as including references to a foundation official."

(5) In paragraph 4 (Register of Foundations) –

- (a) in subparagraph (2)(a) for "containing" substitute "including",
- (b) at the end of subparagraph (2)(a)(iii) delete "and" and after subparagraph (2)(a)(iv) insert –
 - "(v) a copy of the certificate of registration, or establishment of the foundation,

- (vi) where relevant, the date of the foundation's removal from the Register,
 - (vii) the particulars of the governance provisions of the Constitution filed in accordance with paragraph 7(3),
 - (viii) the name and address of the resident agent, appointed in accordance with paragraph 1 of Schedule 1A, and
 - (ix) such other information contained in applications made to, or otherwise sent to, or filed with the Registrar, or documents or information issued by the Registrar under this Law (other than declarations, documents and information containing confidential information or information otherwise contained in Part B of the Register) that the Registrar determines, in his or her absolute discretion, should be contained in Part A of the Register,"
- (c) at the end of paragraph 4(3), insert "and (subject to the provisions of this Law and any subordinate legislation made under it in respect of the payment of fees) shall be available for inspection accordingly", and
- (d) after paragraph 4(3), insert –

"(4) In this paragraph and paragraph 5, "**confidential information**" means –

- (a) a person's residential address (except where that person's address is required to be included in Part A of the Register), and
- (b) required particulars as defined in paragraph 3(2) of Schedule 1A.

(5) The Committee may amend the definition of "confidential information" in subparagraph (4) by regulations."

(6) For paragraph 5 (use of Part B of the Register), substitute –

"Disclosure of information by the Registrar.

5. (1) Subject to the provisions of this section and any contrary provision in this Law or any Ordinance or subordinate legislation made under it in respect of any specific case or category of case, information obtained by the Registrar –

- (a) under this Law or any other enactment, or
- (b) in connection with the carrying out of any of the Registrar's functions,

(including where applicable, for the avoidance of doubt, confidential information and information comprised or intended to be comprised in Part B of the Register where deemed necessary by the Registrar) may be disclosed if the disclosure is –

- (i) of information which at the time of the disclosure is or has already been made available to the public from other sources, including (for the avoidance of doubt) information on the Register that is available for public inspection,
- (ii) of information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
- (iii) to enable the discharge of the Registrar's functions (including, where the Registrar considers it necessary to seek advice relating to the exercise of those functions from a qualified person on any matter of law, accountancy or valuation or other matter requiring the exercise of professional skill, for the purpose of ensuring that the qualified person is properly informed on all matters on which that person's advice is sought),
- (iv) in connection with any proceedings under this Law,
- (v) to comply with an order of a court, or
- (vi) for any purposes set out in subparagraph (2).

- (2) The purposes are any of the following –
- (a) the prevention, detection, investigation or prosecution of criminal conduct, whether in Guernsey or elsewhere,
 - (b) the prevention, detection, investigation or sanctioning of conduct for which penalties other than criminal penalties are provided under the law of Guernsey or of any country or territory outside Guernsey,
 - (c) the conduct of –
 - (i) any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007, or
 - (ii) any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law,
 - (d) assisting or enabling the carrying out of any functions of any intelligence service,
 - (e) the implementation of, compliance with or enforcement of international sanctions measures

within the Bailiwick,

- (f) the prevention, detection or investigation of breaches of international sanctions measures that have been given effect within the Bailiwick,
- (g) assisting or enabling the carrying out by the Commission of its functions,
- (h) assisting or enabling the carrying out by the Director of the Revenue Service of the Director's functions,
- (i) assisting or enabling the Alderney Gambling Control Commission to carry out its functions,
- (j) assisting or enabling His Majesty's Procureur, His Majesty's Sheriff, His Majesty's Sergeant and the Greffier within the meaning of the Government of Alderney Law, 2004 to carry out their functions,
- (k) assisting or enabling the Director of the Economic and Financial Crime Bureau to carry out his or her functions,
- (l) assisting or enabling the Financial Intelligence Unit to carry out its functions,
- (m) assisting or enabling the Data Protection Authority to carry out its functions,

- (n) assisting or enabling the Overseas Aid Commission to carry out its functions,
- (o) assisting or enabling any person with functions relating to the Social Investment Fund to carry out those functions,
- (p) assisting or enabling any of the Registrars to carry out their functions,
- (q) assisting or enabling any person or body within the Bailiwick or in another country or territory, whose functions include any of the matters set out at items (e) and (f), to carry out those functions,
- (r) the enabling of any person or body in another country or territory, with functions similar to those of the Registrars', to carry out those functions,
- (s) assessing, or assisting another authority within the Bailiwick to assess the risks of money laundering, bribery and corruption, the financing of terrorism, the financing of the proliferation of weapons of mass destruction and any other form of financial or non-financial crime, and
- (t) promoting the public interest or the reputation of

the Bailiwick as a finance centre.

(3) For the purposes of subparagraph (2)(p), the Registrars are –

- (a) the Registrar of Beneficial Ownership,
- (b) the Registrar of Companies, including in his or her capacity under the Limited Partnerships (Guernsey) Law, 1995,
- (c) the Registrar of Limited Liability Partnerships,
- (d) the Registrar for the purposes of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017,
- (e) the Registrar for the purposes of the Companies (Alderney) Law, 1994,
- (f) the Registrar of Charities and other Non Profit Organisations appointed under the Charities etc. (Guernsey and Alderney) Ordinance, 2021, and
- (g) the Registrar of Non Profit Organisations appointed under the Charities and Non Profit Organisations (Registration) (Sark) Law, 2010.

(4) The list of purposes at subparagraph (2) may be amended by regulations made by the Committee.

(5) For the avoidance of doubt, the Registrar may take into account any relevant procedure or agreement when considering whether to grant, grant only in part or refuse any request for the disclosure of information obtained by the Registrar and described in subparagraph (1).

(6) Any person to whom information may be disclosed for a purpose within subparagraph (2) may disclose information to the Registrar for the purposes of –

- (a) ensuring that the Registrar is properly informed on all matters in respect of which information from the Registrar is being requested or provided, or
- (b) enabling the carrying out of the Registrar's functions.

(7) Nothing in this paragraph prejudices any power to disclose which exists apart from this paragraph.

(8) The Registrar shall, when disclosing confidential information and information comprised or intended to be comprised in Part B of the Register to any person –

- (a) impose such conditions in relation to the use, disclosure, safekeeping and return of that information by that person or by any other person who may obtain the information from him or her,
- (b) require any such person to enter into such undertakings in relation to such use, disclosure,

safekeeping and return, and

- (c) take such other steps to ensure that the confidentiality of the information is protected,

as the Registrar thinks fit.

- (9) In this section, "**information**" includes documents."

- (7) In paragraph 7(3), after subparagraph (a) insert –

- "(aa) particulars of governance provisions of the Constitution in a form, and containing the information, set out in guidance issued by the Registrar,"

and after paragraph 7(3) insert –

- "(3A) A foundation registered prior to 13th September, 2023 shall on or before 15th December, 2023, file particulars of the governance provisions of the Constitution in a form, and containing the information, set out in guidance issued by the Registrar.

- (3B) A foundation to which subparagraph (3A) applies which fails to comply with subparagraph (3A) is guilty of an offence and liable to a civil penalty."

- (8) After paragraph 7(4), insert –

- "(4A) For the avoidance of doubt, on incorporation of a limited partnership the Registrar shall register in the Register the registered number of

the foundation, and records listed in items (ii) to (v), (vii) and (viii) of paragraph 4(2)(a).".

(9) In paragraph 7(7)(c), for "financial penalties" substitute "civil penalties".

(10) After paragraph 7(7), insert –

"(8) If the Committee determines that all registrations should be subject to an annual renewal procedure in accordance with subparagraph (7), it may specify in regulations made under that subparagraph that failure to comply with the renewal procedure is an offence, punishable –

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale,

(b) on conviction on indictment, to a fine.".

(11) In paragraph 10(1) –

(a) at the end of subparagraph (a) delete "or",

(b) at the end of subparagraph (b) insert ", or", and

(c) for "and, where the change" to the end, substitute " and where the change is to –

(i) the foundation's name, the change shall not be effective until the Registrar has issued a new certificate of registration,

upon the issue of which the existing certificate shall cease to be valid,

- (ii) the foundation's registered office, the change shall not be effective until the Registrar has made the appropriate entry in the Register under subsection (3)., but until the end of the period of 14 days beginning with the date on which it is entered in the Register, a person may validly serve any document on the foundation at its previous registered office".

(12) In paragraph 10(2) –

- (a) at the end of item (a), insert "and liable to a civil penalty", and
- (b) in item (b), for "financial penalty" substitute "civil penalty".

(13) In paragraph 10(4), after "a foundation official", insert "or of the Registrar's own motion,".

(14) After paragraph 16, insert –

"Appeals.

16A. (1) A person aggrieved by a decision of the Registrar made under this Law may appeal to the Court against that decision on the grounds that –

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure.

(2) An appeal under this paragraph shall be instituted –

- (a) within a period of 28 days immediately following the date on which notice in writing of the decision was served by the Registrar on the person to whom the decision relates (or such other period as the Court may in any particular case direct), and
- (b) by summons served on the Registrar stating the grounds and material facts on which the appellant relies.

(3) The Registrar may, where an appeal under this paragraph has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and, on hearing the application, the Court may –

- (a) dismiss the appeal or dismiss the Registrar's application (in either case on such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just,

and the provisions of this subparagraph are without prejudice to the inherent powers of the Court or to the provisions of rule 52(3) of the Royal Court Civil Rules, 2007.

- (4) On an appeal under this paragraph the Court may -
 - (a) set the decision of the Registrar aside and, if the Court considers it appropriate to do so, remit the matter to the Registrar with such directions as the Court thinks fit,
 - (b) confirm the decision, in whole or in part, or
 - (c) make such other order as the Court considers just, including, without limitation -
 - (i) in relation to an application in respect of a civil penalty, the order may increase the amount of the civil penalty for which the foundation is liable, and
 - (ii) in relation to an application in respect of a striking off under regulations made under section 30(b), the execution of the order may be stayed subject to the payment of

any outstanding criminal penalties, fees or civil penalties by the foundation or such other person as it thinks just.

(5) On an appeal under this paragraph the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision in question, pending the determination of the appeal.

(6) An appeal from a decision of the Court made under the provisions of this Law lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961 ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(8) Save in any case where there is express provision in this Law to the contrary, and subject to subsection (5), the making of an appeal under this section does not suspend the effect of that decision."

(15) For paragraph 21, substitute –

"Civil penalties.

21. (1) This section applies to foundations which are liable to a civil penalty.

(2) If the Registrar is satisfied that a foundation is liable to a civil penalty he may make an order directing it to pay the civil penalty.

(3) The Registrar may, if he thinks fit, make regulations concerning civil penalties, including provision for –

(a) the amount of the civil penalty, and

(b) the imposition and amount of additional daily penalties.

(4) Where regulations make provision for the imposition of additional daily penalties, an order of the Registrar under subsection (2) directing a foundation to pay a civil penalty may provide that an additional daily penalty shall accrue after the date of the imposition of the original penalty without further notice.

Relationship of civil penalties with prosecutions.

21A. (1) A foundation is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after the civil penalty has been paid, the Registrar shall repay the civil penalty to the foundation.

(3) In default of payment of a civil penalty, the Registrar may proceed to enforce payment as if the amount due were a civil debt.

(16) In paragraph 22(b)(ii)(A), for "financial penalty" substitute "civil penalty".

Amendment of Schedule 2 to the Foundations Law.

2. (1) Schedule 2 to the Foundations (Guernsey) Law, 2012 is amended as follows.

(2) In paragraph 1(1), for "." substitute";", and after subparagraph (b) insert –

"and in this Schedule, "**corporate services provider**" means a person who holds a primary fiduciary licence within the meaning of the Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020."

Amendment of Strike Off Regulations.

3. (1) The Foundations (Guernsey) (Strike Off) Regulations, 2014^b are amended as follows.

(2) In regulation 2(1), for paragraph (a)(ii) substitute –

"(ii) there have been persistent or gross violations of this Law in respect of the foundation,"

in paragraph (b)(ii) for "." substitute ", or", and after paragraph (b) insert –

"(c) where a foundation has failed to pay a civil penalty and the period in which the foundation may appeal against the decision to impose that civil penalty has elapsed (including, for the avoidance of doubt, in circumstances where the foundation has appealed against the decision and that appeal has been dismissed)."

(3) In regulation 2(3)(c), delete ", for a period of more than 6 months".

^b G.S.I. No. 9 of 2014.

(4) For regulation 2(3)(e), substitute –

"(e) if a foundation fails in any year to deliver to the Registrar during the month of June an annual renewal in accordance with regulation 1 of the Foundations (Annual Renewal) Regulations, 2014,".

Amendment of Annual Renewal Regulations.

4. (1) The Foundations (Annual Renewal) Regulations, 2014^c are amended as follows.

(2) In regulation 3(1), at the end insert ", and the foundation will be liable to be struck off the Register in accordance with regulation 2(3)(e) of the Foundations (Guernsey) (Strike Off) Regulations, 2014".

(3) After regulation 3(3), insert –

"(4) Without prejudice to subparagraphs (1) – (3), a foundation that contravenes regulation (1) is guilty of an offence, and on conviction liable to the penalty set out in paragraph 7(8) of Schedule 1 to the Law.".

Citation.

5. These Regulations may be cited as the Foundations (Guernsey) Law, 2012 (Amendment – Record Keeping, etc) Regulations, 2023.

^c G.S.I. No. 10 of 2014; this enactment has been amended.

Commencement.

6. (1) Subject to paragraph (2), these Regulations shall come into force on 13th September, 2023.

(2) The following provisions shall come into force on 15th December, 2023 –

- (a) regulation 1(3),
- (b) regulation 1(5), to the extent it inserts subparagraph (2)(a)(vii) into paragraph 4 of Schedule 1,
- (c) regulation 1(7), to the extent it inserts subparagraph (3)(aa) into paragraph 7 of Schedule 1,
- (d) regulation 1(12), to the extent that it amends paragraph 10(2)(a) of Schedule 1, and
- (f) regulation 4, to the extent that it inserts regulation 3(4) into the Foundations (Annual Renewal) Regulations, 2014.

Dated this 12th day of September, 2023



N. R. INDER

President of the Committee for Economic Development

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make several amendments to Schedule 1 to the Foundations (Guernsey) Law, 2012 in connection with the registration of foundations and the Register of Foundations, and the functions of the Registrar of Foundations. They also introduce a right of appeal against decisions of the Registrar, and amend the Foundations (Guernsey) (Strike Off) Regulations, 2014 and the Foundations (Annual Renewal) Regulations, 2014.

The main part of these Regulations come into force on the 13th day of September, 2023, with some provisions coming into force on 15th December 2023.