

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Foundations (Registrar) (Civil Penalties) Regulations, 2023 *

[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. 67 of 2023; as amended by the: Foundations (Registrar) (Civil Penalties) (Amendment) Regulations, 2023 (G.S.I. No. 85 of 2023); Foundations (Registrar) (Civil Penalties) (Amendment) (No. 2) Regulations, 2023 (G.S.I. No. 105 of 2023); Foundations (Registrar) (Civil Penalties) (Amendment) (No. 3) Regulations, 2023 (G.S.I. No. 143 of 2023).

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The Foundations (Registrar) (Civil Penalties) Regulations, 2023

ARRANGEMENT OF REGULATIONS

1. Civil penalties.
2. Citation
3. Commencement.

SCHEDULE Civil penalties.

Explanatory Note.

(Made on 13th September, 2023.)

The Foundations (Registrar) (Civil Penalties) Regulations, 2023

THE REGISTRAR OF FOUNDATIONS, in exercise of the powers conferred on the Registrar by section 51 of, and paragraph 21 of Schedule 1 to, the Foundations (Guernsey) Law, 2012^a, and all other powers enabling her in that behalf, hereby makes the following Regulations:-

Civil penalties.

1. The Schedule, which sets out the civil penalties payable under the Foundations (Guernsey) Law, 2012, has effect.

Citation.

2. These Regulations may be cited as the Foundations (Registrar) (Civil Penalties) Regulations, 2023.

Commencement.

3. (1) Subject to paragraphs (2) and (3), these Regulations shall come into force on being made.

(2) Regulation 1 shall come into force on 13th October, 2023 to the extent that it inserts the entry in respect of section 47A in the Schedule to these Regulations.

(3) Regulation 1 shall come into force on 15th December, 2023 to the extent that it inserts the entry in respect of section 22A, and paragraphs 2, 7 and 10 of Schedule 1 in the Schedule to these Regulations.

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

SCHEDULE

Regulation 1

CIVIL PENALTIES

Note: in this Schedule, an "administered" foundation is a foundation licensed, authorised or registered by the Guernsey Financial Services Commission under the supervisory laws or administered, controlled or operated by another entity licensed by the Guernsey Financial Services Commission under the supervisory laws in the course of its activities, and "non-administered" foundation shall be construed accordingly, and "the supervisory Laws" has the meaning given in section 2(b) of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020.

Charities and NPOs: please note that foundations that are registered on the Register of Charities and other Non-Profit Organisations are non-administered foundations for the purposes of this Schedule.

[Reference to the period of "default" is to the period of the breach. For example, in the first entry relating to section 22A, the civil penalty (in respect of a non-administered foundation) is £90 if there has been a failure lasting up to one week, £175 if there has been a failure lasting between one week and one month and £350 if there has been a failure lasting one month or more.

Where the Registrar does not have information on the period of the breach, the Registrar will issue the penalty for a breach lasting one month or more but may reduce the penalty if evidence is provided by the foundation that the period of the breach was shorter than one month.]

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(1) BREACH FOR WHICH CIVIL PENALTY IS INCURRED	(2) SECTION OF THE LAW	(3) CIVIL PENALTY
Failure to keep a record of beneficiaries of the foundation at its registered office	22A	<p>Non-administered foundations where default is up to 1 week – £90</p> <p>Non-administered foundations where default is between 1 week and 1 month – £175</p> <p>Non-administered foundations where default is more than 1 month – £350</p> <p>Administered foundations where default is up to 1 week – £175</p> <p>Administered foundations where default is between 1 week and 1 month – £350</p> <p>Administered foundations where default is 1 month or more – £700</p>
Failure to have a resident agent	47A	£2,500
Failure to keep records at the registered office, or	[Sch. 1, para 2]	Non-administered foundations where default

Consolidated text

<p>failure to keep records up to date</p>		<p>is up to 1 week – £90</p> <p>Non-administered foundations where default is between 1 week and 1 month – £175</p> <p>Non-administered foundations where default is more than 1 month – £350</p> <p>Administered foundations where default is up to 1 week – £175</p> <p>Administered foundations where default is between 1 week and 1 month – £350</p> <p>Administered foundations where default is 1 month or more – £700</p>
<p>Obstruction or failure to comply (without reasonable excuse) with information or requirements</p>	<p>Sch.1, para. 3 (see s.508G of the Companies Law)</p>	<p>£2,500</p>
<p>Failure to complete annual renewal</p>	<p>Sch. 1, para 7</p>	<p>Non-administered foundations where default is up to 1 week – £250</p> <p>Non-administered</p>

Consolidated text

		<p>foundations where default is between 1 week and 1 month – £500</p> <p>Non-administered foundations where default is more than 1 month – £1,000</p> <p>Administered foundations where default is up to 1 week – £450</p> <p>Administered foundations where default is between 1 week and 1 month – £900</p> <p>Administered foundations where default is 1 month or more – £1,800</p>
<p>Failure by foundation registered prior to [15th December], 2023 to file [particulars of the governance provisions of the Constitution] on or before 15th December, 2023 (Sch 1, para 7)</p>	<p>Sch. 1, para 7</p>	<p>Non-administered foundations where default is up to 1 week – £90</p> <p>Non-administered foundations where default is between 1 week and 1 month – £175</p> <p>Non-administered foundations where default is more than 1 month – £350</p>

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		<p>Administered foundations where default is up to 1 week –</p> <p style="text-align: right;">£175</p> <p>Administered foundations where default is between 1 week and 1 month –</p> <p style="text-align: right;">£350</p> <p>Administered foundations where default is 1 month or more –</p> <p style="text-align: right;">£700</p>
Failure to notify change of registered particulars	Sch. 1, para 10	<p>Non-administered foundations where default is up to 1 week –</p> <p style="text-align: right;">£90</p> <p>Non-administered foundations where default is between 1 week and 1 month –</p> <p style="text-align: right;">£175</p> <p>Non-administered foundations where default is more than 1 month –</p> <p style="text-align: right;">£350</p> <p>Administered foundations where default is up to 1 week –</p> <p style="text-align: right;">£175</p> <p>Administered foundations where default is between 1 week and 1 month –</p> <p style="text-align: right;">£350</p>

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		Administered foundations where default is 1 month or more – £700
[Failure to comply with information notice requirements or to make false statements etc in response to information notice	Sch. 1A, para 5 and para 5A	£2,500]
[Failure to keep record of resident agent or failure to notify change of resident agent	Sch. 1A, para 2	Non-administered foundations where default is up to 1 week – £250 Non-administered foundations where default is between 1 week and 1 month – £500 Non-administered foundations where default is more than 1 month – £1,000 Administered foundations where default is up to 1 week – £450 Administered foundations where default is between 1 week and 1 month – £900 Administered foundations where default is 1 month

		or more –	£1,800]
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NOTES

In the Schedule,

the words in the first pair of square brackets were substituted by the Foundations (Registrar) (Civil Penalties) (Amendment) (No. 3) Regulations, 2023, regulation 1(2), with effect from 20th December, 2023;

first, the figures and word in the first pair of square brackets in column 1 of the Table were substituted and, second, the entry in column 1 entitled "Failure to comply with information notice requirements or to make false statements etc in response to information notice" and the corresponding entries in column 2 and 3 were inserted by the Foundations (Registrar) (Civil Penalties) (Amendment) Regulations, 2023, respectively regulation 1(3) and regulation 1(4), with effect from 18th October, 2023;

the words, figures and letter in square brackets in, first, column 2 of the Table and, second, the second pair of square brackets in column 1 therein were substituted and, third, the entry in column 1 in that Table entitled "Failure to keep record of resident agent or failure to notify change of resident agent" and the corresponding entries in column 2 and 3 were inserted by the Foundations (Registrar) (Civil Penalties) (Amendment) (No. 2) Regulations, 2023, respectively regulation 1(2), regulation 1(3) and regulation 1(4), with effect from 15th December, 2023.¹

EXPLANATORY NOTE

*(This note is not part of the Regulations)***

These Regulations, made by the Registrar of Foundations, specify civil penalties payable under the Foundations (Guernsey) Law, 2012.

The main part of these Regulations come into force on the Regulations being made on 13th September, 2023, with one provision coming into force on 13th October, 2023, and some provisions coming into force on 15th December, 2023.

¹ The words, figures and letter in square brackets in column 2 were previously substituted by the Foundations (Registrar) (Civil Penalties) (Amendment) Regulations, 2023, regulation 1(2), with effect from 18th October, 2023.

** 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.