

# Feedback Paper on Consultation Paper No. 7 2022

## Handbook Requirements for Prescribed Non-profit Organisations (Prescribed NPOs)

A feedback paper relating to consultations on amendments to the Handbook and Jersey legal framework to introduce requirements for Prescribed NPOs

## Consultation Feedback

This paper reports on responses received by the JFSC to Consultation Paper No. 7 2022 published by the JFSC on 17 August 2022, and the follow-up consultation paper published by the Government of Jersey on 2 November 2022.

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## Glossary of Terms

Defined terms are indicated throughout this document as follows:

AJC	Association of Jersey Charities
AML	Anti-money laundering
AML/CFT Handbook (or the Handbook)	Handbook for the prevention and detection of money laundering and the countering of terrorist financing
BRA	Business risk assessment
CFT	Countering the financing of terrorism
Codes of Practice (or Codes)	Binding regulatory requirements set out in Section 17 of the AML/CFT Handbook [the NPO Section], which are specifically applicable to Prescribed NPOs
CP	means Consultation Paper No.7 2022 published by the JFSC on 17 August 2022
draft NPO Section	The draft version of Section 17 of the AML/CFT Handbook, as proposed in Consultation Paper No.7 2022 published by the JFSC on 17 August 2022
Government	The Government of Jersey
Government CP	means the follow-up consultation paper published by the Government of Jersey on 2 November 2022
JFSC	Jersey Financial Services Commission
Jersey Finance	Jersey Finance Limited
JCC	Office of the Jersey Charities Commissioner
NPO	Non-profit organisation
NPO Law	Non-Profit Organizations (Jersey) Law 2008
NPO PRA	Non-profit organisation Programme Risk Assessment
NPO Section	Section 17 of the AML/CFT Handbook, which sets out mandatory Code and Practice requirements and guidance notes for Prescribed NPOs
NRA	April 2022 National Risk Assessment for NPOs
Prescribed NPO	Has the meaning given in the Non-Profit Organisations (Prescribed NPOs - Additional Obligations) (Jersey) Order 2022 [the Prescribed NPO Order]
Prescribed NPO Order	<a href="#">Non-Profit Organisations (Prescribed NPOs - Additional Obligations) (Jersey) Order 2022</a>
supervised person	Has the meaning given in Article 1 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008

TCSP	Trust and Company Service Provider (or Trust Company Business)
TF	Terrorist Financing
TFS-TF	Targeted financial sanctions related to terrorist financing

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# 1 Executive Summary

## 1.1 Overview

- 1.1.1 On 17 August 2022 the JFSC issued Consultation No.7 2022 (the **CP**), which sought views on amendments to the Handbook to introduce requirements for Prescribed NPOs.
- 1.1.2 On 2 November 2022 the Government of Jersey (**Government**) issued a follow-up consultation paper (the **Government CP**), which sought views on the draft Non-Profit Organisations (Prescribed NPOs - Additional Obligations) (Jersey) Order 2022 (the **Prescribed NPO Order**).
- 1.1.3 The purpose of this paper is to provide feedback on the responses received to the CP and the Government CP.
- 1.1.4 This paper will also outline further amendments made to Section 17 of the Handbook, which sets out mandatory Code of Practice requirements and guidance notes for Prescribed NPOs (the **NPO Section**), resulting from assessment of the responses provided to the CP, and amendments to the Prescribed NPO Order resulting from assessment of the responses provided to the Government CP.

## 1.2 Feedback received

- 1.2.1 Responses to the CP were collected via the following formats:
  - 1.2.1.1 comments provided directly to the JFSC
  - 1.2.1.2 comments provided indirectly via Jersey Finance, or
  - 1.2.1.3 face-to-face discussions, either through a series of drop-in sessions held at Jersey Library, or one-to-one meetings.
- 1.2.2 Jersey Finance provided the JFSC with comments it had received from the Jersey Association of Trust Companies (JATCo).
- 1.2.3 A total of 28 respondents provided comment on at least one element of the consultation. Not all respondents commented on every question raised in the consultation.
- 1.2.4 Responses to the Government CP were received directly to Government or forwarded via the JFSC.
- 1.2.5 A total of 10 respondents provided comment on the Government CP.
- 1.2.6 Section 2 of this paper presents a summary of the substantive comments received to the CP and Government CP, and the JFSC's and/or Government's response.
- 1.2.7 These two consultations and this feedback paper represent the culmination of over a year of extensive outreach and engagement with the NPO Sector. This has included:
  - 1.2.7.1 A radio campaign in September 2021 regarding the NPO National Risk Assessment (**NRA**) and requirements to register
  - 1.2.7.2 Discussions with four NPOs, Jersey Sports, the Association of Jersey Charities (**AJC**) and a lawyer as part of the NRA process
  - 1.2.7.3 One-to-one meetings with NPOs during the NRA period (Q3/4 2021), followed by publication of the NRA

- 1.2.7.4 Publishing the CP and holding five drop-in sessions at Jersey Library, in collaboration with the JCC
- 1.2.7.5 One-to-one meetings with NPOs and TCSPs as part of the CP process
- 1.2.7.6 Publishing the Government CP and holding a ‘lunch and learn’ session in collaboration with AJC.
- 1.2.8 The JFSC, Government and the JCC are very grateful to all of those involved for taking the time to participate in this process and provide their feedback.

### 1.3 Next Steps

- 1.3.1 In light of the valuable feedback received and amendments to the Prescribed NPO Order, we have made amendments to the NPO Section where appropriate. The revised version of the NPO Section has been published alongside this paper and is accessible [on our website](#).
- 1.3.2 We have listened to concerns expressed where NPOs and TCSPs felt that the requirements proposed in the CP placed too great a burden on Prescribed NPOs. We have made adjustments accordingly and we are very mindful to avoid any unintended or undesired consequences which could interfere with the good works the NPO sector carries out. Both the Prescribed NPO Order and the NPO Section have been designed not to exceed the requirements set out in Financial Action Task Force’s Recommendation 8 and its Interpretive Note.
- 1.3.3 The NPO Section will become effective on 1 January 2023 (the **Effective Date**). The Prescribed NPO Order will also become effective on this date.
- 1.3.4 As noted below, we understand the NPO sector’s concerns that they may not be in a position to fully update their CFT controls in time for the Effective Date. To assist the NPO sector during its transition, we will continue to engage with Prescribed NPOs to better understand their specific circumstances and provide active support in demonstrating compliance with the regulatory framework.
- 1.3.5 We will continue to review the NPO Section over the course of 2023, and continuously thereafter, to identify what further enhancements might be needed. Where appropriate, these will be consulted upon.

## 2 Consultation feedback

### 2.1 Feedback received

- 2.1.1 This part summarises the substantive comments received in response to the CP. Whilst not every comment received is individually listed, this part contains summaries of the most commonly made and pertinent comments and, as appropriate, the JFSC's response to those comments.
- 2.1.2 Questions raised in the CP have been grouped based on their theme for the purposes of this paper, for ease of reference.
- 2.1.3 The comments that were received can be split into those responding to a specific question posed in the CP and those on other matters. This part is structured on those lines.
- 2.1.4 References to "Sections" in this paper are to the Sections of the NPO Section. References to "paragraphs" are to the paragraphs of the NPO Section. References to "parts" refer to the CP, or this paper.

### 2.2 Prescribed NPO scope methodology

- 2.2.1 A [flow-chart](#) was published alongside the CP which set out the **draft** methodology for how a NPO might be brought within scope as a Prescribed NPO. The draft methodology set out three different factors which could cause a NPO to be considered a Prescribed NPO.
- 2.2.2 A total of 19 respondents provided comments in respect of the draft methodology. The majority of respondents who provided comment raised questions as to how they had been provisionally captured as a Prescribed NPO, citing points including:
  - 2.2.2.1 The respondent did not remit funds or have any other connection to the higher risk jurisdictions listed in the flow-chart.
  - 2.2.2.2 The respondent only remitted funds to a connected entity in the UK, who was then responsible for distributing the funds elsewhere, including the listed higher risk jurisdictions.
  - 2.2.2.3 The majority of the respondent's expenditure was focused on domestic operations, with only a small amount sent overseas.
  - 2.2.2.4 The respondent did not consider that it used any payment methods outside the formal banking system (MoneyGram, Hawala etc).

#### Response

- 2.2.3 Since the publication of the CP, the Prescribed NPO Order has been drafted, submitted for public consideration through the Government CP, and subsequently finalised.
- 2.2.4 The scope of the Prescribed NPO definition has been amended so that "a prescribed NPO is an NPO that, during the preceding 12 months, has:
  - 2.2.4.1 raised funds exceeding £1,000 from outside Jersey, Guernsey, the Isle of Man, England and Wales and Scotland; or
  - 2.2.4.2 disbursed funds exceeding £1,000 outside those jurisdictions."
- 2.2.5 This amendment represents a significant streamlining and simplification of the Prescribed NPO definition. We consider that the new definition will provide



	certainty for NPOs in respect of whether they are caught within the Prescribed NPO regime.
2.2.6	A revised infographic covering Article 1 of the Prescribed NPO Order is being prepared by Government and will be made available on our website in due course.

## 2.3 Section 17.1 – Introduction

- 2.3.1 The CP raised one question in terms of the introductory part of the NPO Section:
  - 2.3.1.1 Question 1: Do you consider the contents of Section 17.1 (Introduction) to be sufficient?
- 2.3.2 10 respondents provided comments on Question 1. Four respondents considered the content to be sufficient, whereas six did not agree.
- 2.3.3 Respondents which did not agree with the proposed content of Section 17.1 requested further clarity on:
  - 2.3.3.1 How the terminology “business relationship” and “one-off transaction” should be applied to the NPO sector.
  - 2.3.3.2 The stated requirement to apply the requirements of the Prescribed NPO Order and Codes of Practice to all beneficiaries and partners.
  - 2.3.3.3 How a NPO falls within scope as a Prescribed NPO.

### Response

- 2.3.4 The finalisation of the Prescribed NPO Order allows us to provide greater clarity as to the scope of the Prescribed NPO regime than was available during the consultation period. To that end, we have added the following to Section 17.1:
  - 2.3.4.1 Reference to Article 1 of the Prescribed NPO Order, which states when a NPO will be considered to be a Prescribed NPO.
  - 2.3.4.2 A paraphrased list of the requirements of the Prescribed NPO Order.
- 2.3.5 To clarify when the requirements of the Prescribed NPO Order and Codes of Practice need to be applied, we have amended the new paragraph 8 of the NPO Section to say:
  - 2.3.5.1 “Unless otherwise stated: the AML/CFT/CPF Codes of Practice set out in Sections 2-16 of the Handbook do not apply to Prescribed NPOs. Prescribed NPOs need to apply the requirements of the Prescribed NPO Order and Section 17 of the Handbook to all of their relationships with NPO Beneficiaries and associate NPOs, not just those which are connected to higher risk jurisdictions.
- 2.3.6 We have also added three further paragraphs to state that other acceptable methods of complying with the Prescribed NPO Order and Codes of Practice, outside those described in the guidance notes, may be possible, provided they are equally as robust in demonstrating compliance with the mandatory requirements.

## 2.4 Section 17.2 – Vulnerabilities of Prescribed NPOs

- 2.4.1 The CP raised one question in terms of Section 17.2 of the NPO Section, which provides an overview of the TF risks to which a NPOs might be exposed:
  - 2.4.1.1 Question 2: Do you consider the contents of Section 17.2 (Vulnerabilities of Prescribed NPOs) to be sufficient?
- 2.4.2 Nine respondents provided comments on Question 2. Three respondents found the contents of Section 17.2 to be sufficient, whereas six respondents did not.
- 2.4.3 The respondents who did not consider the content to be sufficient generally requested more detail on:
  - 2.4.3.1 Why the sub-sector of NPOs identified in the NRA were particularly vulnerable to TF abuse.
  - 2.4.3.2 The concept of “Diversion” in respect of TF.

#### Response

- 2.4.4 To make Section 17.2 more informative and user-friendly, we have made the following amendments/additions:
  - 2.4.4.1 Further explanation of why the sub-sector of NPOs identified in the NRA might be more vulnerable to TF abuse.
  - 2.4.4.2 Further explanation of “Diversion”, including examples of how this might take place.
  - 2.4.4.3 Re-wording some of the existing guidance around diversion risk so it is easier to review.

## 2.5 Section 17.3 – Risk-Based Approach

- 2.5.1 The CP raised two questions in respect of how Prescribed NPOs should assess, manage and mitigate their risk of being used to assist terrorism:
  - 2.5.1.1 Question 3: Do you consider Section 17.3.1 and the template NPO PRA [**Programme Risk Assessment**] provide sufficient guidance on how to assess your NPO’s TF risk exposure?
  - 2.5.1.2 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?
- 2.5.2 10 respondents provided comments on Question 3. Four respondents considered the content to be sufficient, whereas six did not agree.
- 2.5.3 One respondent suggested the NPO PRA be expanded to consider what is known about a jurisdiction where activity is to be undertaken, along with knowledge of the activity itself.
- 2.5.4 One respondent suggested that regulated TCSPs should be able to integrate a customer Prescribed NPO’s PRA into their wider corporate Business Risk Assessment (**BRA**).
- 2.5.5 Three respondents raised queries about what should be considered to be a “programme of activity” (paragraph 16 of the draft version of the NPO Section – the **draft NPO Section**). Comments included noting that a NPO might undertake several different programmes at once, and a query on how regularly a NPO PRA should be re-done.

- 2.5.6 During the drop-in sessions held at the Jersey Library, several NPOs raised queries on how they should approach their NPO PRA where their sole activity was remitting funds to equivalent jurisdictions.
- 2.5.7 11 respondents provided comments on Question 4. Seven respondents considered the content to be sufficient, whereas four did not agree.
- 2.5.8 One respondent considered the template risk register at Section 17.3.2 to be sufficient if it could be tailored accordingly based on the risk level and complexity of the programme of activity.
- 2.5.9 One respondent suggested paragraphs 24-26 of the draft NPO Section (documenting decision-making processes, carrying out additional interim reviews etc.) might be too onerous for Prescribed NPOs.

#### **Response**

- 2.5.10 Taking into account the comments made in response to Question 3 and our own internal review, we have made the following amendments/additions to Section 17.3.1:
  - 2.5.10.1 Provided examples of what may be considered a “programme of activity”, whilst making it clear that it is the responsibility of the Prescribed NPO to identify and define said programme(s).
  - 2.5.10.2 Clarified that a Prescribed NPO may consider it more appropriate to conduct a separate risk assessment for each programme of activity, or one for the whole body of work conducted, depending on their circumstances.
  - 2.5.10.3 Clarified the purpose of the Risk Appetite Statement and how it can assist a Prescribed NPO in undertaking a NPO PRA.
  - 2.5.10.4 Explained that if a Prescribed NPO establishes a risk-based approach through methods other than conducting a NPO PRA and/or Risk Appetite Statement, they would be expected to demonstrate how those other methods achieve the same outcome as a NPO PRA and/or Risk Appetite Statement.
  - 2.5.10.5 Noted that a regulated TCSP may consider it appropriate to integrate a Prescribed NPO’s NPO PRA into their BRA and compliance monitoring testing.
- 2.5.11 We have also added a new sub-section 17.3.1.1, providing guidance and examples of how a Prescribed NPO might undertake their NPO PRA where their sole activity is remitting to charities in equivalent jurisdictions.
- 2.5.12 Taking into account the comments made in response to Question 4 and our own internal review, we have made the following amendments/additions to Section 17.3.2:
  - 2.5.12.1 Stated that a Prescribed NPO might decide to carry out monitoring on more, less or different risks than those listed in the template Risk Register, depending on the outcome of its NPO PRA and/or Risk Appetite Statement.
  - 2.5.12.2 Guidance on how to complete the Risk Register, with reference to the NPO PRA and/or Risk Appetite Statement to help conclude what controls might be put in place for a particular risk.

2.5.12.3	Recommended that periodic reviews of risk exposure are carried out at least annually, and provided examples of when certain risks might be more or less frequently reviewed.
2.5.13	We have retained guidance stating that the outcome of periodic reviews should be documented in all cases. It is important that reviews are documented, so that a Prescribed NPO can demonstrate they are considering risks at the appropriate times. We consider the additional guidance on carrying out reviews on a risk-based approach will allow Prescribed NPOs to effectively manage their capacity in this regard.

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

- 2.6.1 The CP raised two questions in respect of how Prescribed NPOs should identify and verify their beneficiaries and partners:
  - 2.6.1.1 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?
  - 2.6.1.2 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.
- 2.6.2 12 respondents provided comments on Question 5, all of which were in favour of bespoke methods being in place.
- 2.6.3 One respondent noted that they have a personal relationship with their primary NPO partner.
- 2.6.4 Another respondent requested further detail regarding what kind of sanctions screening methods for NPO partners might be appropriate for smaller NPOs.
- 2.6.5 16 respondents provided comments on Question 6. A total of 14 provided suggestions regarding methods which may be used by Prescribed NPOs to identify and verify their beneficiaries and partners.
- 2.6.6 One respondent suggested that the methods already in place and employed by supervised persons in compliance with the Money Laundering (Jersey) Order 2008 be applied.
- 2.6.7 Several respondents suggested face-to-face engagement with the beneficiary or partner.
- 2.6.8 One respondent raised a concern that it might be difficult for Prescribed NPOs to put CFT clauses into a partnership agreement drawn up with a NPO partner.

### Response

- 2.6.9 Regarding the response to Question 5 noting a personal relationship with their NPO Partner, we have added a paragraph to Section 17.4.2 to account for scenarios where, due to an existing long-term personal relationship with a NPO Partner, no further verification of identity is considered to be required. We have included a case study to illustrate this scenario and what action the Prescribed NPO should take.
- 2.6.10 In respect of the request for more detailed sanctions screening guidance, we have added a further paragraph at Section 17.4.2, providing examples of different

screening methods which might be appropriate based on the size and complexity of the Prescribed NPO.

- 2.6.11 Regarding the suggestion made in response to Question 6 to include the methods already in place and employed by supervised persons, we have added a paragraph each to Sections 17.4.1, 2 and 3, stating that a Prescribed NPO may choose to apply due diligence measures aligned with those set out at Sections 3 and 4 of the Handbook.
- 2.6.12 With reference to the comments given to Question 6 regarding face-to-face engagement, we note that this approach is addressed in the guidance notes for verifying identity of both NPO beneficiaries and NPO partners. As noted above, we have also added further guidance regarding personal relationships with NPO partners.
- 2.6.13 In terms of the concerns expressed in response to Question 6 regarding placing CFT clauses in partnership agreements, we have added a paragraph to Section 17.4.2 acknowledging that there may be circumstances where it might not be possible, nor necessary, for a partnership agreement or CFT clauses to be in place. Guidance is provided on what a Prescribed NPO should do in those circumstances.

- 2.6.14 The CP raised two questions in respect of who should be captured within the definition of a “significant donor” and what due diligence should be applied to a person falling within that definition:
  - 2.6.14.1 Question 7: Do you consider the proposed definition of “significant donor” to be appropriate and proportionate?
  - 2.6.14.2 Question 8: Do you think there should also be a requirement in the NPO Section to verify the identity of significant donors?
- 2.6.15 Nine respondents provided comments on Question 7. A total of seven were in favour of the proposed definition of a “significant donor”.
- 2.6.16 Two respondents did not agree with the proposed definition. One commented that a donation of £10,000 might be a significant amount for small or medium-sized NPOs, but it might not be such for larger NPOs.
- 2.6.17 The same respondent suggested that a Prescribed NPO should collect identity information the first time a significant donor makes a payment to the NPO, and only “refresh” the information thereafter if there is a trigger event, such as a change in ownership of a corporate donor.
- 2.6.18 Eight respondents provided comments on Question 8. A total of four were in favour of Prescribed NPOs being required to verify the identity of significant donors.
- 2.6.19 Four respondents were not in favour of Prescribed NPOs being required to verify the identity of significant donors. One respondent observed that there was not sufficient guidance in Section 17.4.3 regarding what would cause a Prescribed NPO to consider it necessary to verify the identity of a significant donor, or understand the ownership structure of a donor if they were not a natural person.

#### **Response**

- 2.6.20 We note that the Prescribed NPO Order has been revised so that Article 5 requires a Prescribed NPO to keep records of donors who, during the preceding 12 months, have donated (as a single donation or cumulatively):

	2.6.20.1	£10,000 or above, or
	2.6.20.2	over 50% of total donations made to the prescribed NPO during that period.
2.6.21	We have amended the Glossary definition of “significant donors” to reflect this change to the Prescribed NPO Order.	
2.6.22	We have also added further guidance that where a significant donor makes regular payments to a Prescribed NPO it is not necessary to obtain identity information every time a donation is received from a donor. The identity information should be re-confirmed at least every two years, or sooner if a trigger event takes place.	
2.6.23	We have also added guidance and examples regarding individuals who may be NPO Owners or Controllers through indirect means.	
2.6.24	Regarding the observation made about when it might be necessary for a Prescribed NPO to verify the identity of a significant donor, we consider that the existing reference to the outcome of a NPO PRA producing a higher-risk outcome provides sufficient guidance on this point. However, we have added further guidance that independent data sources should be used to conduct the verification.	
2.6.25	We have also added reference in the guidance notes to the NPO PRA producing a higher-risk outcome, regarding when additional identity and structural information might be requested from the significant donor.	

## 2.7 Section 17.5 – Identification, screening and training of volunteers, employees, owners and controllers

- 2.7.1 The CP raised two questions in respect of the owners and controllers of Prescribed NPOs and how those persons should be identified:
- 2.7.1.1 Question 9: Have you identified any unintended consequences of our proposed definition of “NPO owners and controllers”?
  - 2.7.1.2 Question 10: Do you consider the content of Sections 17.5.1 and 17.5.2 to be sufficient?
- 2.7.2 Eight respondents provided comments on Question 9. Six did not identify any unintended consequences of our proposed definition of “NPO owners and controllers”.
- 2.7.3 A number of respondents noted that many NPOs do not have owners, due to the legal form in which they are established.
- 2.7.4 Seven respondents provided comments on Question 10. Six considered the content of Sections 17.5.1 and 17.5.2 to be sufficient.

### Response

- 2.7.5 We note that most respondents did not object to our proposed definition of “NPO owners and controllers”, nor the draft content of Sections 17.5.1 and 17.5.2. However, we acknowledge the feedback that not all NPOs have owners.
- 2.7.6 As a result, we have updated Section 17.5.2 to clarify that NPOs which do not have owners are not required to comply with that particular element of Article 4(1)(a) of the Prescribed NPO Order.

2.7.7 We have also added guidance and examples regarding individuals who may be NPO Owners or Controllers through indirect means.

- 2.7.8 The CP raised four questions in respect of the screening, training and awareness of employees, volunteers, owners and controllers:
- 2.7.8.1 Question 11: Do you consider the proposed definitions of “employee” and “volunteer” for the purposes of the NPO Section to be appropriate and proportionate?
  - 2.7.8.2 Question 12: Have you identified any unintended consequences of the Code of Practice requirements proposed at Section 17.5.3?
  - 2.7.8.3 Question 13: Do you consider the Code of Practice and guidance notes at Section 17.5.4.1 to be appropriate and proportionate?
  - 2.7.8.4 Question 14: Do you consider the Code of Practice and guidance notes at Section 17.5.4.2 to be appropriate and proportionate?
- 2.7.9 Nine respondents provided comments on Question 11. Six respondents did not agree with the proposed definitions, whereas three were in favour.
- 2.7.10 The majority of respondents who were not in favour expressed concern that the proposed definitions were too broad in scope and would create training/screening requirements which were too onerous for the Prescribed NPOs.
- 2.7.11 12 respondents provided comments on Question 12. 10 respondents identified unintended consequences from the Code of Practice proposed, whereas two respondents did not.
- 2.7.12 Similarly to Question 11, the majority of concerns expressed related to the Code requirements being too onerous due to the broad scope of the proposed definitions of “employee” and “volunteer”.
- 2.7.13 11 respondents provided comments on Question 13. Seven respondents did not agree with the proposed Codes and guidance, whereas four were in favour.
- 2.7.14 Comments made by those who did not agree with the proposals generally related to training being expensive to organise and deliver. Additional comments stated that requiring all employees and volunteers to receive training was not risk-based.
- 2.7.15 Nine respondents provided comments on Question 14. Five respondents did not agree with the proposed Codes and guidance, whilst four were in favour.
- 2.7.16 Similarly to Question 13, the majority of concerns expressed related to monitoring of awareness for all volunteers/employees being expensive to undertake, and not risk-based.

#### Response

- 2.7.17 We acknowledge the concerns expressed regarding our proposals at Questions 11-14, in that they may place a disproportionate cost and capacity burden on Prescribed NPOs.
- 2.7.18 We also note that the Prescribed NPO Order does not put in place any legal requirements for Prescribed NPOs to screen, deliver training to or monitor awareness of volunteers and employees.
- 2.7.19 As a result of the above, we have amended Sections 17.5.3 and 17.5.4 so that there are no mandatory Code of Practice requirements in terms of screening, training, or



monitoring of awareness. These sections are now provided as guidance on best practice.

- 2.7.20 We have also amended the terms “volunteers” and “employees” within the Handbook to “relevant volunteers” and “relevant employees” respectively. The scope of these definitions has been narrowed to capture individuals who act as NPO controllers, and/or who are responsible for the disbursement, and/or the raising of funds, outside of Jersey, Guernsey, the Isle of Man, England and Wales, or Scotland.
- 2.7.21 We have also added a range of further guidance across Sections 17.5.3-4, covering areas such as:
  - 2.7.21.1 Examples of different sanctions screening methods for NPO controllers which might be appropriate based on the size and complexity of the Prescribed NPO.
  - 2.7.21.2 Examples of different types of training which may be delivered, depending on the circumstances.
  - 2.7.21.3 Examples of factors which might lead a Prescribed NPO to carry out an exit interview with a relevant volunteer, relevant employee or controller.

## 2.8 Section 17.6 – Accounting for funds

- 2.8.1 The CP raised one question in terms of the above-referenced section:
  - 2.8.1.1 Question 15: Have you identified any unintended consequences of the Codes of Practice we have proposed for Section 17.6?
- 2.8.2 12 respondents provided comments on Question 15. Four respondents did not identify any unintended consequences of the proposed Codes of Practice, whereas eight respondents did.
- 2.8.3 Potential unintended consequences identified by respondents included:
  - 2.8.3.1 Prescribed NPOs being required to make their financial statements available to the public, causing confidentiality issues in respect of donors and other connected parties.
  - 2.8.3.2 The requirement to prepare financial statements in line with generally accepted accounting principles (GAAP) adopted in Jersey needing engagement with accounting professionals, adding an extra cost burden on Prescribed NPOs.
  - 2.8.3.3 A lack of clarity in Section 17.6 around what the word “issue” in the context of the draft statutory requirement to “issue financial statements” at paragraph 116 of the draft NPO Section.

### Response

- 2.8.4 The finalisation of the Prescribed NPO Order allows us to provide greater clarity as to the legal and regulatory requirements around accounting for funds and financial statements.
- 2.8.5 The Prescribed NPO Order requires Prescribed NPOs to prepare a financial statement and make this available to the JFSC upon request. As a result, there is no



	requirement for Prescribed NPOs to make their financial statements available to the public.
2.8.6	For the avoidance of doubt, we have also added a note to Section 17.4.3 to confirm that there is no statutory or Code of Practice requirement to make the identities of any significant donors public. We consider these two points address the concerns about confidentiality raised in response to Question 15 of the CP.
2.8.7	We have also listened to concerns regarding the cost of preparing financial statements in line with Jersey GAAP and have therefore removed the proposed Code of Practice requiring this. The Code of Practice regarding the maintenance of accounting records has been retained.
2.8.8	Finally, we have re-worked the guidance notes at Section 17.6 to cover the following:
2.8.8.1	How frequently a Prescribed NPO might reconcile their transactions.
2.8.8.2	The level of complexity of a Prescribed NPO's financial statements, with examples for smaller and larger organisations.
2.8.8.3	Presenting financial statements to the governing body of the Prescribed NPO for approval.

## 2.9 Section 17.7 – Record-keeping

- 2.9.1 The CP raised one question in respect of the above-referenced section:
  - 2.9.1.1 Question 16: Do you consider the Codes of Practice and guidance notes proposed at Section 17.7 to be appropriate and proportionate?
- 2.9.2 Eight respondents provided comments on Question 16. Four respondents were in agreement with the proposed content, whereas four other respondents were not.
- 2.9.3 Comments in response to this question included:
  - 2.9.3.1 Concerns that the proposed record-keeping requirements were disproportionate. In particular, concerns were raised in respect of paragraphs 136 and 137 of the draft NPO Section (reviewing the condition of records and testing the adequacy of record access and retrieval).
  - 2.9.3.2 A suggestion that records be kept for 10 years rather than five, to align with Jersey customary law.
  - 2.9.3.3 A suggestion that the proposed requirements be linked to the record-keeping requirements already in place for other supervised persons in Section 10 of the Handbook.

### Response

- 2.9.4 We acknowledge concerns expressed regarding the requirements set out in this section. We would emphasise, however, that good record-keeping by Prescribed NPOs is a key component in making sure we are able to effectively supervise the sector. It assists law enforcement in tracing funds through the financial system, hence is a vital part of our CFT efforts. Good record-keeping also helps Prescribed NPOs to demonstrate compliance with the regulatory framework.

- 2.9.5 Therefore, we have decided to retain the Codes of Practice proposed in this section. The guidance provided in the NPO Section is to assist NPOs in meeting their requirements and obligations. The JFSC will be providing additional guidance to support Prescribed NPOs in how they can comply with this section.
- 2.9.6 With particular reference to the requirements proposed at paragraphs 136-137 of the draft NPO Section, we would add that these do not mandate how frequently the reviews and testing should be carried out. This remains the decision of the Prescribed NPO. However, we have amended these two Codes of Practice to clearly state that the frequency must be determined with reference to the Prescribed NPO's NPO PRA or equivalent document.
- 2.9.7 To provide further context regarding the legal and NPO Section requirements around record-keeping, we have re-worked Section 17.7.1 as an 'Overview and general requirements' section. This revised section:
  - 2.9.7.1 Describes the importance of good record-keeping.
  - 2.9.7.2 Notes that more general obligations to maintain records covered elsewhere in the Jersey legal framework might extend the period for which records must be kept.
  - 2.9.7.3 Lists the formats in which records can be kept.
  - 2.9.7.4 Confirms that a regulated TCSP applying record-keeping measures which meet the requirements of Section 10 of the Handbook does not need to duplicate them to comply with Section 17.7.

## 2.10 Effective date of NPO Section and Prescribed NPO Order

- 2.10.1 The CP proposed that the Prescribed NPO Order, and therefore the NPO Section, come into effect on 1 January 2023. At the date of the CP it was intended for this feedback paper to be published in early October 2022. We raised the following question:
  - 2.10.1.1 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?
- 2.10.2 Eight respondents provided comments on Question 17. Four respondents were in favour of the proposed timeline, whereas four other respondents were not.
- 2.10.3 Comments provided by those respondents not in favour of the proposal included:
  - 2.10.3.1 1 January 2023 being too soon for Prescribed NPOs to have appropriate policies and procedures in place, and to have delivered training to volunteers and employees.
  - 2.10.3.2 Suggestions of a staggered approach so that different elements of the requirements proposed in the NPO Section become effective at different times.

### Response

- 2.10.4 We acknowledge that there are concerns within the NPO sector that 1 January 2023 is too soon for the statutory and Code of Practice requirements to become effective.

However, after due consideration it has been decided to retain 1 January 2023 as the effective date for the Prescribed NPO Order and the NPO Section.

- 2.10.5 As noted at the drop-in sessions and other meetings held during the consultation period for this CP, the JFSC is minded that the changes to regulation will be new for the NPO sector and will provide a supportive and collaborative approach. This will allow us to better understand the individual circumstances of each Prescribed NPO, then provide support on how best they can comply with the requirements of the Prescribed NPO Order and NPO Section.
- 2.10.6 It is also our intention to provide further support to Prescribed NPOs through webinars and/or 'lunch-and-learn' sessions, held over the course of 2023.

## 2.11 Requirement to report TF and Sanctions matters

- 2.11.1 The CP raised three questions in respect of terrorist financing (TF), targeted financial sanctions connected to TF (TFS-TF) and linked reporting requirements:
  - 2.11.1.1 Question 18: Do you agree that prescribed NPOs should be brought into scope for the reporting requirements connected to TF and TFS-TF?
  - 2.11.1.2 Question 19: Do you consider the proposed functions of the "Nominated Reporting Person" to be appropriate and proportionate?
  - 2.11.1.3 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?
- 2.11.2 Eight respondents provided comments on Question 18. Five respondents were in favour of the proposals, whereas three were not.
- 2.11.3 Nine respondents provided comments on Question 19. Seven respondents were not in favour of the proposals, whereas two were in favour.
- 2.11.4 Eight respondents provided comments to Question 20. Four respondents were in favour of the proposals, and another four were not.
- 2.11.5 The most commonly raised concerns in respect of these three proposals may be summarised as follows:
  - 2.11.5.1 Employing a Nominated Reporting Person would be expensive and there is a lack of qualified personnel on the Island to perform the role.
  - 2.11.5.2 The need to comply with TF and TFS-TF reporting requirements, along with the personal and professional risk arising from the offence of failure to report on TF and TFS-TF matters, would dissuade individuals from working with NPOs.

### Response

- 2.11.6 To allow the NPO sector to properly embed the requirements of the Prescribed NPO Order and the Code of Practice requirements set out in the NPO Section, we have decided not to progress the matters discussed in Questions 18-20 of the CP at this time.
- 2.11.7 For the avoidance of doubt, reporting requirements connected to TF and TFS-TF, the function of a Nominated Reporting Person and relevant criminal offences/penalties

will not form part of the NPO regulatory framework when it becomes effective on 1 January 2023.

- 2.11.8 We would note, however, that because Prescribed NPOs will be classed as supervised persons, they will be subject to the civil financial penalty provisions set out in Article 21A of the [Financial Services Commission \(Jersey\) Law 1998](#) from 1 January 2023.
- 2.11.9 The regulatory framework in terms of regulated TCSPs and their reporting requirements remains unchanged.

## 2.12 Removal of Article 2(2) exemption from NPO Law

- 2.12.1 The CP raised the following question in terms of the exemption currently in place at Article 2(2) of the NPO Law:
- 2.12.1.1 Have you identified any unintended consequences of the removal of the exemption at Article 2(2) of the NPO Law?
- 2.12.2 Six respondents expressed a view regarding this question. Four were of the view that there were no unintended consequences identified regarding the proposed amendment.

### Response

- 2.12.3 Given that the majority of respondents who expressed a view identified no unintended consequences, the removal of the Article 2(2) exemption from the NPO Law, via the [Non-Profit Organisations \(Miscellaneous Amendments\) \(Jersey\) Law 2022](#), shall be debated in December 2022.
- 2.12.4 The exemption at Article 2(1) of the NPO Law, regarding a minimum threshold to register, has also been removed as per the above-referenced amendment law.

## 2.13 Response to Government CP

- 2.13.1 Note that Government have not responded to every point raised regarding the Government CP. Instead, the below responses are limited to key issues or those which were raised by several respondents.
- 2.13.2 A number of respondents requested further guidance to be provided which has been addressed by the updated NPO Section.
- 2.13.3 Clarification was requested in respect of Article 1, which outlines that an NPO will be a prescribed NPO where it meets certain conditions during the preceding 12 months. It was queried whether an NPO would need to make an assessment of whether it continues to meet the conditions on a rolling basis. We confirm that this is the case.
- 2.13.4 As a result of feedback received, Article 2 of the Prescribed NPO Order has been amended to remove the proposal to automatically submit a copy of the financial statement to the JFSC. This is now required on request only.
- 2.13.5 Further detail was requested in respect of significant Donors. The Prescribed NPO Order has been amended to clarify that a significant Donor refers to a single person.
- 2.13.6 A suggestion was made that the obligations set out in Article 6 should not apply to associate NPOs and/or beneficiaries who are in Jersey, Guernsey, Isle of Man, England and Wales, and Scotland. This was carefully considered, however, such an

exclusion would not be compliant with the Financial Action Task Force (FATF) Standards.