

## **Consultation No. 7 2022**

# **Handbook requirements for Prescribed Non-profit Organisations (NPOs)**

A consultation on amendments to the Handbook to introduce requirements for Prescribed NPOs

## Consultation

The Jersey Financial Services Commission (JFSC) invites comments on this consultation. Comments should reach Jersey Finance Limited by 20 September 2022.

Responses should be sent to:

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Alternatively, responses may be sent directly to us by 20 September 2022. If you require any assistance, clarification or wish to discuss any aspect of the proposal before formulating a response, please contact us.

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**It is our policy to provide the content of responses for inspection unless specifically requested otherwise.**

**It is the policy of Jersey Finance Limited (unless otherwise requested or agreed) to collate all responses and share them verbatim with us on an anonymised basis (with reference made only to the type of respondent, e.g. individual, law firm, trust company, etc.) This collated, anonymised response will, typically, be placed in JFL's permanent electronic archive which is currently open to all JFL members.**

## Glossary

AML	Anti-money laundering
AML/CFT Codes of Practice	Binding regulatory requirements present in Sections 2-16 of the Handbook
CFT	Countering the financing of terrorism
Codes of Practice	Binding regulatory requirements proposed to be added to Section 17 of the Handbook [the NPO Section]
Commission Law	Financial Services Commission (Jersey) Law 1998, as amended
FATF	The Financial Action Task Force
FATF Recommendations	The FATF's international standards on combating money laundering and the financing of terrorist & proliferation
FTA	Financial Transparency Advisors
Government	The Government of Jersey
The Handbook	Handbook for the prevention and detection of money laundering and the countering of terrorist financing
JFCSG	Jersey Financial Crime Strategy Group
JFL	Jersey Finance Limited
JFSC (us, we)	Jersey Financial Services Commission
The Minister	Minister for External Relations and Financial Services
ML	Money laundering
NPOs	Non-profit organisations
NPO Law	Non-Profit Organisations (Jersey) Law 2008
NPO PRA	Non-profit organisation Programme risk assessment
Person	any natural or legal person (including a body of persons corporate or unincorporated)
Prescribed NPO	Has the meaning given in Article 24 of the <a href="#">Non-profit Organizations (Miscellaneous Amendments) (Jersey) Law 2022</a>
Prescribed NPO Order	Prescribed Non-Profit Organisations (Jersey) Order 2022 (not yet published)
Proceeds of Crime Law	Proceeds of Crime (Jersey) Law 1999
Registered NPOs	An NPO which is registered under the NPO Law
Regulated NPOs	Has the meaning given in Article 1 of the NPO Law
Sanctions and Asset-Freezing Law	Sanctions and Asset-Freezing (Jersey) Law 2019
SAR	Suspicious activity report
Supervised Person	Has the meaning given in Article 1 of the Supervisory Bodies Law

Supervisory Bodies Law	Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008
Terrorism Law	Terrorism (Jersey) Law 2002
TF	Terrorist financing (may also be referred to as the financing of terrorism)
TFS-TF	Targeted financial sanctions related to terrorist financing

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# Consultation

## Basis for consultation

We are issuing this consultation in accordance with Article 8(3) of the Commission Law, under which the JFSC “may, in connection with the carrying out of its functions [...] consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate”.

## Who this applies to

The proposed changes to the Handbook will affect any person who meets the definition of a prescribed NPO as set out in the Prescribed NPO Order. This means both registered NPOs and regulated NPOs could be affected.

## Responding to the consultation

We invite comments, in writing, from interested parties on the content of this consultation. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.

A [questionnaire](#) has been published alongside this consultation. Respondents are requested to use this form when responding to questions posed and providing any comments to support their answers. The use of this form will assist both JFL and ourselves in collating and considering the responses provided.

Comments on this consultation should be received no later than **20 September 2022**.

## Next steps

Following this consultation, we will publish feedback and issue a revised version of the Handbook. We anticipate this will be published at the beginning of October 2022.

It is expected for the requirements proposed below to come into force on 1 January 2023.

# The JFSC

## Overview

We are a statutory body corporate established under the Commission Law. We are responsible for the supervision and development of financial services provided in or from within Jersey.

## Our functions

Article 5 of the Commission Law prescribes that we are responsible for:

- › the supervision and development of financial services provided in or from within Jersey;
- › providing the States of Jersey, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
- › preparing and submitting to the Minister recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
- › such functions in relation to financial services or such incidental or ancillary matters:
- › as are required or authorised by or under any enactment, or
- › as the States may, by Regulations, transfer; and
- › such other functions are conferred on the JFSC by any other Law or enactment.

## Guiding principles

Article 7 of the Commission Law provides that in exercising our functions, we may take into account any appropriate matter, but that we should consider:

- › the reduction of the risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within Jersey;
- › the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- › the best economic interests of Jersey;
- › the need to counter financial crime in both Jersey and elsewhere.

# 1 Proposals for Prescribed NPO Handbook section

## 1.1 Executive summary

- 1.1.1 The Financial Action Task Force (FATF) has published a set of [Recommendations](#) in respect of combatting Money Laundering (ML) and the Financing of Terrorism (TF) and Proliferation (the FATF Recommendations).
- 1.1.2 Following analysis of the FATF Recommendations, some potential gaps in Jersey's countering the financing of terrorism (CFT) regime for non-profit organisations (NPOs) were identified in respect of FATF Recommendation 8.
- 1.1.3 The Jersey Financial Crime Strategy Group (JFCSG) published a [consultation paper](#) on 27 July 2018 proposing revisions to Jersey's anti-money laundering (AML) and CFT legal framework (the 2018 CP). In particular, the 2018 CP noted that future measures which could be imposed on NPOs vulnerable to TF abuse may include being required to:
  - 1.1.3.1 Register with a designated body
  - 1.1.3.2 Maintain information on the purpose and objectives of their stated activities and the identity of the person(s) who own, control or direct their activities, including senior officers, board members and trustees. This information could be publicly available either directly from the NPO or through associated authorities
  - 1.1.3.3 Issue annual financial statements
  - 1.1.3.4 Have appropriate controls in place to ensure that all funds are fully accounted for
  - 1.1.3.5 Take reasonable measures to confirm the identity, credentials and good standing of beneficiaries and associate NPOs
  - 1.1.3.6 Take reasonable measures to document the identity of their significant donors
  - 1.1.3.7 Maintain, for a period of at least five years, records of domestic and international transactions that are sufficiently detailed to verify that funds have been received and spent in a manner consistent with the purpose and objectives of the organisation. Where appropriate, records of charitable activities and financial operations by NPOs could also be made available to the public
- 1.1.4 The 2018 CP further proposed that:
  - 1.1.4.1 New legislation be introduced in order to impose obligations, such as those future measures mentioned above, on the sub-sector of NPOs that would be vulnerable to TF abuse
  - 1.1.4.2 The sub-sector of NPOs being vulnerable to terrorist financing abuse (Vulnerable NPOS) be identified as part of the national risk assessment (NRA) programme and designated thereafter by Ministerial Order
- 1.1.5 The JFCSG published its [feedback paper for the 2018 CP](#) on 3 June 2019. Since the respondents were overall in favour of the proposals, the Government of Jersey (Government) instructed the Legislative Drafting Office to draft new provisions as indicated in the 2018 CP with the intention that such new provisions will apply to vulnerable NPOs designated as such by Ministerial Order.



- 1.1.6 On 27 April 2022 the States of Jersey adopted the [Non-profit Organizations \(Miscellaneous Amendments\) \(Jersey\) Law 2022](#). This legislation amends the Non-Profit Organisations (Jersey) Law 2008 (the NPO Law) to insert a new power for the Minister for External Relations and Financial Services (the Minister) to impose obligations by Order on “Prescribed NPOs”. This Order would also provide a definition for Prescribed NPOs, specifying those types of NPOs which, by virtue of their activities and characteristics, have been identified as likely to be at risk for TF abuse. These Prescribed NPOs will fall within our supervisory regime when the Ministerial Order comes into effect.
- 1.1.7 As a result of the above law being adopted, the following legislation will also be amended:
- 1.1.7.1 The Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the Supervisory Bodies Law), to state that Prescribed NPOs are “supervised persons” carrying on “supervised business”. This provides us with supervisory powers in relation to Prescribed NPOs.
  - 1.1.7.2 The Proceeds of Crime (Supervisory Bodies)(Designation of Supervisory Bodies)(Jersey) Order 2008 to designate us as the supervisory body in respect of Prescribed NPOs.
- 1.1.8 A Ministerial Order, to be known as the Prescribed Non-profit Organisations (Jersey) Order 2022 (the Prescribed NPO Order), is being prepared which, broadly, will impose the requirements noted in the 2018 CP on Prescribed NPOs.
- 1.1.9 It is anticipated that the Prescribed NPO Order and Jersey’s updated supervisory regime will come into effect from 1 January 2023.
- 1.1.10 In order to supplement the requirements of the Prescribed NPO Order, it is therefore proposed to create a new sector-specific section for Prescribed NPOs (the NPO Section) in our Handbook for the prevention and detection of money laundering the countering of terrorist financing (the Handbook). The NPO Section will set out Codes of Practice and guidance notes to assist Prescribed NPOs in demonstrating compliance with the Prescribed NPO Order. The NPO Section is linked for your review and we invite your feedback on its contents.  
[Draft handbook section 17 – Non-profit Organisation amends](#)
- 1.1.11 As noted above, these requirements will apply to both Regulated NPOs and Registered NPOs, where they fall under the definition of a Prescribed NPO.
- 1.1.12 Set out below is a high-level summary of each part of the NPO Section, detailing the key elements which we propose to include. A number of questions regarding these elements have also been raised throughout this consultation paper, for your consideration.
- 1.1.13 Given that the Prescribed NPO Order is yet to be finalised, we are unable to cite specific Article numbers within the draft NPO Section. Therefore all references to Articles of the Prescribed NPO Order have been drafted as “Article X”.
- 1.1.14 We have also set out longer-term proposals on how to strengthen Jersey’s regulatory framework in respect of NPOs, namely:
- 1.1.14.1 Putting in place a requirement for prescribed NPOs to report suspected TF activity and sanctions matters;
  - 1.1.14.2 Removing the exemption currently in place at Article 2(2) of the NPO Law.

- 1.1.15 We invite comments regarding these longer-term proposals and have raised questions regarding the same.

## 1.2 Section 17.1 – Introduction

- 1.2.1 This section provides a brief overview of the regulatory framework in place for Prescribed NPOs and explains the purpose of the NPO Section. The objective of this section is to provide context and background for the further Codes of Practice and guidance notes set out in the NPO Section.

- 1.2.2 Question 1: Do you consider the contents of Section 17.1 (Introduction) to be sufficient? If not, provide further detail.

## 1.3 Section 17.2 – Vulnerabilities of Prescribed NPOs

- 1.3.1 This section provides an overview of the risks to which Prescribed NPOs might be exposed through reference to the April 2022 National Risk Assessment for NPOs and an exploration of some of the drivers of TF diversion risk.
- 1.3.2 We have also made reference to the Handbook’s definition of the offence of terrorist financing, to emphasise that it is broad in nature and scope.

- 1.3.3 Question 2: Do you consider the contents of Section 17.2 (Vulnerabilities of Prescribed NPOs) to be sufficient? If not, provide further detail.

## 1.4 Section 17.3 – Risk-based approach

- 1.4.1 This section is focused on how a Prescribed NPO may assess the risk of being abused to finance terrorism and put in place systems and controls to help mitigate those risks.
- 1.4.2 We have drafted the following sections:
- 1.4.2.1 17.3.1 – NPO Programme Risk Assessment (NPO PRA). This section sets out three Codes of Practice (paragraphs 11-13) and provides guidance regarding the preparation of a Risk Appetite Statement and NPO PRA.
  - 1.4.2.2 The Risk Appetite Statement defines an NPO’s overall tolerances for TF risk. The NPO PRA supports the assessment of the risks to which a Prescribed NPO will be exposed when carrying out a programme of activity. A template version of a NPO PRA is accessible [here](#) and within the draft NPO Section published alongside this consultation.
  - 1.4.2.3 17.3.2 – Ongoing risk monitoring. This explains the concept of the risk assessment cycle and how Prescribed NPOs may demonstrate they have systems and controls in place to monitor their risk exposure. To assist Prescribed NPOs in their monitoring activities, we have prepared a document called a “risk register”, which is accessible [here](#) and within the draft NPO Section.

- 1.4.3 Question 3: Do you consider Section 17.3.1 and the template NPO PRA provide sufficient guidance on how to assess your NPO’s TF risk exposure? If not, provide further detail.

- 1.4.4 Question 4: Do you consider Section 17.3.2 and the template risk register provide sufficient guidance on how to monitor your NPO's TF risk exposure? If not, provide further detail.

## 1.5 Section 17.4 – NPO Beneficiaries, Partners and Donors

- 1.5.1 The interpretive note to FATF Recommendation 8 states:
- 1.5.1.1 NPOs could be required to take reasonable measures to confirm the identity, credentials and good standing of beneficiaries and associate NPOs and that they are not involved with and/or using the charitable funds to support terrorists or terrorist organisations. However, NPOs should not be required to conduct customer due diligence.
- 1.5.2 Some jurisdictions have required their equivalent of prescribed NPOs to apply due diligence to their beneficiaries and partners in the same way as financial institutions do for their customers. In these cases, Prescribed NPOs are essentially referred to an existing AML/CFT guidance document and required to follow the due diligence processes set out therein.
- 1.5.3 Meanwhile, other jurisdictions have adopted an approach where NPOs may achieve the necessary due diligence by other, more bespoke means.
- 1.5.4 We have considered the different approaches taken by other jurisdictions and drafted the following relevant sections:
- 1.5.4.1 17.4.1 – NPO Beneficiaries. This includes guidance notes on identifying beneficiaries, obtaining information on the nature and purpose of the business relationship or one-off transaction, and verifying the identity of beneficiaries.
- 1.5.4.2 17.4.2 – NPO Partners. This includes guidance notes on identifying partners, obtaining information on the nature and purpose of the business relationship or one-off transaction, and verifying the identity of partners.
- 1.5.5 After due consideration of the options available to us, we decided to draft the guidance at Section 17.4.1 to include bespoke methods for Prescribed NPOs to identify and verify their beneficiaries, and obtain information on the nature and purpose of the relationship or one-off transaction.
- 1.5.6 We have taken a similar approach regarding Section 17.4.2.
- 1.5.7 We acknowledge that an alternative approach would be to require Prescribed NPOs to apply the measures set out in Section 4 of the Handbook (Identification measures – finding out identity and obtaining evidence), when identifying and verifying the identity of their beneficiaries and partners.
- 1.5.8 However, it is recognised that the requirements in Section 4 are more onerous than what we have proposed in the draft NPO Section and may have unintended consequences for the operation of a NPO's activities. Therefore we considered it more appropriate to draft bespoke guidance which may not place as great an administrative burden on Prescribed NPOs.
- 1.5.9 Question 5: Do you think that it is more appropriate for there to be bespoke methods for prescribed NPOs to identify and verify the identity of their beneficiaries and partners, rather than applying the methods set out in Section 4 of the Handbook?

1.5.10	Question 6: Do you have any suggested methods a prescribed NPO may use to identify and verify their beneficiaries and partners? If so, provide further detail.
1.5.11	In respect of donors, the interpretive note to FATF Recommendation 8 states:
1.5.11.1	NPOs could be required to take reasonable measures to document the identity of their significant donors and to respect donor confidentiality.
1.5.12	We have identified that some jurisdictions have required their equivalent of prescribed NPOs to apply due diligence to their “significant donors” e.g. obtain information on the donor’s identity and verify that information. These jurisdictions may refer their prescribed NPOs to an existing AML/CFT guidance document and require them to follow the due diligence processes set out therein.
1.5.13	However, it is noted that the FATF Recommendations do not require the identity of significant donors to be verified, only documented. The above approach therefore exceeds to requirements of the FATF Recommendations.
1.5.14	In this case, we have decided to match the requirements of the FATF Recommendations rather than exceed them. As a result, Section 17.4.3 has been drafted to provide guidance notes on what constitutes a “significant donor” and obtaining information on the identity of those persons. In line with the FATF Recommendations, we have not proposed a requirement to verify the identity of a significant donor.
1.5.15	It is proposed for a “significant donor” to be defined in the NPO Section as a natural person, legal person or legal arrangement:
1.5.15.1	who makes donations of at least £10,000 per year. The donations may be made as a single transaction, or through several linked transactions over the course of a 12-month period, or
1.5.15.2	whose contributions to the Prescribed NPO form such a large proportion of their overall donations that they would effectively be unable to function if the donor stopped making their contributions. In other words, a Donor who is crucial to the operation of the Prescribed NPO. Significant Donors of this kind may for example have assisted the Prescribed NPO through the challenging period of the COVID-19 pandemic when some NPOs experienced a drought of donations, whilst their fixed expenses remained unchanged.
1.5.16	It is noted that some other jurisdictions have applied a monetary value threshold to distinguish significant donors from other contributors to NPOs. We consider that a threshold of £10,000 per year is in line with those put in place by other similar jurisdictions.
1.5.17	However, we have also decided to include a second type of significant donor in recognition that a donor may be crucial to the functioning of a NPO even if it does not contribute at least £10,000 per year. We considered that in practical terms, such a situation can arise, so it was important to capture that scenario within the significant donor definition.
1.5.18	Question 7: Do you consider the proposed definition of “significant donor” to be appropriate and proportionate? If not, provide further detail.
1.5.19	Question 8: Do you think there should also be a requirement in the NPO Section to verify the identity of significant donors? If so, provide further detail.

## 1.6 Section 17.5 – Identification, screening and training of employees

- 1.6.1 Just as is the case for other types of supervised persons, we consider that effective systems and controls to screen and train persons acting for a Prescribed NPO are important components of countering TF risk.
  - 1.6.2 Equally, the Prescribed NPO Order will make it a statutory requirement for Prescribed NPOs to identify their owners and controllers.
  - 1.6.3 To supplement the requirements of the Prescribed NPO Order and help maintain a strong CFT framework for this sector, we have therefore prepared five sub-sections:
  - 1.6.4 17.5.1 – Overview of section. This sets out the relevant requirements of the Prescribed NPO Order and stresses the importance of a Prescribed NPO having staff who are well-trained and have integrity.
  - 1.6.5 17.5.2 – Identifying NPO owners and controllers. For ease of reference throughout the NPO Section and to link back to the requirements of the Prescribed NPO Order, we have prepared a defined term “NPO owners and controllers”. For the purposes of the Handbook, this would be defined as:
    - 1.6.5.1 those persons set out in Article X of the Prescribed NPO Order, who “own, control or direct [the Prescribed NPO’s] activities”.
  - 1.6.6 We consider this definition captures all the necessary persons who need to be identified under that part of the Prescribed NPO Order. However, we are open to comments as to whether the definition should be changed.
  - 1.6.7 The remainder of Section 17.5.2 provides guidance on what identity information should be obtained from NPO owners and controllers. When preparing the guidance, we determined that it should not exceed the identity information collected for a natural person under Section 4 of the Handbook, to moderate the administrative burden on Prescribed NPOs.
- |       |  |
|-------|--|
| 1.6.8 | Question 9: Have you identified any unintended consequences of our proposed definition of “NPO owners and controllers”? If so, provide further detail. |
| 1.6.9 | Question 10: Do you consider the content of Sections 17.5.1 and 17.5.2 to be sufficient? If so, provide further detail.                                |
- 1.6.10 17.5.3 – Screening of volunteers, employees and controllers. To provide clarity for Prescribed NPOs when applying the requirements set out below, we have proposed, for the purposes of this section, to define the following terms:
    - 1.6.10.1 “Employees” includes officers of a Prescribed NPO and is not limited to individuals working under a contract of employment. It includes temporary and contract employees, and the employee of any external party fulfilling a function in relation to a Prescribed NPO under an outsourcing agreement.
    - 1.6.10.2 For consistency, we have adapted the above definition from the one used throughout the rest of the Handbook.
    - 1.6.10.3 “Volunteer” means a person carrying out any duties for a Prescribed NPO on a voluntary, non-remunerated basis. A volunteer may carry out a range of activities, from acting as a board member to working overseas in the field.
  - 1.6.11 This section also sets out four Codes of Practice at paragraphs 96-99. These Codes of Practice focus on ensuring that a Prescribed NPO’s personnel are “fit and proper”

and are partially derived from the Code set out at Section 9.2 of the Handbook. These have been expanded to specifically capture NPO controllers, account for where a Prescribed NPO is a registered charity, and set out minimum screening requirements.

1.6.12 Finally, this section provides guidance on when the screening should be carried out and what it may include.

1.6.13 Given the heightened TF risk exposure of the Prescribed NPO sector, we consider it is crucial for Prescribed NPOs to be staffed by competent persons of high integrity. However, we are mindful that mandatory screening requirements may place additional time and resource burdens on Prescribed NPOs.

1.6.14 Question 11: Do you consider the proposed definitions of “employee” and “volunteer” for the purposes of the NPO Section to be appropriate and proportionate? If not, provide further detail.

1.6.15 Question 12: Have you identified any unintended consequences of the Code of Practice requirements proposed at Section 17.5.3? If so, provide further detail.

1.6.16 Section 17.5.4 – Training and awareness of volunteers, employees and controllers – is divided into two further sub-sections.

1.6.17 Section 17.5.4.1 – Promoting awareness and providing training – sets out a Code of Practice at paragraph 105 requiring a Prescribed NPO to provide training on TF risks. In drafting this Code, we referred to the obligation set out at Section 9.5 of the Handbook and adapted the wording so it reflected the specific requirements of the NPO sector. We considered the substance of the Code at Section 9.5 to be relevant to the activities of Prescribed NPOs.

1.6.18 The remainder of the section provides guidance on what the training should include, when it should take place, and lists some useful resources when delivering the training.

1.6.19 Section 17.5.4.2 – Monitoring and maintaining awareness – sets out a Code of Practice at paragraph 112 requiring a Prescribed NPO to monitor and test their volunteers’, employees’ and controllers’ awareness of TF risks. Whilst there is not a direct equivalent to this Code within Section 9 of the Handbook, we considered it important to make it a binding requirement to ensure Prescribed NPOs’ awareness of TF risks is maintained at a high level.

1.6.20 The remainder of this section provides guidance on how Prescribed NPOs may adequately monitor TF awareness, along with actions to take if awareness is considered to be insufficient.

1.6.21 Question 13: Do you consider the Code of Practice and guidance notes at Section 17.5.4.1 to be appropriate and proportionate? If not, provide further detail.

1.6.22 Question 14: Do you consider the Code of Practice and guidance notes at Section 17.5.4.2 to be appropriate and proportionate? If not, provide further detail.

## 1.7 Section 17.6 – Accounting for funds

1.7.1 This section sets out the statutory requirements of the Prescribed NPO Order around preparing financial statements and ensuring the funds of Prescribed NPOs are fully accounted for.

- 1.7.2 To supplement the requirements of the Prescribed NPO Order, we have proposed two new Codes of Practice (paragraphs 118-119) setting out that financial statements must be prepared in line with generally accepted accounting principles (GAAP) adopted in Jersey, and how the accounting records must be maintained.
- 1.7.3 We have also prepared guidance notes regarding how frequently the accounting records might be reconciled, and an explanation of GAAP.
- 1.7.4 We have proposed to require financial statements be prepared in line with GAAP adopted in Jersey as this provides choice for NPOs within a recognised and respected principle which will help to maintain confidence in Prescribed NPOs' financial records.

1.7.5 Question 15: Have you identified any unintended consequences of the Codes of Practice we have proposed for Section 17.6? If so, provide further detail.

## 1.8 Section 17.7 – Record-keeping

- 1.8.1 This section expands upon the statutory requirements of the Prescribed NPO Order by requiring Prescribed NPOs to maintain certain records linked to those requirements.
- 1.8.2 Section 17.7.1 sets out the general statutory requirements of the Prescribed NPO Order which relate to record-keeping. We have also proposed 6 Codes of Practice (paragraphs 128-133). These are, in the main, derived from the AML/CFT Codes of Practice in Sections 10.4.2, 10.4.5 of the Handbook.
- 1.8.3 Section 17.7.2 (Access and retrieval of records) broadly mirrors the wording at Section 10.5 of the Handbook and introduces Code of Practice at paragraph 134-140 along the same lines at the Codes in that section.
- 1.8.4 Section 17.7.3 (External records) broadly mirrors the wording at Section 10.5.1 of the Handbook and introduces a Code of Practice at paragraph 142 along the same lines at the Code in that section.
- 1.8.5 Section 17.7.3 (Reorganisation or termination) broadly mirrors the wording at Section 10.5.2 of the Handbook and introduces Codes of Practice at paragraph 144-145. These Codes of Practice are generally the same as the Codes in Section 10.5.2, amended to be more bespoke for Prescribed NPOs.
- 1.8.6 In each of the above sections, we considered that the referenced requirements of Section 10 are also relevant to the activities of Prescribed NPOs, therefore it is important that they are replicated in the NPO Section.

1.8.7 Question 16: Do you consider the Codes of Practice and guidance notes proposed at Section 17.7 to be appropriate and proportionate? If not, provide further detail.

## 1.9 Amendments to Glossary and Section 1 of the Handbook

- 1.9.1 In order to reflect the new terms which are proposed to be used in the NPO Section, we have prepared a number of new definitions in the Glossary. We have also amended a few existing definitions which would be affected by the introduction of the NPO Section. These are all clearly highlighted in the draft Handbook via tracked changes and a full list is provided at Appendix B.



- 1.9.2 We have identified that the preparation and issuance of the NPO Section will require some consequential amendments to Section 1 of the Handbook (Introduction). Once feedback from this consultation is received and the revised NPO Section has been prepared, we will make the necessary changes to Section 1 and publish them alongside the NPO Section.
- 1.9.3 As Section 1 is purely overview and introductory text, no AML/CFT Codes of Practice will be amended and therefore a further consultation will not be published on the changes to Section 1.

## 1.10 Effective date

- 1.10.1 It is proposed that the Prescribed NPO Order shall come into effect on 1 January 2023.
- 1.10.2 We intend to publish a feedback paper for this consultation at the beginning of October 2022. A revised version of the draft Handbook and a draft of the Prescribed NPO Order will also be published alongside the feedback paper. This means prescribed NPOs would have access to all relevant material three months before they need to comply with the requirements set out therein.
- 1.10.3 During this time, we would expect Prescribed NPOs to fully review the Prescribed NPO Order and the NPO Section, then take any necessary action to ensure they are able to comply with the requirements from 1 January 2023.
- 1.10.4 During this three-month period, we will also conduct further outreach and support the non-profit sector through the transition. Therefore we consider three months is a sufficient transition period.

- 1.10.5 Question 17: Noting the planned publication date for the Prescribed NPO Order and the NPO Section is early October 2022, do you consider it to be appropriate and proportionate for the Prescribed NPO Order to come into force on 1 January 2023? If not, provide further detail.

## 1.11 Requirement to report TF and Sanctions matters

- 1.11.1 Article 34 of the Proceeds of Crime (Jersey) Law 1999 (the Proceeds of Crime Law) sets out a range of requirements in respect of Suspicious Activity Reports (SARs). However, in the main these do not capture Prescribed NPOs.
- 1.11.2 Article 34D of the Proceeds of Crime Law sets out a requirement for financial services businesses (as defined in that law) to submit SARs. Therefore at present a prescribed NPO would be excluded from the requirements of Article 34D.
- 1.11.3 Article 34A requires a person to submit a SAR where information comes to them through their trade, business, profession or employment. Similar requirements are in place at Articles 19-22 of the Terrorism (Jersey) Law 2002 (the Terrorism Law) specifically regarding TF.
- 1.11.4 Due to the voluntary nature of much of the NPO sector, we consider these requirements do not currently capture all prescribed NPOs.
- 1.11.5 The Sanctions and Asset-Freezing (Jersey) Law 2019 (the Sanctions and Asset-Freezing Law) sets out a range of requirements in respect of reporting suspected breaches of targeted financial sanctions related to TF (TFS-TF), or suspected involvement with persons who are subject to TFS-TF.



- 1.11.6 The Sanctions and Asset-Freezing Law also provides that a licence may be requested from the Minister to continue operating a transaction with a sanctioned person.
  - 1.11.7 The reporting requirements set out in the Sanctions and Asset-Freezing Law do not currently apply to Prescribed NPOs.
  - 1.11.8 Given the exposure of prescribed NPOs to heightened TF risk, in order for us to effectively gather and act upon information in respect of TF activity, we consider that Jersey's legal framework should be amended so that the reporting and licencing requirements are extended to that sector. This would also allow us to share information with relevant overseas authorities, therefore enabling us to better participate in the global fight against TF.
  - 1.11.9 In order for such reporting to be properly handled, we also propose to amend Jersey's legal framework to create the position of "Nominated Reporting Person". This role would resemble a combination of the Money Laundering Reporting Officer and Money Laundering Compliance Officer positions, with appropriate modifications for the NPO sector. The Nominated Reporting Person's principal duties would include:
    - 1.11.9.1 Receiving and considering internal SARs and, if necessary, submit them to the JFCU
    - 1.11.9.2 Receiving and considering internal reports regarding TFS-TF matters and, if necessary, notifying the Minister
    - 1.11.9.3 Seeking a licence from the Minister in respect of a transaction
    - 1.11.9.4 Monitoring whether the relevant enactments in Jersey relating to TF and TFS-TF are being complied with
  - 1.11.10 Finally, we propose that failure in a Prescribed NPO to report on any of the matters listed above should be subject to criminal penalties similar in nature to, for example, Article 34D of the Proceeds of Crime Law.
  - 1.11.11 In order for these penalties to be sufficiently dissuasive in line with the FATF Recommendations, we propose that they would be set at a consistent level with those for other equivalent offences. For example, a person who is guilty of an offence under Article 34D of the Proceeds of Crime Law is liable to a maximum of five years' imprisonment or to a fine or both.
  - 1.11.12 Should the above legislative amendments be pursued and the Nominated Reporting Person role created, additional guidance and Codes of Practice would be created for the NPO Section as appropriate.
- 1.11.13 Question 18: Do you agree that prescribed NPOs should be brought into scope for the reporting requirements connected to TF and TFS-TF? If not, provide further detail.
  - 1.11.14 Question 19: Do you consider the proposed functions of the "Nominated Reporting Person" to be appropriate and proportionate? If not, provide further detail.
  - 1.11.15 Question 20: Do you consider it appropriate and proportionate for criminal offences and penalties to be put in place for Prescribed NPOs regarding a failure to report on TF and TFS-TF matters? If not, provide further detail.

## 1.12 Removal of Article 2(2) exemption

- 1.12.1 Article 2(2) of the NPO Law sets out an exemption from the requirements set out in that law:
  - 1.12.1.1 A non-profit organization that is provided with a prescribed service in the course of trust company business under the Financial Services (Jersey) Law 1998 [known as regulated NPOs] need only comply with those requirements of Part 2 of this Law that are expressed to apply also to regulated NPOs.
- 1.12.2 In 2021 Financial Transparency Advisors (FTA, an AML/CFT consulting firm) undertook a review of the Jersey legal framework's current compliance with the FATF Recommendations. It was identified that the Article 2 exemptions detailed above created a gap in terms of Jersey's compliance with FATF Recommendation 8.
- 1.12.3 To address this gap, FTA recommended that all NPOs be subject to the same requirements in the NPO Law. Following consideration of how best to carry this out, we are proposing to amend the NPO Law so that the Article 2(2) exemption is removed.
- 1.12.4 As a result, regulated NPOs would be subject to the full requirements of the NPO Law, not just those which had specifically applied to regulated NPOs.
- 1.12.5 It is important to note that the removal of the Article 2 exemptions would not mean that all NPOs would be subject to the requirements of the Prescribed NPO Order. Those requirements would still only apply to NPOs meeting the definition of a Prescribed NPO.

- 1.12.6 Question 21: Have you identified any unintended consequences of the removal of the exemption at Article 2(2) of the NPO Law? If so, provide further detail.

## 2 Summary of questions

**Question 1:** Do you consider the contents of Section 17.1 (Introduction) to be sufficient? If not, provide further detail.

**Question 2:** Do you consider the contents of Section 17.2 (Vulnerabilities of Prescribed NPOs) to be sufficient? If not, provide further detail.

**Question 3:** Do you consider Section 17.3.1 and the template NPO PRA provide sufficient guidance on how to assess your NPO's TF risk exposure? If not, provide further detail.

**Question 4:** Do you consider Section 17.3.2 and the template risk register provide sufficient guidance on how to monitor your NPO's TF risk exposure? If not, provide further detail.

**Question 5:** Do you think that it is more appropriate for there to be bespoke methods for prescribed NPOs to identify and verify the identity of their beneficiaries and partners, rather than applying the methods set out in Section 4 of the Handbook?

**Question 6:** Do you have any suggested methods a prescribed NPO may use to identify and verify their beneficiaries and partners? If so, provide further detail.

**Question 7:** Do you consider the proposed definition of "significant donor" to be appropriate and proportionate? If not, provide further detail.

**Question 8:** Do you think there should also be a requirement in the NPO Section to verify the identity of significant donors? If so, provide further detail.

**Question 9:** Have you identified any unintended consequences of our proposed definition of "NPO owners and controllers"? If so, provide further detail.

**Question 10:** Do you consider the content of Sections 17.5.1 and 17.5.2 to be sufficient? If so, provide further detail.

**Question 11:** Do you consider the proposed definitions of "employee" and "volunteer" for the purposes of the NPO Section to be appropriate and proportionate? If not, provide further detail.

**Question 12:** Have you identified any unintended consequences of the Code of Practice requirements proposed at Section 17.5.3? If so, provide further detail.

**Question 13:** Do you consider the Code of Practice and guidance notes at Section 17.5.4.1 to be appropriate and proportionate? If not, provide further detail.

**Question 14:** Do you consider the Code of Practice and guidance notes at Section 17.5.4.2 to be appropriate and proportionate? If not, provide further detail.

**Question 15:** Have you identified any unintended consequences of the Codes of Practice we have proposed for Section 17.6? If so, provide further detail.

**Question 16:** Do you consider the Codes of Practice and guidance notes proposed at Section 17.7 to be appropriate and proportionate? If not, provide further detail.

**Question 17:** Noting the planned publication date for the Prescribed NPO Order and the NPO Section is early October 2022, do you consider it to be appropriate and proportionate for the Prescribed NPO Order to come into force on 1 January 2023? If not, provide further detail.

**Question 18:** Do you agree that prescribed NPOs should be brought into scope for the reporting requirements connected to TF and TFS-TF? If not, provide further detail.

**Question 19:** Do you consider the proposed functions of the "Nominated Reporting Person" to be appropriate and proportionate? If not, provide further detail.

**Question 20:** Do you consider it appropriate and proportionate for criminal offences and penalties to be put in place for Prescribed NPOs regarding a failure to report on TF and TFS-TF matters? If not, provide further detail.

**Question 21:** Have you identified any unintended consequences of the removal of the exemption at Article 2(2) of the NPO Law? If so, provide further detail.

### **3 Appendix A - List of representative bodies and other persons who have been sent this consultation paper**

- › Association of Jersey Charities
- › Jersey Association of Trust Companies
- › Jersey Banker's Association
- › Jersey Compliance Officer's Association
- › Jersey Finance Limited
- › Society of Trust and Estate Practitioners (STEP), Jersey branch

### **4 Appendix B – List of new and amended terms proposed for Glossary**

- › Diversion
- › Employee
- › Facilitator
- › the Handbook
- › Hawala
- › NPO
- › NPO Beneficiaries
- › NPO Funds
- › NPO Law
- › NPO Partner
- › NPO Representative
- › Prescribed NPO
- › Proscribed terrorist organisation
- › NPO Resources
- › Registered NPO
- › Regulated NPO
- › Supervised person
- › Sympathiser
- › Terrorist
- › terrorist(s)
- › TF Recruitment
- › Transfer risk