

# GUERNSEY STATUTORY INSTRUMENT

ENTITLED

## **The Foundations (Guernsey) (Annual Renewal) Regulations, 2014 \***

*[CONSOLIDATED TEXT]*

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* G.S.I. No. 10 of 2014; as amended by the: Foundations (Annual Renewal) (Amendment) Regulations, 2017 (G.S.I. No. 41 of 2017); the Foundations (Annual Renewal) (Amendment) Regulations, 2020 (G.S.I. No. 83 of 2020); Foundations (Guernsey) Law, 2012 (Amendment – Record Keeping, etc) Regulations, 2023 (G.S.I. No. 63 of 2023); Foundations (Guernsey) Law, 2012 (Annual Renewal and Fees) (Amendment) Regulations, 2023 (G.S.I. No. 63 of 2023); Foundations (Annual Renewal) (Amendment) Regulations, 2024 (G.S.I. No. 10 of 2024). See also the: Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

# GUERNSEY STATUTORY INSTRUMENT

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## **The Foundations (Guernsey) (Annual Renewal) Regulations, 2014**

### ARRANGEMENT OF REGULATIONS

1. Duty to complete annual renewal.
2. Form and contents of annual renewal.
3. Failure to complete annual renewal.
4. Interpretation.
5. Citation.
6. Commencement.

Explanatory Note.

*(Made on 18th March, 2014.)*

## **The Foundations (Guernsey) (Annual Renewal) Regulations, 2014**

**THE COMMERCE AND EMPLOYMENT DEPARTMENT**, in exercise of the powers conferred upon it by section 51 of, and paragraph 7(7) of Schedule 1 to, the Foundations (Guernsey) Law, 2012<sup>a</sup> ("**the Law**"), and all other powers enabling it in that behalf, hereby makes the following regulations: –

### **Duty to complete annual renewal.**

**1.** (1) Each calendar year, during the month of [March], every Guernsey foundation must submit an annual renewal to the Registrar in accordance with these Regulations, unless the foundation was first registered on the Register on or after the [1<sup>st</sup> of February] of the year in question, in which case no annual renewal needs to be made in that year.

(2) The annual renewal must –

- (a) be completed in accordance with regulation 2 (form and contents of annual renewal), and
- (b) contain information, as required by regulation 2(1), which is [correct and current] as of the [last day of February] immediately preceding the month in which the return is due.

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### **NOTES**

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<sup>a</sup> Order in Council No I of 2013.

In regulation 1,

*the words, first, in the first and, second, the second pairs of square brackets in paragraph (1) and, third, in the second pair of square brackets in paragraph (2)(b) were substituted by the Foundations (Annual Renewal) (Amendment) Regulations, 2024, regulation 1(2), respectively subparagraph (a)(i), subparagraph (a)(ii) and subparagraph (b), with effect from 27th February, 2024;*

*the words in the first pair of square brackets in paragraph (2)(b) were substituted by the Foundations (Guernsey) Law, 2012 (Annual Renewal and Fees) (Amendment) Regulations, 2023, regulation 1(2), with effect from 17th November, 2023.*

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**Form and contents of annual renewal.**

2. (1) Each annual renewal must be given in such form as required by the Registrar, must state the date to which it is made up and must contain the following information –

- (a) confirmation as to whether the Charter has been amended since the last annual renewal, or since registration, whichever is the later,
- (b) the names and addresses of the councillors,
- (c) the name and address of the guardian, if relevant, and if not, confirmation that there are no disenfranchised beneficiaries and no purpose in respect of which there are no beneficiaries,
- [(d) whether the foundation is exempt from the resident agent requirements at Schedule 1A and, if so, the grounds on which it is so exempt,]
- (e) the address of the registered office in Guernsey,

- [(f) the category or categories of foundation to which it belongs, by reference to a system of classifying foundations prepared by the Registrar,
- (g) with regard to each foundation official who is an individual, whether or not that official is licensed to act as such in relation to the foundation,
- (h) where a foundation official who is an individual is not licensed to act as such in relation to the foundation –
  - (i) whether that official is unrewarded or is exempt, and
  - (ii) in the case of an official who is exempt, the applicable provisions,]
- [(i) in relation to a resident agent, if applicable –
  - (i) that the foundation has a resident agent in accordance with the requirements of Schedule 1A to the Law,
  - (ii) the particulars of its resident agent required to be entered in its record of resident agent under paragraph 2 of Schedule 1A to the Law,
  - (iii) that the foundation has kept a record of its resident agent and has notified the Registrar of any change in its resident agent or in the details

*Consolidated text*

contained in its record of resident agent in accordance with paragraph 2 of Schedule 1A to the Law,

- (iv) an address for service (and such other contact details for that resident agent as the Registrar may specify),
  - (v) the length of time for which the resident agent has been an official of the foundation or otherwise associated with it,
  - (vi) whether the resident agent has served a notice under section 9 of the Beneficial Ownership Law on any person in respect of the beneficial owners of the foundation within such period as the Registrar may direct,
- (ia) the category or categories of its principal business activities by reference to a system of classifying business activities prepared by the Registrar,]
  - [(j) other than for foundations within paragraph (2A), whether the foundation has[, in respect of such matters as the Registrar may specify,] an ongoing business relationship with a person licensed or authorised by, or registered with, the Commission, and, if so, the nature of that relationship,
  - (k) for foundations to which this paragraph applies –

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- (i) whether the accounts of the foundation have been audited or otherwise examined by an accountant, and
  - (ii) whether the foundation is directed and managed in Guernsey,]
- [(ka) that the foundation has complied, over the course of the year, with its obligations to keep and maintain records under the Law, including its obligations to keep and maintain records at its registered office under section 22 of the Law,
- (kb) that the records required to be kept under the Law (including those kept for the purposes of section 22 of the Law) are correct and current as at the 31<sup>st</sup> May of the year to which the annual renewal relates,
- (kc) that the foundation, where applicable, has complied with its obligations under the Law to deliver copies of documents, or give notice to the Registrar of changes to information filed with the Registrar, as the case may be,]
- [(l) for foundations to which this paragraph applies, the jurisdiction of incorporation of any direct subsidiaries of the foundation and such other matters in relation to those subsidiaries as the Registrar may specify,
- (m) for foundations to which this paragraph applies, the location of any real property [or high value asset] held

*Consolidated text*

by the foundation, and such other matters in relation to that property [or asset] as the Registrar may specify,

- (n) for foundations to which this paragraph applies –
  - (i) the nature of the activities of the foundation,
  - (ii) the locations in which those activities are carried out, and
  - (iii) such other matters in relation to those activities as the Registrar may specify, and]

[(o) for foundations to which this paragraph applies, whether the foundation –

- (i) is a settlor, trustee, protector or beneficiary of an existing express trust (or occupies an equivalent role in relation to another form of legal arrangement), or
- (ii) exercises control over an express trust (or another form of legal arrangement),

and, if so, such other matters in relation to that trust or other legal arrangement as the Registrar may specify,

- (p) that the foundation's record of beneficiaries is kept and maintained at its registered office as required under section 22A of the Law, and is correct and current as at

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the 31<sup>st</sup> May of the year to which the annual renewal relates,

(q) that the information contained in the return was correct and current as at the 31<sup>st</sup> May of the year to which the annual renewal relates, and

(r) such further information as the Registrar may direct, following consultation with the Committee.]

(2) Each annual renewal must also be accompanied by –

(a) the applicable fee, in accordance with the Foundations (Fees) (Guernsey) Regulations, 2013<sup>b</sup>, [...]

[(ab) a declaration signed by the resident agent confirming that the foundation's record of beneficial ownership is [correct and] current as at the date the annual validation is filed, and]

(b) a declaration signed by either a councillor or the resident agent confirming that the information given in the annual renewal form is correct to the best of that person's knowledge and belief.

[ (2A) Subparagraphs (j) to (o) of paragraph (1) do not apply to a foundation which is licensed, authorised or registered by the Commission.]

[ (2B) ...]

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**b** G.S.I. No 2 of 2013.

[ (2C) For the purposes of paragraphs (2) and (2A) –

- (a) **"directed and managed in Guernsey"** has the same meaning as in the Income Tax (Substance Requirements) (Implementation) Regulations, [2021],
- (b) **"the Fiduciaries Law"** means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000,
- (c) **"fiduciary licence"** has the same meaning as in the Fiduciaries Law,

[(ca) **"high value asset"** means –

- (i) any single item of tangible personal property, or
- (ii) a collection of items of tangible personal property of the same type held for the primary purpose of financial gain, or the preservation of wealth,

which a reasonable person would believe to have a market value greater than £5 million, and

- (cb) **"market value"**, for the purposes of paragraph (ca), means the price which that single item or collection of items (as the case may be) might reasonably be expected to fetch in a sale in an open market,]

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- (d) a foundation official is licensed to act as such in respect of the foundation if that official holds a fiduciary licence,
- (e) an unrewarded foundation official is one who not rewarded within the meaning of subparagraph (g),
- (f) a foundation official is rewarded if that foundation official is acting as an official of the foundation by way of business within the meaning of the Fiduciaries Law,
- (g) a foundation official is exempt if that official would be required to hold a fiduciary licence in acting as an official of the foundation but for the application of one or more of the exemptions at section 3 of the Fiduciaries Law,
- (h) the applicable provisions are the subsections of section 3 of the Fiduciaries Law which have the effect of exempting the official in question from the requirement to hold a fiduciary licence with regard to his or her acting as an official of the foundation, and
- (i) a person is linked to a foundation if –
  - (i) that person is an official of the foundation or is otherwise involved in its management or administration, or

- (ii) an employee or official of that person is an official of the foundation or is otherwise involved in its management or administration.]

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**NOTES**

*In regulation 2,*

*first, paragraph (1)(d) was substituted, second, paragraph (1)(i) (which was originally inserted by the Foundations (Annual Renewal) (Amendment) Regulations, 2020, regulation 1(2)(b), with effect from 1st September, 2020) was substituted and paragraph (1)(ia) was inserted, third, the words in square brackets within paragraph (1)(j) were inserted, fourth, paragraphs (1)(ka), (kb) and (kc) were inserted, fifth, the words in the first and second pairs of square brackets within paragraph (1)(m) were inserted and, sixth, paragraph (1)(o) (which was originally inserted by the Foundations (Annual Renewal) (Amendment) Regulations, 2020, regulation 1(2)(b), with effect from 1st September, 2020) was substituted and paragraphs (1)(p) to (r) were inserted by the Foundations (Guernsey) Law, 2012 (Annual Renewal and Fees) (Amendment) Regulations, 2023, respectively regulation 1(3)(a), regulation 1(3)(b), regulation 1(3)(c), regulation 1(3)(d), regulation 1(3)(e) and regulation 1(3)(f), with effect from 17th November, 2023;<sup>1</sup>*

*first, paragraph (1)(f), paragraph (1)(g), paragraph (1)(h), paragraph (1)(j), paragraph (1)(k), paragraph (1)(l), paragraph (1)(m) and paragraph (1)(n) and, second, paragraph (2C) were all inserted by the Foundations (Annual Renewal) (Amendment) Regulations, 2020, respectively regulation 1(2)(b) and regulation 1(3), with effect from 1st September, 2020;*

*the word omitted in square brackets at the end of paragraph (2)(b) was revoked and paragraph (2)(ab) was inserted by the Foundations (Annual Renewal) (Amendment) Regulations, 2017 regulation 1(2), with effect from 15th August, 2017;*

*first, the words in square brackets within paragraph (2)(ab) were inserted, second, paragraph (2A) (which was originally inserted by the Foundations (Annual Renewal) (Amendment) Regulations, 2020, regulation 1(3), with effect from 1st September, 2020) was substituted, third, paragraph (2B) (which was originally inserted by the Foundations (Annual Renewal) (Amendment) Regulations, 2020, regulation 1(3), with effect from 1st September, 2020) was revoked, fourth, the figures in the first pair of square brackets within paragraph (2C) were substituted and, fifth, paragraphs (2C)(ca) and (cb) were inserted by the Foundations (Guernsey) Law, 2012 (Annual Renewal and Fees) (Amendment) Regulations, 2023, respectively regulation 1(4), regulation 1(5), regulation 1(6), regulation 1(7)(a) and regulation 1(7)(b), with effect from 17th November, 2023.*

*In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the reference in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section of that section are satisfied.*

*The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 has since been repealed by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, section 62(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 60 of the 2020 Law.*

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**Failure to complete annual renewal.**

3. (1) If a foundation contravenes regulation 1(1), the penalty for failing to complete an annual renewal specified in the Foundations (Registrar) (Civil Penalties) Regulations, 2023 shall be payable, 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.

(2) Without prejudice to paragraph (1), 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.]

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**NOTE**

*Regulation 3 was substituted by the Foundations (Guernsey) Law, 2012 (Annual Renewal and Fees) (Amendment) Regulations, 2023, regulation 1(8), with effect from 17th November, 2023.<sup>2</sup>*

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**Interpretation.**

4. (1) In these regulations –

**"the Law"** means the Foundations (Guernsey) Law, 2012,

**"the Registrar"** means the Registrar of Foundations,

and other words or expressions have the same meaning as in the Law.

(2) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the interpretation of these regulations as it applies to the interpretation of an enactment.

(3) Any reference in these regulations to an enactment is a reference thereto as from time to time amended, repealed and replaced (with or without modification), extended or applied.

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**NOTE**

*The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.*

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**Citation.**

5. These Regulations may be cited as the Foundations (Guernsey) (Annual Renewal) Regulations, 2014.

**Commencement.**

6. These Regulations shall come into force on the 18<sup>th</sup> March, 2014.

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<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

## EXPLANATORY NOTE

*(This note is not part of the regulations)\*\**

These Regulations create a duty for Guernsey foundations to submit an annual renewal to the Registrar of Foundations in June each year. They specify the information to be provided in the annual renewal, enable the Registrar to require that information to be submitted in such form as the Registrar may require and provide for the consequences of not complying with the duty to submit a renewal, in accordance with the powers in the Foundations (Guernsey) Law, 2012.

The Regulations come into force on 18<sup>th</sup> March, 2014.

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<sup>1</sup> Prior to its substitution, paragraph (1)(d) was amended by the Foundations (Annual Renewal) (Amendment) Regulations, 2020, regulation 1(2)(a), with effect from 1st September, 2020.

<sup>2</sup> Prior to its substitution, regulation 3 was amended by the Foundations (Guernsey) Law, 2012 (Amendment – Record Keeping, etc) Regulations, 2023, regulation 4(2), with effect from 13th September, 2023.

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\*\* The text of this Explanatory Note is as it was when the Statutory Instrument was first made – that is to say that the Explanatory Note has not been updated to take account of any changes made by subsequent amending Statutory Instruments with their own Explanatory Notes.