

STATES OF JERSEY



DRAFT CHARITIES (TRIBUNAL – RESTRICTED SECTION OF REGISTER) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 23rd January 2018
by the Chief Minister**

STATES GREFFE



Jersey

DRAFT CHARITIES (TRIBUNAL – RESTRICTED SECTION OF REGISTER) (JERSEY) REGULATIONS 201-

REPORT

These draft Regulations make provision as to one aspect of the procedure for appeals to the Charity Tribunal (the “tribunal”) under the [Charities \(Jersey\) Law 2014](#) (the “2014 Law”).

The Regulations protect information about an entity that has applied for or is registered on the restricted section of the register and where there is an appeal against a decision of the Charity Commissioner.

In these circumstances, the appeal must be conducted in a manner (including not holding a public hearing) which ensures that information about the entity is not disclosed without the consent of the entity or under particular circumstances broadly outlined below.

Under the 2014 Law, information can be disclosed in particular circumstances to other agencies (as opposed to the public), and nothing in these Regulations prevents that. Information can also be disclosed to the public if –

- (a) the information is already available in the public parts of the register (in a case in which the entity had previously been registered); or
- (b) it is already available to the public from some other source; or
- (c) it is in a summary or collection framed so as not to identify the entity; or
- (d) it is information that cannot enable identification of the entity or associated persons.

Under the 2014 Law, the tribunal may regulate its own procedure, subject to that Law and these Regulations. These Regulations therefore supplement the provision made in Part 8 of, and Schedule 2 to, the 2014 Law, and do not cover other matters that are left to the tribunal itself to regulate.

The 2014 Law recognises that it is reasonable for the public to access information about entities that receive charitable tax reliefs and solicit donations from the public and, at the same time, it is also reasonable for those who set up charities using private monies or assets – as opposed to monies which are solicited from the general public – to maintain their confidentiality where they wish to do so.

The restricted section of the register does not allow the public full access to the information about these “private” charities that the Charity Commissioner receives, but it does allow access to the charity’s charitable purpose and public benefit statements. These statements are key to the Commissioner’s decision to register, and

hence form the grounds on which a “private” charity may be entitled to access full charitable tax reliefs.

The effect of these regulations is to maintain this privacy about any appeals to the tribunal in relation to entities on or applying to be on the restricted section of the Register.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Chief Ministers, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of these Regulations.

Explanatory Note

These Regulations make provision as to one aspect of the procedure for appeals to the Charity Tribunal (the “tribunal”) under the Charities (Jersey) Law 2014 (the “Law”) against decisions of the Jersey Charity Commissioner. The Regulations protect information about an entity that is an applicant for registration on the restricted section of the register, or is a charity already entered on that section. The Regulations apply to any appeal made by such an entity. They also apply to an appeal about such an entity, if the appeal is made by the Attorney General (against any decision of the Commissioner), by a governor of the entity against a required steps notice, or by a third party against registration of the entity.

The tribunal must not hold a public hearing on the appeal. The tribunal must also conduct the appeal in a manner that it considers likely to secure that information about the entity is not disclosed, unless one of the following exceptions applies.

The Regulations do not prevent disclosure with the consent of the entity, or disclosure to the entity itself, to the Commissioner, to the tribunal or to their representatives. Nor do they prevent disclosure of information that is already available to the public from some other source, or is in a summary or collection framed so as not to identify the entity (see Article 29(2)(b) and (c) of the Law). The Regulations also do not prevent disclosure made under Articles 30 and 31 of the Law (to other agencies, rather than to the public, or to enable the Commissioner to discharge his or her functions).

Under Article 9(1) of the Law certain parts of the restricted section of the register are made public (and information on them can be disclosed under Article 29(2)(a) of the Law). The information in those parts is the charity’s registration number (but not its name), its constitutional status, its charitable purposes statement, its public benefit statement, and the summary of the reasons for its registration in the restricted section. If the entity is already a registered charity then the Regulations do not prevent disclosure of that information (if the entity is only applying for registration then no information will yet have been registered).

The Tribunal may also, after giving the relevant entity an opportunity to make submissions, disclose information that does not enable the public to identify (directly or indirectly) the relevant entity, its governors, persons connected to its governors, persons who have donated to it, or persons who the tribunal believes have a connection to the entity that justifies their identity not being made public.

Under paragraph 4(3) of Schedule 2 to the Law, the tribunal may regulate its own procedure, subject to that Law and these Regulations. These Regulations therefore supplement the provision made in Part 8 of, and Schedule 2 to, the Law, and do not affect other matters (relating to the restricted section or otherwise) that are left to the tribunal itself to regulate.

These Regulations would come into force at the same time as Article 33 of the Charities (Jersey) Law 2014, which is the provision that allows appeals to be made to the tribunal.



Jersey

**DRAFT CHARITIES (TRIBUNAL – RESTRICTED
SECTION OF REGISTER) (JERSEY)
REGULATIONS 201-**

Arrangement

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Jersey

DRAFT CHARITIES (TRIBUNAL – RESTRICTED SECTION OF REGISTER) (JERSEY) REGULATIONS 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 39 of, and paragraph 4(3) of Schedule 2 to, the Charities (Jersey) Law 2014¹, have made the following Regulations –

1 Appeal relating to registration in restricted section

- (1) This Regulation applies to an appeal, under Article 33 of the Charities (Jersey) Law 2014² (the “Law”), if a relevant entity –
 - (a) makes the appeal; or
 - (b) is the subject of the appeal.
- (2) For the purpose of this Regulation –
 - (a) a relevant entity is –
 - (i) an entity that is applying for registration as a charity, and has requested, under Article 9(2) of the Law, entry in the restricted section of the register, or
 - (ii) a charity entered in the restricted section of the register; and
 - (b) a relevant entity is the subject of an appeal if –
 - (i) the appeal is under Article 33(3) of the Law, by a governor of the relevant entity acting in that capacity,
 - (ii) the appeal is under Article 33(4) of the Law against a decision that relates to the relevant entity, or
 - (iii) the appeal is under Article 33(5) of the Law against a decision to register the relevant entity.
- (3) If the tribunal holds a hearing on the appeal, it must not do so in public.
- (4) The tribunal must otherwise conduct the appeal in such a manner as the tribunal considers reasonably likely to secure that no information about the relevant entity will be disclosed, subject to paragraph (5), as a result of the appeal.

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- (5) Paragraph (4) does not apply –
- (a) to a disclosure by or with the consent of the relevant entity;
 - (b) to a disclosure to the relevant entity, the Commissioner, the tribunal, or any person acting on behalf of any of those persons;
 - (c) to a disclosure by the tribunal, after giving the relevant entity an opportunity to make submissions, of information that does not enable the public to identify, directly or indirectly, the relevant entity or any related person;
 - (d) if the relevant entity is a registered charity, to a disclosure of information that is registered in the public elements of the restricted section of the register;
 - (e) to a disclosure of information that falls within either or both of subparagraphs (b) and (c) of Article 29(2) of the Law; or
 - (f) to a disclosure under Article 30 or 31 of the Law.
- (6) For the purpose of paragraph (5)(c) a related person, in relation to a relevant entity, is –
- (a) a governor of the relevant entity;
 - (b) a person having a connection, prescribed under Article 13(9)(a) of the Law, with a governor of the relevant entity;
 - (c) a person who has made a donation to the relevant entity; or
 - (d) any other person who, in the opinion of the tribunal, has a connection to the relevant entity that is of such a nature as to justify an expectation that that person's identity will not be made public.

2 Citation and commencement

These Regulations may be cited as the Charities (Tribunal – Restricted Section of Register) (Jersey) Regulations 201- and come into force on the coming into force of Article 33 of the Charities (Jersey) Law 2014³.

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- ¹ *chapter 15.070*
² *chapter 15.070*
³ *chapter 15.070*