

Feedback Paper on Consultation Paper No.7 2021

Consolidation of the AML/CFT Handbooks and other amendments

A feedback paper relating to a consultation on the consolidation of the AML/CFT Handbooks into one document, the extension of the AML/CFT Codes and guidance notes to cover all supervised persons, and the addition of new AML/CFT Codes in respect of electronic identification (E-ID), electronic statements/utility bills and the certification of documents

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Consultation feedback

This paper reports on responses received by the Jersey Financial Services Commission (the **JFSC**) in respect of Consultation Paper No.7 2021. Further enquiries regarding the consultation and this feedback paper may be directed to the following contacts:

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Glossary of Terms

Defined terms are indicated throughout this document as follows:

AML/CFT Code(s)	AML/CFT Code(s) of Practice issued under Article 22 of the Proceeds of Crime (Supervisory Bodies)(Jersey) Law 2008
BRA	Business Risk Assessment
CDD	Customer Due Diligence
Consultation Paper	Consultation Paper No.7 2021 on the consolidation of the AML/CFT Handbooks into one document, the extension of the AML/CFT Codes and guidance notes to cover all supervised persons, and the addition of new AML/CFT Codes in respect of E-ID, electronic statements/utility bills and the certification of documents, published 1 November 2021
Current AML/CFT Handbooks	The currently issued Handbooks for the prevention and detection of money laundering and the financing of terrorism, comprising: <ul style="list-style-type: none"> › The AML/CFT Handbook for Regulated Financial Services Businesses › The AML/CFT Handbook for the Accountancy Sector › The AML/CFT Handbook for the Legal Sector › The AML/CFT Handbook for Estate Agents and High Value Dealers
Draft Consolidated Handbook	The initial version of the consolidated AML/CFT Handbook, published as part of the Consultation Paper
E-ID	Electronic identification
FATF	Financial Action Task Force
Feedback Paper	Refers to this document, created to provide feedback on the responses received to the Consultation Paper
JFSC	Jersey Financial Services Commission
LPP	Legal Professional Privilege
MLCO	Money Laundering Compliance Officer
Money Laundering Order	Money Laundering (Jersey) Order 2008
MLRO	Money Laundering Reporting Officer
relevant person	Has the meaning given in Article 1 of the Money Laundering Order
Revised Consolidated Handbook	The revised version of the consolidated AML/CFT Handbook, published alongside this Feedback Paper
supervised person	Has the meaning given in Article 1 of the Proceeds of Crime (Supervisory Bodies)(Jersey) Law 2008

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1 Executive summary

1.1 Overview

- 1.1.1 In November 2021, we issued Consultation Paper No.7 2021 on proposals to merge the Current AML/CFT Handbooks into one consolidated handbook, extend the scope of the AML/CFT Codes and guidance notes to cover all supervised persons and add AML/CFT Codes in respect of electronic identification (**E-ID**), electronic statements/utility bills and certification of documents (the **Consultation Paper**). Feedback was invited from members of the public and Industry.
- 1.1.2 The purpose of this paper (the **Feedback Paper**) is to provide feedback on the responses received to the Consultation Paper.
- 1.1.3 This paper will also outline further amendments made to the Revised Consolidated Handbook resulting from an internal review conducted during the consultation period. These include a revision of some elements of the proposed AML/CFT Codes described above into guidance notes. A high-level list of substantive amendments arising from the review are set out as **Appendix B**.
- 1.1.4 We wish to flag at an early stage that, as a result of the internal review, we have replaced a range of defined terms within the body of the Revised Consolidated Handbook, where these were found not to be the most appropriate terms within the context of the relevant Sections and paragraphs. This approach is part of our commitment to enhance and simplify our regulatory rules as described in our 2022-2024 Strategic framework. For example, 'relevant person' has generally been replaced with 'supervised person' throughout the body of the Revised Consolidated Handbook, except where the Money Laundering (Jersey) Order 2008 (the **Money Laundering Order**) has been quoted, paraphrased or summarised.

1.2 Feedback received

- 1.2.1 The consultation period for the Consultation Paper closed on 7 January 2022. We received **14** responses directly and Jersey Finance Limited received **6** responses. In total we received **20** responses.
- 1.2.2 Paragraphs 2 to 6 of this Feedback Paper present a summary of the substantive comments received and our responses.
- 1.2.3 A number of comments were received which fell outside the scope of the Consultation Paper. These included requests for guidance and clarification on a range of matters. We have not included or responded to these comments within this Feedback Paper. However, we will carefully consider each of these and issue further guidance or consultations as appropriate.
- 1.2.4 We are grateful to respondents for taking the time to consider and comment on our proposals. A full list of respondents is provided in **Appendix A**.

1.3 Next Steps

- 1.3.1 In light of the feedback received, we have made amendments to the Draft Consolidated Handbook where appropriate, along with the amendments resulting from the internal review described at 1.1.4.
- 1.3.2 The Revised Consolidated Handbook has been published alongside this Feedback Paper.

- 1.3.3 As noted in Paragraph 6 below, having listened to Industry requests for a longer period to prepare for the change, the Revised Consolidated Handbook will now become effective on 31 May 2022 (the **Effective Date**). The Current AML/CFT Handbooks will be archived on the Effective Date.
- 1.3.4 Tracked-change documents comparing each of the Current AML/CFT Handbooks, including the Glossary, Prepaid Cards guidance (Section 3.3.6 of the Revised Consolidated Handbook) and E-ID (Section 4.3.5 of the Revised Consolidated Handbook) against the Revised Consolidated Handbook have been published alongside the Feedback Paper.
- 1.3.5 We will continue to review and amend the Revised Consolidated Handbook throughout the course of 2022, in order to make further enhancements. We will consider the comments received which fell outside the scope of the Consultation Paper during this time. Where appropriate, proposed enhancements will be consulted upon.

2 Consultation feedback

2.1 Feedback received

- 2.1.1 This section summarises the most commonly made and pertinent comments received in response to the Consultation Paper and provides our response to those comments. Please note that not every comment received is individually listed.
- 2.1.2 Respondents to the Consultation Paper overall raised no significant concerns with the over-arching objective of enhancing the AML/CFT regime in line with the Financial Action Task Force's (**FATF**) standards.
- 2.1.3 References to "Sections" in this Feedback Paper are to the Sections of the Draft Consolidated Handbook published in the Consultation Paper. References to "paragraphs" are to the paragraphs of the Draft Consolidated Handbook. References to "Paragraphs" refer to the Consultation Paper, or this Feedback Paper, as detailed.

3 Consolidation of the Current AML/CFT Handbooks

3.1 Question 1 (Paragraph 4.4.10 of the Consultation Paper)

Have you identified any unintended consequences of merging the AML/CFT Handbooks into one Consolidated Handbook?

- 3.1.1 The majority of respondents identified no unintended consequences of merging the AML/CFT Handbooks.



- 3.1.2 Two respondents stated that the new labelling and colour-coding system was helpful.
- 3.1.3 One respondent stated that the new Section 6.4 (Money laundering warning signs) was helpful.
- 3.1.4 Three respondents observed that the merger would make the Revised Consolidated Handbook more complex and require supervised persons to undertake a significant amount of work to account for the changes made.

Our response

- 3.1.5 In relation to the points regarding the merger making the Revised Consolidated Handbook more complex, we refer to Section 4.2 of the Consultation Paper which outlined that maintaining the four Current AML/CFT Handbooks may mean Jersey would be unable to demonstrate full technical compliance with the 2012 FATF Recommendations. As described in Paragraph 4.3 of the Consultation Paper, merging the AML/CFT Handbooks into one consolidated handbook would partly address this issue.

3.1.6 As stated at Paragraph 6 of this Feedback Paper, we have concluded that the Revised Consolidated Handbook should now become effective on **31 May 2022**. We have considered that this extended transition period will provide supervised persons with sufficient time to undertake any changes required. We will also provide tracked-change documents to assist supervised persons during the transition period.

3.1.7 One respondent queried the applicability of Section 2.7 of the Draft Consolidated Handbook (Financial Groups) to accountants, given that some accountants are not legal persons. The respondent referenced paragraph 88 which notes that in practice the requirements of Section 2.7 may not apply to all law firms, as some are not legal persons. The respondent also asked whether there would be a case for a “carve out” similar to that for law firms.

Our response

3.1.8 We have amended the overview to Section 2.7 in the Revised Consolidated Handbook so that it more clearly states which supervised persons will need to comply with its requirements, in line with the definition of a financial group set out at Article 1(5) of the Money Laundering Order.

3.1.9 Two respondents in the accountancy sector raised queries or expressed concern regarding certain new requirements which would be placed on them by the merger of the Current AML/CFT Handbooks.

3.1.10 One respondent expressed concern that auditors would be brought into scope of Section 13 (Funds and Fund Operators), by way of Section 13.1, paragraph 6 listing an auditor as a potential Fund Operator. The concerns related to the requirements set in Section 13 necessitating additional work in respect of customer due diligence (**CDD**).

3.1.11 One respondent highlighted the guidance at Section 13.3.4, paragraph 66 of the Draft Consolidated Handbook that more stringent measures should be applied for higher risk relationships, regarding the source of funds of passive investors and requested more detail on what those measures might include.

Our response

3.1.12 In relation to the point raised on Section 13.1 of the Draft Consolidated Handbook, we note that the home page for the Current AML/CFT Handbook for the accountancy sector states:

‘If services are being provided to a Fund, reference should be made to Section 14 of the AML/CFT Handbook for regulated financial services businesses’.

3.1.13 Reference to and compliance with the section on Funds and Fund Operators therefore does not constitute a new requirement for accountants. That being said, we have added wording to emphasise that different service providers to a fund may have different CDD obligations in respect of that fund.

3.1.14 In relation to the point raised on Section 13.3.4, paragraph 66 of the Draft Consolidated Handbook, we have added guidance on how to determine what additional measures may be required, regarding the source of funds of passive investors.

3.1.15 One respondent observed that Section 5.2 of the Draft Consolidated Handbook (Group Reliance) was new for accountancy firms and requested further guidance on how it may be applied.

Our response

- 3.1.16 In relation to the point regarding Group Reliance, we note Section 5.2 of the Draft Consolidated Handbook states that the conditions for application and provisions for testing in respect of Group Reliance are the same as those for reliance on obliged persons. As reliance on obliged persons is an established part of the Current AML/CFT Handbooks (Section 5.1 in each case), we do not consider that additional clarification is required.
- 3.1.17 With reference to our responses above, and for the reasons set out at Section 4.2 of the Consultation Paper, we shall proceed with the merging of the AML/CFT Handbooks into one consolidated handbook. The Revised Consolidated Handbook has been published alongside this Feedback Paper, and will become effective on 31 May 2022.

4 Extension of AML/CFT Codes

4.1 Question 2 (Paragraph 4.5.3 of the Consultation Paper)

Have you identified any unintended consequences or anomalous results due to the extension of the AML/CFT Codes to cover all supervised persons?

- 4.1.1 The majority of respondents identified no unintended consequences or anomalous results due to the extension of the AML/CFT Codes.



- 4.1.2 One respondent stated that variances from the AML/CFT Codes should still be available following the consolidation of the Current AML/CFT Handbooks, where strict adherence would produce an anomalous result.

Our response

- 4.1.3 In relation to the point made on variances, we confirm that supervised persons may still request a variance from the requirements set out in the AML/CFT Codes, where strict adherence would produce an anomalous result. The process for applying for a variance remains unchanged, i.e. a supervised person should contact their supervisor to discuss the request.
- 4.1.4 One respondent requested further detail and clarity in respect of the Glossary definition of 'financing of terrorism'. The respondent also expressed concern that Section 1, paragraph 3 of the Draft Consolidated Handbook suggested Jersey's financial services and products were regularly used to facilitate money laundering and terrorist financing.

Our response

4.1.5 In relation to the point regarding the definition of ‘financing of terrorism’, we have amended the definition to provide greater clarity. In respect of the concerns expressed regarding Section 1, paragraph 3, we do not consider that the wording of this paragraph creates an impression that Jersey’s financial services and products are regularly used to facilitate money laundering and terrorist financing. This is a general point to highlight that no business sector is immune from the risk of being abused by money launderers and terrorist financiers. We shall therefore not be making any changes to this paragraph.

4.1.6 One respondent referenced Section 1.6 of the Draft Consolidated Handbook and raised two separate points:

4.1.6.1 They requested additional guidance be provided for accountants, regarding the application of the defined terms ‘business relationship’, ‘customer’ and ‘one-off transaction’ in the context of accountancy services. They noted that accountants often provide services to other ‘network firms’, to support delivery of services to those firm’s clients. It was further noted that determining the identity of the customer and any third parties on whose behalf the customer was acting could be challenging.

4.1.6.2 They also referenced paragraph 80 which states that additional guidance on determining the value of transactions is provided within the sector-specific sections of the Draft Consolidated Handbook and noted there was no such guidance in the sector-specific section for accountants.

Our response

4.1.7 In relation to the first point on Section 1.6 of the Draft Consolidated Handbook, we consider that the definitions of ‘business relationship’, ‘customer’ and ‘one-off transaction’ and relevant guidance on the application of the same are sufficient. We also note that the definitions of ‘business relationship’ and ‘one-off transaction’ are the same as those set out in the Money Laundering Order. It is therefore our view that supervised persons should be able to apply these definitions as they stand and identify their customer and any third parties on whose behalf the customer is acting. If a supervised person is unable to identify their customer or any third parties – e.g. because the relationship is complex – then they should consider whether this impacts the risk profile of the relationship and take appropriate action.

4.1.8 In relation to the second point on Section 1.6, we confirm that there is no sector-specific guidance for accountants on determining the value of transactions. We have therefore amended the relevant paragraph to clarify that additional sector-specific guidance is provided where appropriate.

4.1.9 One respondent noted that Section 1.7, paragraph 90 of the Draft Consolidated Handbook stated:

Policies and procedures may be more straightforward for smaller businesses.

4.1.10 The respondent requested guidance on what we consider to be a ‘smaller business’.

Our response

4.1.11 In relation to the point made on Section 1.7, paragraph 90 of the Draft Consolidated Handbook, we note that this paragraph was originally part of the

AML/CFT for Estate Agents and High Value Dealers only. However, we considered that it was in fact applicable to all business sectors and added the paragraph to the Draft Consolidated Handbook. It is our view that supervised persons should be able to make an adequate assessment as to the size of their business and therefore no additional guidance will be provided.

- 4.1.12 One respondent expressed concern that the reference to Legal Professional Privilege (LPP) at Section 2.4.1, paragraph 44 of the Draft Consolidated Handbook suggested it could be applied more broadly than by lawyers only.

Our response

- 4.1.13 In relation to the point made on Section 2.4.1 of the Draft Consolidated Handbook, we have amended the relevant paragraph to more clearly state that LPP is only applicable to lawyers.

- 4.1.14 One respondent raised two separate points in respect of Sections 2.5 and 2.6 of the Draft Consolidated Handbook:

- 4.1.14.1 The first point requested clarification regarding the first footnote in the AML/CFT Codes at Section 2.5, paragraph 65 and Section 2.6, paragraph 78, which set out the conditions whereby a supervised person may be permitted to appoint an employee of its administrator to act as its MLCO and/or MLRO. They requested specific confirmation on whether the conditions were intended to be cumulative. It was suggested that, if they were cumulative, this might cause difficulties for some types of supervised persons now captured by the Revised Consolidated Handbook, e.g. Jersey Private Funds (also known as JPFs). It was further suggested that we consider extending the derogation to these additional types of supervised persons.
- 4.1.14.2 The second point requested that a footnote be added to Sections 2.5 and 2.6 to reference the notice issued under Article 10 of the Money Laundering Order on 19 October 2017, becoming effective on 1 January 2018 (the **Notice**). The Notice provided that certain persons were exempted from the obligations set out at Articles 7(6) and 8(4) of the Money Laundering Order, which require notification to us regarding the appointment and ceasing to act of a MLCO or MLRO.

Our response

- 4.1.15 In relation to the first point on Sections 2.5 and 2.6, we confirm that the conditions in the first footnotes to paragraphs 65 and 78 in the Draft Consolidated Handbook are cumulative. We will consider the impact of the extension of these AML/CFT Codes to all supervised persons and consult Industry on any new proposals in due course.
- 4.1.16 In relation to the second point on Sections 2.5 and 2.6, we note that paragraphs 65 and 78 in the statutory requirements boxes already state (paragraphs merged for ease of reference):
- 4.1.16.1 Articles 7(6) and 8(4) of the Money Laundering Order require a relevant person to notify us in writing within one month when a person is appointed as, or ceases to be, a MLCO/MLRO. However, Article 10 provides that we may grant exemptions from this notification requirement, by way of notice.

4.1.16.2 Notices currently issued under Article 10 of the Money Laundering Order can be found on our website under the 'Legal Notices' section of our ['AML/CFT legislation' page](#).

4.1.17 One respondent noted it was common to collect signed agreements from potential customers in advance, with provision of services being made subject to completion of satisfactory due diligence. They referenced the additional wording AML/CFT Code at Section 4.7, paragraph 247 of the Draft Consolidated Handbook:

'A relevant person must not permit final agreements to be signed [...] until such time as evidence of identity has been obtained'.

4.1.18 The respondent asked whether their approach detailed above would remain appropriate given the new wording in the AML/CFT Code.

Our response

4.1.19 In relation to the point made on signed agreements, in light of the comments received from Industry and during the internal review we have reverted to the wording used in Section 4.7, paragraph 191 of the Current AML/CFT Handbook for regulated financial services business. We consider this will allow Industry to continue to apply the approach detailed above.

4.1.20 One respondent referenced the revised AML/CFT Code at Section 7.14, paragraph 106 of the Draft Consolidated Handbook which reads:

'A relevant person must be able to demonstrate that the exemption conditions required by the Money Laundering Order and set out above are being met'.

4.1.21 The respondent expressed concern that the inclusion of 'set out above' would result in compliance with the guidance notes at Section 7.13 and statutory requirements at Section 7.14 becoming a mandatory requirement.

Our response

4.1.22 In relation to the comments regarding Section 7.14, it is our view that the inclusion of 'set out above' does not construct a mandatory requirement to comply with the guidance notes at Section 7.13. We would add that the statutory requirements at Section 7.14 paraphrase provisions in the Money Laundering Order which are mandatory. That being said, we have amended the paragraph to provide further clarity so that it now reads:

'A relevant person must be able to demonstrate that the exemption conditions required by the Money Laundering Order and summarised in the Statutory Requirements above are being met'.

4.1.23 We wish to take this opportunity to reference Section 4.2 of the Consultation Paper which outlined that there are currently no AML/CFT Codes that apply directly to a number of financial services businesses. This may mean Jersey would be unable to demonstrate full technical compliance with the 2012 FATF Recommendations. As stated in Section 4.3 of the Consultation Paper, extending the scope of the AML/CFT Codes to all supervised persons would partly address this issue.

4.1.24 With reference our responses above and for the reasons set out at Section 4.2 of the Consultation Paper, we shall proceed with the extension of the AML/CFT Codes to all supervised persons. Compliance with the AML/CFT Codes set out in the Revised Consolidated Handbook shall become effective on 31 May 2022.

5 E-ID, electronic statements/utility bills and certification of documents

5.1 Question 3 (Paragraph 4.6.7 of the Consultation Paper)

Do you consider the revised AML/CFT Codes and guidance provided in the Consolidated Handbook regarding E-ID, electronic statements/utility bills and certification of documents to be adequate for the purposes of your business? If not, please provide further detail in the comments section of this question.

- 5.1.1 The majority of respondents did not consider the revised AML/CFT Codes and guidance referenced above to be adequate.

5.1.2



- 5.1.3 Clarification was sought by a number of respondents regarding the practical application of various elements of the AML/CFT Codes and guidance referenced above.

5.2 Electronic bank statements and utility bills (Section 4.3.2.1)

- 5.2.1 Eight respondents specifically referenced the proposed AML/CFT Codes and guidance at Section 4.3.2.1 of the Draft Consolidated Handbook. All were in favour of this inclusion to the Draft Consolidated Handbook.
- 5.2.2 Six respondents requested further guidance on the application of a risk-based approach, including the circumstances where additional measures should be applied.
- 5.2.3 One respondent requested clarification on the delivery mechanisms for supervised persons to accept electronic bank statements and utility bills.

Our response

- 5.2.4 We have clarified Section 4.3.2.1 by:
- 5.2.4.1 Making it clear that supervised persons may accept electronic bank statements and utility bills in all scenarios; and
 - 5.2.4.2 Providing further guidance on additional measures which may be appropriate should the risk profile of the customer, or the integrity of the document warrant further investigation or corroboration by the supervised person.

5.3 Suitable certification (Section 4.3.3)

- 5.3.1 Thirteen respondents made reference to the suitable certification requirements.

- 5.3.2 Six respondents requested clarification on the certification options available. In particular, the difference between a hand-written (or “wet-ink”) original certified copy and an electronic certified copy.

Our response

- 5.3.3 Following feedback received, we have:
- 5.3.3.1 Provided additional guidance regarding the certification of documents with the use of an electronic or digital signature.
 - 5.3.3.2 Clarified our language to refer to the two types of certification which would be acceptable under this Section:
 - (1) hand-written certification (otherwise known as “wet-ink”) or
 - (2) electronic/digital certification as further described within the Section.

- 5.3.4 Three respondents raised concerns that suitable certifiers would not be able to accurately assess whether the documentation that they are certifying has been tampered with and/or is a forgery.

Our response

- 5.3.5 We have considered the responses relating to suitable certifiers and would like to remind supervised persons that should they have concerns regarding that certifier’s ability, it is expected that supervised persons would apply additional measures to ensure that they are confident with the documentation received using other means or third party data sources. We have clarified our language to emphasise this point.
- 5.3.6 We also acknowledge that digital address verification solutions (such as geotagging) are continuing to evolve which may have an impact on our guidance in this area. We continue to work with the Government of Jersey and Industry in respect of E-ID and digital address verification and will be reviewing our future guidance on these topics.

- 5.3.7 Two respondents requested further guidance on what we mean by “the relevant person would need to be satisfied as to the reliability of the software” as contained within paragraph 29 of Section 4.3.3.

- 5.3.8 One respondent requested clarification on the circumstance where digital identification tools were capable of “certifying” documents.

Our response

- 5.3.9 In response to the points raised above, we will look to undertake further work to provide further guidance to supervised persons.

- 5.3.10 Two respondents suggested that supervised persons were accepting PDF copies of certified documents.

Our response

- 5.3.11 We wish to take this opportunity to remind supervised persons that PDF copies of certified documents are not (and have never been) an accepted form of documentation by themselves to meet the regulatory obligations. Supervised

persons that are concerned about how they have treated PDF documentation in the past should contact their supervisor without delay.

- 5.3.12 One respondent raised a concern that paragraphs 54-55 of Section 4.3.3 created a requirement that documents which were electronically certified should be received directly from the certifier and observed that this was not always possible. The same respondent also raised a concern that some electronic signature software would not be able to provide sufficient information regarding the certifier, as required at Section 4.3.3 of the Draft Consolidated Handbook.

Our response

- 5.3.13 It is our view that paragraphs 54-55 at Section 4.3.3 of the Draft Consolidated Handbook do not construct a requirement for electronically certified documents to be received directly from the certifier, nor is it our intention to require the same.
- 5.3.14 However it is accepted that further clarity could be provided. A new paragraph has therefore be added at Section 4.3.3 as follows:
- "It is not a requirement for a document which be been electronically certified to be received directly from the certifier".*
- 5.3.15 It is our understanding that there are a number of electronic signature applications which allow the required information about the certifier to be added (i.e. adding 'digital signature attributes').
- 5.3.16 It continues to be vital for supervised persons to be able to verify the identity and credentials of a certifier, no matter what method of certification is used.

5.4 Relationship between suitable certification (Section 4.3.3), Use of Electronic Identification (E-ID) (Section 4.3.5) and Copy documentation provided by regulated trust and company services provider (Sections 4.4.5 and 4.5.7)

- 5.4.1 Five respondents sought clarification on the application of copy documentation provided by regulated trust and company service providers and whether the electronic signature provisions contained within Section 4.3.3 could apply.

Our response

- 5.4.2 We have considered the feedback received and believe that the amendments made to Section 4.3.3 clarify that electronic signatures which have been affixed in accordance with Section 4.3.3 would be permissible to meet the requirements as contained within Sections 4.4.5 and 4.5.7.
- 5.4.3 One respondent noted that they had sought to meet their requirements under Section 4.5.7 through the use of video calls, where contractual obligations with clients prevented a regulated trust and company service provider from providing copy documents to other third parties.

Our response

- 5.4.4 Supervised persons are reminded that if contractual obligations prevent a regulated trust and company service provider from sending copy documentation to other parties which would be compliant with the requirements under Section 4.5.7 (or Section 4.4.5), this Section may not be applied, and the other parties in this scenario must meet their regulatory obligations under this part using one of the other mechanisms for obtaining evidence of a customer's identity.

- 5.4.5 Our intention is to look at other scenarios upon which Sections 4.4.5 and 4.5.7 may be applied.

5.5 Use of electronic identification (E-ID) (Section 4.3.5)

- 5.5.1 One respondent sought clarification regarding the application of E-ID in conjunction with one or more of the options described within paragraph 20 of Section 4.3.2 of the Draft Consolidated Handbook.

Our response

- 5.5.2 We have amended the language in paragraph 20 to make it clear to supervised persons that each of the methods described within that paragraph to evidence a customer's identity can be used by themselves or in conjunction with one another. It remains the responsibility of supervised persons to apply a risk-based approach to their customers and apply enhanced CDD measures where necessary.

- 5.5.3 One respondent noted that Section 4.3.5 of the Draft Consolidated Handbook is in reference to the use of E-ID applications developed by third parties and does not extend to supervised persons developing their own in-house E-ID application.

Our response

- 5.5.4 We consider any application that meets the detail referred to in the Draft Consolidated Handbook, regardless of whether it has been developed by the supervised person or a third party, to be considered as an E-ID application. We have removed the explicit reference to third-party in this regard.

- 5.5.5 Two respondents requested further information and guidance on the relationship between Section 4.3.5 and Section 5 (Reliance on obliged persons).

Our response

- 5.5.6 It is our view that evidence of identity obtained by the obliged person may take the form of any of the methods described in Section 4.3.2, paragraph 20, provided that the conditions of Article 16(2) of the Money Laundering Order are being met. In this regard we note that the introduction to Section 5 refers to the obliged person obtaining evidence using 'documents, data or information'. Our intention is to consider whether the AML/CFT Codes in Section 5 could be further clarified to reflect our position stated above and will consult Industry if necessary.

5.6 Legal and regulatory obligations relevant to E-ID (Section 4.3.5.1)

- 5.6.1 Six respondents requested further guidance on our interpretation of whether face-to-face interactions include those which are conducted via video-conferencing tools.

Our response

- 5.6.2 We have acknowledged that the references to "face-to-face" interactions are unhelpful to supervised persons, particularly where other jurisdictions consider face-to-face interactions to include video conferencing. When referring to "face to face" transactions, our interpretation of this is where a customer is physically present. We have amended the Revised Consolidated Handbook to remove reference to "face to face" and instead replaced with "physically present" which we believe is less ambiguous in the current environment.

5.6.3 Our position remains unchanged that video conferencing facilities which do not have E-ID capabilities should not be used to collect evidence or verify a customer's identity. Another form of evidencing identity must be used by a supervised person. This is for the reasons set out in the Revised Consolidated Handbook.

5.6.4 At this time we wish to acknowledge that video conferencing facilities may be used by a supervised person during their usual course of business for the purposes of communicating with their customers.

5.6.5 Three respondents requested further guidance on the application of our Outsourcing Policy and Guidance Notes regarding the use of an E-ID application.

Our response

5.6.6 Our Outsourcing Policy and Guidance Notes (the **OSP**) are currently under review. This review has considered the application of the OSP in the context of supervised persons' use of third-party providers in order to meet their legal obligations. Subject to consultation with Industry, the OSP considers any use of E-ID applications to meet the statutory requirements to be material, therefore requiring supervised persons to submit an Outsourcing Notification.

5.6.7 The revised OSP will be subject to consultation during 2022 and for clarity and consistency our current intention is to explicitly include all supervised persons subject to the Revised Consolidated Handbook within its scope.

5.7 Risk of using E-ID (Section 4.3.5.2) and factors to consider when assessing E-ID applications (Section 4.3.5.3)

5.7.1 Two respondents requested further guidance on how to mitigate the risk of deep-fake technology being used as part of the application of E-ID.

5.7.2 Five respondents requested further guidance on how to assess E-ID applications in order to meet their regulatory requirements under this Section.

Our response

5.7.3 As part of our ongoing commitment to enabling adoption of regulatory technology by supervised persons, we will be working with the Government of Jersey and reviewing our guidance on the use of E-ID technology to provide more comprehensive information which supervised persons can refer to when considering the application of this Section on their operational compliance.

5.7.4 In the meantime, should supervised persons have any doubt we would encourage them to contact their supervisor.

5.8 Record-keeping requirements relevant to the use of E-ID (Section 4.3.5.4)

5.8.1 One respondent requested further information on what practical steps could be taken by supervised persons in line with the requirements under Section 10 of the Draft Consolidated Handbook.

Our response

5.8.2 We consider that Section 10 of the Draft Consolidated Handbook contains sufficient detail for supervised persons to determine what practical steps would be appropriate for their business following the introduction of an E-ID solution.

Notably these options include (as detailed within paragraph 20 of Section 10) the keeping of records:

- 5.8.2.1 by way of original documents;
- 5.8.2.2 by way of photocopies of original documents (certified where appropriate);
- 5.8.2.3 in scanned form; or
- 5.8.2.4 in computerised or electronic form.

6 Transition period

6.1 Question 4 (Paragraph 4.7.3 of the Consultation Paper)

Do you consider a two-month transition period to be appropriate and proportionate? If not, please provide further detail in the comments section of this question.

- 6.1.1 The majority of respondents did not consider the above proposal to be appropriate and proportionate.

6.1.2



- 6.1.3 Two respondents stated that a transition period of 3-4 months would be preferable. Five respondents stated that a transition period of 4-6 months would be preferable. Three respondents did not propose an alternative length of time.
- 6.1.4 Several respondents stated that they did not consider a two-month transition period to provide sufficient time to undertake required amendments to policies and procedures. Several respondents also variously cited the need to undertake remediation on their customer base, the transition period coinciding with the Supervisory Risk Data Collection exercise and pressures arising from the COVID-19 pandemic.

Our response

- 6.1.5 A clear majority of respondents did not consider a two-month transition period to be sufficient. We have taken note of this feedback and extended the transition period so that the Revised Consolidated Handbook shall instead become effective on 31 May 2022.
- 6.1.6 It is considered that a four-month transition period represents a reasonable compromise based on the comments received. This revised time-frame means that the Revised Consolidated Handbook shall become effective one month after the Supervisory Risk Data Collection exercise is due to be completed in April 2022. An effective date of 31 May 2022 will also allow us to introduce further

enhancements to the Revised Consolidated Handbook on a timely basis throughout the rest of 2022.

7 Appendix A

7.1 List of respondents

A total of 20 responses were received. 14 of these were shared with us directly:

- › Of the direct respondents, 11 either wished not to be identified or did not give consent to be identified, these were:
 - › 3 trust company businesses
 - › 1 fund services business
 - › 2 Industry bodies
 - › 1 casino
 - › 1 bank
 - › 1 response submitted on behalf of three accountants
 - › 1 lawyer
 - › 1 accountant.
- › The three other direct respondents were:
 - › Viberts
 - › HSBC Bank plc, Jersey Branch and HSBC Trustee (C.I.) Limited (joint submission)
 - › RBS International.

Jersey Finance Limited provided six anonymous responses from:

- › 2 investment businesses
- › 1 trust company business
- › 2 fund services businesses
- › 1 Industry body.

8 Appendix B

8.1 Substantive amendments made following internal review

Please note that the list below does not detail every amendment made.

Glossary:

Added definitions for:

- › Business Risk Assessment (BRA)
- › Customer Risk Assessment (CRA)
- › Financial Institutions
- › FATF Style Regional Body (FSRB)
- › Guidance Notes
- › Relevant connection

- › Special Purpose Vehicle (SPV)
- › Statutory Requirements
- › Supervised business
- › Terrorist financing

Amended definitions for:

- › Accountancy services
- › Beneficial owners and/or controllers
- › FATF Recommendations
- › Financial group
- › Financing of terrorism
- › Higher risk country or territory
- › JFSC
- › Money laundering
- › Politically Exposed Person (PEP)
- › Relevant person
- › Suspicious Activity Report (SAR)
- › Supervised Person

Section 1:

Please note that unless otherwise stated, Section and paragraph numbers relate to those in the Revised Consolidated Handbook.

- › Section 1.3.3: Expanded list of regulatory sanctions for non-compliance with AML/CFT Codes at paragraph 43
- › Section 1.4.2: Amended reference to Article 10A(9) of the Money Laundering Order at paragraph 51
- › Section 1.5 revised to cover 'Definition of Supervised Business'
- › Amendments to Guidance Notes at Section 1.6
- › Statutory Requirements removed from Section 1.7
- › Section 1.8.3: Sources of additional information to determine equivalence of a country or territory moved to Appendix B of the Revised Consolidated Handbook.

Section 2:

- › Section 2.4.1 revised to include a non-exhaustive list of areas required under the Money Laundering Order to be covered in systems and controls
- › AML/CFT Code at Section 2.5 amended to simplify language
- › Amended overview of Section 2.7 to more clearly state which supervised persons will need to comply with its requirements.

Section 3:

- › Section 3.3: Clarified at paragraph 22 that the senior management function is responsible for conducting a BRA, where a supervised person is not a company
- › Section 3.3.2.2: Removed list of suggested questions to be included in a customer questionnaire and amended guidance notes at paragraph 39

- › Section 3.3.4.1: Expanded guidance at paragraph 56
- › Section 3.3.6.2: Clarified that other types of New Payment Products and Services (NPPS) are not covered by this section.

Section 4:

- › Section 4.3.2: Amended paragraph 27 to clarify that its guidance may also be applied to lower risk customers who are resident outside of Jersey
- › Section 4.3.2.1: Converted AML/CFT Code of Practice regarding electronic bank statements/utility bills into guidance notes
- › Section 4.3.3: Converted AML/CFT Code of Practice regarding certification methods not permitted to guidance notes and added further methods of certification for clarity
- › Section 4.3.5.1: Converted AML/CFT Code of Practice regarding legal and regulatory obligations relevant to E-ID into guidance notes
- › Section 4.3.5.5: Converted AML/CFT Code of Practice regarding E-ID methods not permitted to guidance notes
- › Section 4.5.1: Amended description of Three Tier Test at paragraph 152. Three Tier Test explanatory diagram removed. This will be revised, improved and re-issued during 2022
- › Section 4.5.4: Removed option to collect a certificate of incorporation as evidence of identity for a foundation.

Section 5:

- › No substantive amendments.

Section 6:

- › Section 6.2.2: Removed reference to vessels/aircrafts/other sanctioned parties at paragraph 38.

Section 7:

- › Section 7.3, 7.6.2: Amended 'relevant connection' to 'connection' where appropriate to account for new definition of the former
- › Section 7.11: Amended Overview paragraph 76 to clarify meaning of 'Correspondent banking'
- › Section 7.13: Simplified Overview paragraph 95.

Section 8:

- › Section 8.3.2: Added footnote to paragraph 83 to reiterate meaning of 'the Board' in context of the Revised Consolidated Handbook.

Section 9:

- › Section 9.5.2: Amended title to 'The Board or equivalents'
- › Section 9.5.6: Amended title to 'Timing and frequency of training'.

Section 10:

- › Section 10.4.3: Amended 'unusual transactions' to 'notable transactions' where appropriate to enhance clarity.

Section 11:

- › Section 11.4: Amended 'PSP' to 'PSP of the payee' where appropriate to enhance clarity.

Section 12:

- › No substantive amendments.

Section 13:

- › Section 13.1: Link added to paragraph 8 for Managers of managed entities and certain managed entities. Definition added for 'Managed Entity'
- › Section 13.2.1: Added paragraph providing examples of further risks which may need to be considered in a BRA
- › Section 13.3.1: Amended description of the Three Tier Test at paragraph 48
- › Section 13.4: Amended paragraph 95 to clearly state our expectation regarding the obtaining of evidence of identity "as soon as reasonably practicable".

Section 14:

- › Section 14.1.1: Removed reference to European Union AML/CFT legislation
- › Added new section 14.2.2 'Timing of identification measures'.

Section 15:

- › Added new section 15.2 'Business relationships and one-off transactions'
- › Added new section 15.4 'Corporate governance'
- › Section 15.5.3: Amended paragraph 81 to clarify the statutory requirements under the Money Laundering Order to terminate a business relationship or not carry out a one-off transaction
- › Section 15.6.1: Amended guidance regarding service risk at paragraph 91.

Section 16:

- › Section 16.1.1: Added examples of accountancy services to paragraph 2
- › Section 16.4.4: Amended paragraph 49 to clarify the statutory requirements under the Money Laundering Order to terminate a business relationship or not carry out a one-off transaction
- › Section 16.6.2: Amended 'competent authority' to 'revenue authority' where appropriate throughout this section.