



Jersey Financial
Services Commission

Consultation on proposals regarding further enhancements to the AML/CFT Handbook

[Consultation No. 5 2023]

Issued: August 2023

Consultation

The Jersey Financial Services Commission (JFSC) invites comments on this consultation paper by **29 August 2023**. If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the JFSC.

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Alternatively, Jersey Finance Limited (JFL) are coordinating an Industry response that will incorporate any matters raised by local businesses. Comments should be submitted to JFL by 29 August 2023.

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It is the policy of the JFSC to make the content of all responses available for public inspection (unless specifically requested otherwise by the respondent).

It is the policy of JFL (unless otherwise requested or agreed) to collate all responses and share them verbatim with the JFSC 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 of terms

Defined terms are indicated throughout this document as follows:

AML/ CFT	Anti-money Laundering/ Counter Financing of Terrorism
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FATF Recommendations	The <i>FATF</i> Recommendations adopted into law on 16th February 2012 and as amended from time to time.
FIU	Financial Intelligence Unit
The Handbook	The AML/CFT/CPF Handbook
JFSC	Jersey Financial Services Commission
Order	Money Laundering (Jersey) Order 2008
MVTS	Money or Value Transfer Services
PSP	Payment Service Providers
PEP	Politically Exposed Person
The Proceeds of Crime Law	Proceeds of Crime (Jersey) Law 1999
The Terrorism Law	Terrorism (Jersey) Law 2002
VASPs	Virtual Asset Service Providers

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1 Executive Summary

1.1 Overview

- 1.1.1 This consultation paper seeks feedback on proposals to amend existing guidance notes and add further guidance notes and AML/CFT/CPF Codes of Practice (Codes of Practice) to the Handbook for the detection and prevention of money laundering, countering of terrorist financing and proliferation financing.
- 1.1.2 In order to better align Jersey's legislative AML/CFT/CPF regime with the terminology and requirements under international AML and CFT standards or international best practices, certain amendments have been made to existing legislation. These amendments have been made following consultation with Industry.
- 1.1.3 It is now proposed to amend the Handbook to reflect those changes in legislation.
- 1.1.4 It is also now proposed to enhance the Handbooks existing content to provide further clarity and guidance demonstrating compliance with the FATF Recommendations and Immediate Outcomes.
- 1.1.5 Feedback is now sought on these proposed changes.

1.2 What is proposed and why?

- 1.2.1 We are proposing to add a range of new and expanded guidance notes across the Handbook. Guidance notes are non-binding and suggest how a supervised person may demonstrate compliance with Jersey legislation and AML/CFT/CPF Codes of Practice (Codes of Practice).
- 1.2.2 We are also proposing to add one new Code of Practice in Section 7.6 of the Handbook.
- 1.2.3 Finally, new defined terms will be added to the Handbook to account for some of the new content proposed below.
- 1.2.4 These changes have been driven by one or more of the following:
 - 1.2.4.1 Money Laundering (Amendment No. 12) (Jersey) Order 2023 which comes into effect on 01 September 2023
 - 1.2.4.2 EU Legislation (Information Accompanying Transfers of Funds) (Amendment) (Jersey) Regulations 2023 (**Wire Transfer Regulations**) which comes into effect on 01 September 2023
 - 1.2.4.3 Proceeds of Crime (Financial Intelligence) (Amendment) (Jersey) Regulations 2022 which came into effect July 2023
 - 1.2.4.4 Recommendations made by the Financial Transparency Advisors (FTA, an AML/CFT consulting firm) following a review of Jersey's legal framework against the FATF Recommendations; and
 - 1.2.4.5 Recommendations made by the JFSC Supervision division to include guidance on the requirements of the Terrorism (Jersey) Law 2002 in relation to suspicious activity reporting by NPOs.
- 1.2.5 It should be noted that the Government of Jersey has consulted on the Money Laundering (Amendment No. 12) (Jersey) Order 2023 and the [response paper](#) has been published. It has also consulted on the Wire Transfer Regulations and published a [response paper](#).

- 1.2.6 It should also be noted that in respect of changes aligned to the Wire Transfer Regulations, we communicated directly with relevant industry representatives and trade bodies. We are grateful to those persons for taking the time to support us in this regard.

1.3 Who would be affected?

- 1.3.1 Unless otherwise stated, the proposals in this consultation will affect all supervised persons.

1.4 Costs and benefits

- 1.4.1 We recognise the cost to Industry when amending the Handbook. However, the benefits of implementing the proposals set out below are:
- 1.4.1.1 Contributing towards the Island meeting the FATF Recommendations, therefore assisting in the fight against financial crime as well as promoting the Island as a well-regulated place to do business and
 - 1.4.1.2 Further guidance for Industry on how to demonstrate compliance with the Jersey regulatory framework.

2. Consultation

2.1. Basis for consultation

- 2.1.1. The JFSC has issued this consultation paper in accordance with Article 8(3) of the Commission Law, as amended, 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”.

2.2. Responding to the consultation

- 2.2.1. The JFSC invites comments in writing from interested parties on the proposals included in this consultation paper. 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.
- 2.2.2. Comments should be received by the JFSC no later than **29 August 2023**.
- 2.2.3. We understand that this is an unusually short consultation period, however the Government of Jersey has already consulted on the amendments to the Order and the Wire Transfer Regulations. The changes to the Handbook reflect those amendments which, for the most part, amend or add definitions to align with definitions in the Proceeds of Crime Law or elsewhere rather than introduce new code requirements (save for in one instance – see section 4 below).
- 2.2.4. Clean and tracked-change versions of each Handbook section discussed below are available for review on our [website](#).
- 2.2.5. We will also be holding two drop-in sessions during this consultation period to allow Industry to seek further clarity on any of the changes proposed. These sessions are scheduled for:
- 2.2.5.1. Thursday 24 August from 13:00-16:00 at Digital Jersey in the Hamilton room.

2.2.5.2. Friday 25 August from 10:00-12:00 at Santander Work Café in the Buenos Aires room.

2.2.6. Anyone can book a 15-minute appointment between 14:00 and 16:00. If you would like to attend the session, please contact Gamu Mbetu on g.mbetu@jerseyfsc.org to book a slot.

2.2.7. Subject to demand, we may organise further sessions.

2.3. Next steps

2.3.1. Following this consultation, we will publish feedback and issue an amended Handbook. We anticipate this will be published on 31 August and will come into effect on 1 September 2023.

3. The JFSC

3.1. Overview

3.1.1. The JFSC is a statutory body corporate established under the Commission Law. It is responsible for the supervision and development of financial services provided in or from within Jersey.

4. Proposals

4.1. Money Laundering (Amendment No.12) (Jersey) Order 2023

4.1.1. The Money Laundering (Amendment No. 12) (Jersey) Order 2023 makes a number of amendments to the Order. This has resulted in some minor consequential amendments being made to the Handbook as follows:

4.1.1.1. Amendment to the definition of “the FATF Recommendations” in the glossary to provide that as the FATF Recommendations are amended or replaced from time to time, such changes will automatically be incorporated without having to amend the Handbook definition.

4.1.1.2. Amendment to the definition of “prominent public function” within the Glossary which includes persons who are or were in a prominent public position in an international organisation. This aligns with FATF Recommendations 6 and 12 and related FATF guidance.

4.1.1.3. The inclusion, of language at Section 4 of the Handbook to clarify that a digital identification system that complies with the FATF Guidance on Digital Identity (published on 6 March 2020 as amended or replaced from time to time), constitutes a reliable and independent source for the purpose of customer due diligence measures.

4.1.1.4. Section 1.7 – Alignment of the meaning of “one-off transaction” by updating references to a “money service business” to “money or value transfer services” (MVTs).

4.1.1.5. The deletion of a paragraph from the table at pages 180 to 181 in Section 7.13 to reflect the deletion of Article 17A(2) of the Order.

4.1.2. In addition to the minor consequential amendments, amendments have been made to the Order in respect of:

- 4.1.2.1. Article 11A – inclusion of Designated Non-Financial Businesses and Professionals (DNFBPs) under the term “financial groups” for the purposes of disclosing, monitoring, screening, and managing information.
- 4.1.2.2. Article 15A – amends the definition of “prominent public function” and allows for the declassification of politically exposed persons who do not present a higher risk of money laundering and clarifies that this also applies to immediate family members or close associates of the politically exposed person.
- 4.1.2.3. Article 15B – amends the Article to apply to a Jersey financial institution or Jersey VASP which has or proposes to have a correspondent banking or similar relationship with a foreign financial institution.
- 4.1.2.4. References in Article 15B to “relevant person” have been amended to “a Jersey financial institution or Jersey VASP”. References to “the institution” have been amended to “the foreign financial institution or foreign VASP”. Definitions of the terms “Jersey financial institution”, “Jersey VASP”, “foreign financial institution” and “foreign VASP” are inserted in Article 15B(3).
- 4.1.2.5. Article 23A – provides that a Jersey financial institution or Jersey VASP must not enter into or continue a correspondent banking relationship with a shell bank and must take appropriate measures to prevent or discontinue a correspondent banking relationship with a financial institution or VASP that permits its accounts to be used by a shell bank.
- 4.1.3. To address these wider amendments to the Order, we have:
 - 4.1.3.1. Amended Section 2.7 to include DNFBPs under the term “financial groups” within the context of collating information for preventing or detecting money laundering/money laundering risks.

Question 1

Does the addition of DNFBPs at Section 2.7 have a negative impact on your business?

- 4.1.3.2. Drafted a new Code and supporting guidance at Section 7.6 to reflect the ability to declassify politically exposed persons and/or prominent persons after relevant time periods provided certain criteria is met:

	Domestic	Foreign	Prominent person
Risk Assessment	✓	✓	✓
No reason to continue to treat as PEP	✓	✓	✓
Number of years post position	2	5	5

- 4.1.3.3. The amendment includes the addition of immediate family members or close associates of the politically exposed person.

Question 2

Do you consider the proposed Code and guidance notes at Section 7.6 to be adequate for the purpose of your business?

- 4.1.3.4. Amended Section 7 to reflect the new definitions and added guidance at Section 7.11 on correspondent banking and similar relationships with regard to VASPs and explains the addition of foreign financial institutions and foreign VASPs.

Question 3

Do you consider the proposed guidance notes at Section 7.11 to be adequate for the purpose of your business?

4.2. EU Legislation (Information Accompanying Transfers of Funds) (Amendment) (Jersey) Regulations 2023 (“Wire Transfer Regulations”)

- 4.2.1. Certain definitions in the Regulations in relation to Virtual Asset Service Providers (VASPs) have been amended to strengthen AML/CPF/CFT measures in line with FATF Recommendation 15 and to align with the Proceeds of Crime Law.
- 4.2.2. Consequently, the following changes to the Handbook are proposed:
- 4.2.2.1. Amendment to Section 11 to add a definition of money or value transfer service provider in accordance with the definition in paragraph 5 in part 2 of Schedule 2 the Proceeds of Crime Law.
- 4.2.2.2. Amendment to Section 11 to add a definition of payment service provider (PSP) meaning a person registered under the Banking Business (Jersey) Law 1991 or who is a virtual asset service provider or a money or value transfer service provider, when-
- (a) The person is carrying out payment services in or from within Jersey; or
 - (b) Being a legal person established under Jersey law, the person is carrying out payment services in any part of the world other than in or from within Jersey.
- 4.2.2.3. Amendment to Section 11 to add a definition of Virtual Assets and VASPs in accordance with the definition in the Proceeds of Crime Law.

Question 4

Is the guidance on the additional terms and interpretations in the Wire Transfer Regulations clearly explained in Section 11 of the Handbook?

- 4.2.3. Amendment to Section 11 to articulate the scope of the exemption of VASPs from the requirements and application of the EU Regulation (EU) 2015/847 through Article 2 of the Wire Transfer Regulations if the transfer of virtual assets is equivalent to less than €1,000.00 and between VASPs.

- 4.2.4. Where either the payer or the payee is not a VASP and the transaction is at a higher risk of money laundering, the exemption does not apply regardless of the amount.

Question 5

Do you consider the proposed guidance notes at Section 11 in respect of this exemption to be adequate for the purpose of your business?

4.3. Proceeds of Crime (Financial Intelligence) (Amendment) (Jersey) Regulations 2022

- 4.3.1. The Proceeds of Crime (Financial Intelligence) (Amendment) (Jersey) Regulations 2022 establish the Financial Intelligence Unit (FIU) and its operations. This has resulted in some minor consequential amendments to the Proceeds of Crime Law.
- 4.3.2. These consequential amendments have also been reflected throughout the Handbook:
- 4.3.2.1. References to the JFCU will be deleted and replaced by the FIU.
 - 4.3.2.2. References to “a police officer” will be replaced with the FIU.
 - 4.3.2.3. Reference to “an officer of the force or customs officer” will be replaced with the FIU.
 - 4.3.2.4. The terms “designated customs officer” or “designated customs officer” will be replaced with “the FIU”.

4.4. Recommendations made by the FTA

- 4.4.1. Following the FTA’s review of Jersey’s legal framework against the FATF Recommendations, the FTA identified areas where the Handbook could include further guidance in relation to identification measures.
- 4.4.2. In order to address those recommendations, a new Section 4.9 to the Handbook entitled “Challenges to identification” (the **Proposed New Section**) were proposed in our Handbook consultation No. 12 2022.
- 4.4.3. Several respondents raised concerns with the Proposed New Section. As such, it was determined that further consideration would be given as to the most appropriate approach to address the concerns of the FTA and the Proposed New Section was not therefore implemented.
- 4.4.4. Further consideration has been given and we now propose to add guidance notes at:
- 4.4.4.1. Section 3.3.2
 - 4.4.4.2. Section 3.3.3
 - 4.4.4.3. Section 3.3.6
 - 4.4.4.4. Section 7.3
- 4.4.5. In each section, we have expanded guidance emphasising the importance of not accepting information/documentation on face value regardless of its source of origin. We have also expanded guidance in respect of various elements of risk which a supervised person might need to consider. These amendments have been driven by recommendations made by FTA.

Question 6

Do you consider the proposed guidance notes at Section 11 in respect of this exemption to be adequate for the purpose of your business?

4.5. Terrorism (Jersey) Law 20002 - in relation to NPOs and suspicious activity reporting

- 4.5.1. It has been a standing expectation that all NPOs must follow SAR reporting requirements in accordance with Articles 19 to 22 of the Terrorism Law.
- 4.5.2. Despite not having a reporting officer requirement, NPOs are expected to submit SARs. Article 19 of the Terrorism Law requires a relevant person and employees of that relevant person to make a report under two conditions:
 - 4.5.2.1. they believe or suspect: another person is engaged in the financing of terrorism; or, any property is, or may be terrorist property.
 - 4.5.2.2. the information or matter on which the belief or suspicion is based, comes to them in the course of the trade, profession, business or employment.
- 4.5.3. Under Article 19 of the Non-Profit Organizations (Jersey) Law 2008, reference to “employment” in Article 19 of the Terrorism Law includes work undertaken on behalf of an NPO on a voluntary or an unpaid basis.
- 4.5.4. In relation to suspicion of money laundering, only NPOs receiving services from a regulated trust company services business are subject to the obligations under Article 34D(4) of the Proceeds of Crime Law to make SARS in relation to money laundering. A relevant person (the TCSP) and employees of that relevant person are required to report in accordance with the provisions of the Proceeds of Crime Law as set out in Section 8 of the Handbook.
- 4.5.5. Proposed amendments have been to Section 17.8 to provide guidance on the application of the SAR requirements of the Terrorism Law to NPOs.

5. Summary of Questions

Page	Question
8	Question 1: Does the addition of DNFBPs at Section 2.7 have a negative impact on your business?
9	Question 2: Do you consider the proposed Code and guidance notes at Section 7.16 to be adequate for the purpose of your business?
9	Question 3: Do you consider the proposed guidance notes at Section 7.11 to be adequate for the purpose of your business?

Page	Question
9	<p>Question 4:</p> <p>Is the guidance on the additional terms and interpretations in the Wire Transfer Regulations clearly explained in Section 11 of the Handbook?</p>
10	<p>Question 5:</p> <p>Do you consider the proposed guidance notes at Section 11 in respect of this exemption to be adequate for the purpose of your business?</p>
11	<p>Question 6:</p> <p>Do you consider the proposed guidance notes at Sections 3.3.2, 3.3.3, 3.3.6 and 7.3 to be adequate for the purpose of your business?</p>