

Consultation:

Draft Non-Profit Organisations (Prescribed NPOs Additional Obligations) (Jersey) Order 202-

03 NOVEMBER 2022

Summary:

The Government of Jersey is consulting on the Draft Non-Profit Organisations (Prescribed NPOs - Additional Obligations) (Jersey) Order 202- which provides a definition for “Prescribed NPO” and sets out five additional obligations to which Prescribed NPOs will have to adhere.

Ways to respond

Responses may be submitted in writing as follows:

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Email: Economy@gov.je

Subject heading: “NPO Draft Order”

How we will use your information

The information you provide will be processed in compliance with the Data Protection (Jersey) Law 2018 for the purposes of this consultation. For more information, please read our privacy notice set out in Appendix C.

Date published:

03 November 2022

Closing date:

18 November 2022

1. Background

On 27 April 2022 the States of Jersey adopted the Non-Profit Organizations (Miscellaneous Amendments) (Jersey) Law 2022, which amended the Non-Profit Organizations (Jersey) Law 2008 (the NPO Law).

This gives the Minister for External Relations and Financial Services (the Minister) the power to impose obligations, by Order, on “Prescribed NPOs”.

This Order would also define Prescribed NPOs, specifying those types of NPOs which, by virtue of their activities and characteristics, are likely to be at a higher risk for Terrorist Financing abuse. These Prescribed NPOs will fall within the Jersey Financial Services Commission’s (JFSC) supervisory regime when the Order comes into effect in 2023. The JFSC will apply a risk-based approach to its supervision activities.

The Draft Non-Profit Organisations (Prescribed NPOs - Additional Obligations) (Jersey) Order 202- (the Draft NPO Order) has been prepared, and the wording of was decided on in light of:

- The Risk Assessment of the NPO Sector in Jersey (which was undertaken in 2021 and published in April 2022); and
- The Public Consultation on Proposed NPO Changes (which ran from 17 August 2022 to 20 September 2022).

The Draft NPO Order contains the definition of a “Prescribed NPO” and sets out five additional obligations which Prescribed NPOs will have to undertake, and which reflect the need for good governance.

A copy of the Draft NPO Order is attached as **Appendix A** and additional information which explains how certain terms can be interpreted is attached as **Appendix B**.

2. Definition of “Prescribed NPO”

Article 1 of the Draft NPO Order defines “prescribed NPO” as an NPO¹ that, during the preceding 12 months, has –

1. raised² more than £1,000³ from outside Jersey, Guernsey, the Isle of Man, Scotland, England and Wales; or
2. disbursed⁴ more than £1,000 outside those jurisdictions.

¹ See Question 1 in “Additional Information”

² See Question 2 in “Additional Information”

³ See Question 3 in “Additional Information”

⁴ See Question 4 in “Additional Information”

3. Additional Obligations on Prescribed NPOs

- Article 2: A prescribed NPO must prepare and provide⁵ a financial statement⁶ to the Commission once a year.
- Article 3: A prescribed NPO must have appropriate accounting systems and controls in place to ensure that its funds⁷ are fully accounted for.
- Article 4: A prescribed NPO must keep and retain records⁸ that are sufficient to identify⁹ –
 - (a) any person who owns the NPO or controls or directs the NPO’s activities, including (as appropriate) a senior officer, board member, director or trustee;
 - (b) any other person who exercises, or has the right to exercise, significant influence or control over the activities of the NPO.
- Article 5: A prescribed NPO must keep and retain a record of donors who, during the preceding 12 months, have donated (as a single donation or cumulatively) –
 - (a) over £10,000; or
 - (b) over 50% of total donations made to the prescribed NPO during that period.
- Article 6: A prescribed NPO must take reasonable steps¹⁰ to –
 - (a) identify its associate NPOs¹¹ and beneficiaries¹²; and
 - (b) obtain information about –
 - (i) the activities of each associate NPO and beneficiary; and
 - (ii) the nature and purpose of its relationship with each associate NPO and beneficiary; and
 - (c) confirm, so far as possible, that its associate NPOs and beneficiaries are not assisting or being used to assist terrorism or the financing of terrorism.

Conclusion

Government welcomes your feedback on the Draft Order.

⁵ See Question 5 in “Additional Information”

⁶ See Question 6 in “Additional Information”

⁷ See Question 7 in “Additional Information”

⁸ See Question 8 in “Additional Information”

⁹ See Question 9 in “Additional Information”

¹⁰ See Question 10 in “Additional Information”

¹¹ See Question 11 in “Additional Information”

¹² See Question 12 in “Additional Information”

Questions:

Question One:

Are you responding on behalf of an NPO which meets the proposed definition of “Prescribed NPO”?

Question Two:

If you answered “Yes” to Question One, has anybody else from the same NPO submitted feedback to this consultation / is anybody else from the same NPO intending to submit feedback?

Question Three:

Please provide details of the specific comments/concerns you have in respect of the draft NPO Order. Please refer to the relevant article/s in your response.

Question Four:

Are you happy for somebody from Government to contact you to discuss the concerns you have raised? If so, please provide the relevant details of your preferred method of contact.

Question Five:

Please provide any general comments regarding the Draft NPO Order.

Question Six:

Do you give permission for your comments to be quoted?

Question Seven:

If you answered “Yes” to Question Six, do you give permission for your comments to be attributed to you or the NPO you are representing? If so, please provide your name and/or the name of NPO you would like the comments to be attributed to.

**DRAFT NON-PROFIT ORGANISATIONS
(PRESCRIBED NPOS - ADDITIONAL
OBLIGATIONS) (JERSEY) ORDER 202-**

Contents

Article

1 Interpretation	8
2 Obligation to prepare and provide annual financial statement	8
3 Obligation to have appropriate accounting systems and controls.....	8
4 Obligation to keep records of owners, controllers etc	9
5 Obligation to keep record of significant donors	9
6 Obligations in relation to associate NPOs and beneficiaries	9
7 Citation and commencement	9

**DRAFT NON-PROFIT ORGANISATIONS
(PRESCRIBED NPOS - ADDITIONAL OBLIGATIONS) (JERSEY)
ORDER 202-**

Made *[date to be inserted]*
Coming into force *[date to be inserted]*

THE MINISTER FOR EXTERNAL RELATIONS AND FINANCIAL SERVICES makes this Order under Article 13A of the Non-Profit Organizations (Jersey) Law 2008 –

1 Interpretation

For the purposes of Article 13A of the Non-Profit Organizations (Jersey) Law 2008, a prescribed NPO is an NPO that, during the preceding 12 months, has –

- (a) raised funds exceeding £1,000 from outside Jersey, Guernsey, the Isle of Man, England and Wales and Scotland; or
- (b) disbursed funds exceeding £1,000 outside those jurisdictions.

2 Obligation to prepare and provide annual financial statement

- (1) A prescribed NPO must prepare and provide annually to the Commission a financial statement for a period of not more than 12 months.
- (2) The period –
 - (a) must begin on or before the date the NPO became a prescribed NPO; but
 - (b) if the NPO has previously prepared and provided a financial statement under paragraph (1), must begin at the end of the period covered by its most recent financial statement.
- (3) The financial statement must –
 - (a) be in a form published or approved for the purpose by the Commission; and
 - (b) be provided to the Commission within 10 months after the end of the period covered by the statement.

3 Obligation to have appropriate accounting systems and controls

A prescribed NPO must have in place appropriate accounting systems and controls to ensure that its funds are fully accounted for.

4 Obligation to keep records of owners, controllers etc.

- (1) A prescribed NPO must keep records that are sufficient to identify –
 - (a) any person who owns the NPO or controls or directs the NPO's activities, including as appropriate a senior officer, board member, director or trustee;
 - (b) any other person who exercises, or has the right to exercise, significant influence or control over the activities of the NPO.
- (2) A prescribed NPO must retain the records kept under paragraph (1) for at least 5 years.

5 Obligation to keep record of significant donors

- (1) A prescribed NPO must keep a record of donors who, during the preceding 12 months, have donated (as a single donation or cumulatively) –
 - (a) £10,000 or above; or
 - (b) over 50% of total donations made to the prescribed NPO during that period.
- (2) A prescribed NPO must retain the record kept under paragraph (1) for at least 5 years.

6 Obligations in relation to associate NPOs and beneficiaries

- (1) A prescribed NPO must take reasonable steps to –
 - (a) identify its associate NPOs and beneficiaries;
 - (b) obtain information about –
 - (i) the activities of each associate NPO and beneficiary; and
 - (ii) the nature and purpose of its relationship with each associate NPO and beneficiary; and
 - (c) confirm, so far as possible, that its associate NPOs and beneficiaries are not assisting or being used to assist terrorism or the financing of terrorism.
- (2) In this Article –

“associate NPO” means an NPO with which the prescribed NPO collaborates or works jointly in carrying out its activities;

“beneficiary” means a person (including another NPO) who receives assistance through the activities of the prescribed NPO.

7 Citation and commencement

This Order may be cited as the Non-Profit Organisations (Prescribed NPOs - Additional Obligations) (Jersey) Order 202- and comes into force [immediately after the Non-Profit Organisations (Miscellaneous Amendments) (Jersey) Law 2022 comes into force].

Additional Information:

1. What is a NPO?

The Non-Profit Organizations (Jersey) 2008 Law (as amended by the Non-Profit Organisations (Miscellaneous Amendments) (Jersey) Law 2022) defines a NPO as follows:

- (1) An organization, legal person or arrangement is a non-profit organization (NPO) if –
- (a) it is established solely or primarily for charitable, religious, cultural, educational, social, or fraternal purposes with the intention of benefiting the public or a section of the public; and
 - (b) it raises or disburses funds in pursuance of those purposes.
- (2) In paragraph (1) “organization” includes the trustees of a trust.

2. What does “raised” mean in the context of an NPO?

“Raised”, in respect of the funds of an NPO, includes funds given to the NPO but does not include –

- (a) income earned on the funds of the NPO; or
- (b) amounts paid to the NPO by persons to become or remain members of the NPO.

3. Must the £1,000 raised or disbursed be in cash?

No, the definition is wide and includes:

- (a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

4. What does “disbursed” mean in the context of an NPO?

“Disbursed”, in respect of the funds of an NPO, does not include the disbursement of funds paid to the NPO by persons to become or remain members of the NPO if those funds are applied in a way that only benefits members of the NPO.

5. How should the NPO provide the financial statement to the JFSC?

The intention is that an NPO will be able to submit its financial statement via the JFSC portal. However, if there are any delays in enabling this functionality initially, financial statements may need to be submitted by e-mail as an interim measure. Guidance and information will be provided by the JFSC as appropriate.

6. What is a “financial statement”?

“Financial statement”, in respect of an NPO for a particular period, means a statement –

- (c) that contains a breakdown of the NPO’s income and expenditure (in each case, with such explanation as may be reasonably necessary) during the period; and
- (d) that sets out the state of its funds at the end of the period.

7. What does “funds” mean in the context of an NPO?

“Funds”, in respect of an NPO means:

- (a) assets of every kind, whether tangible or intangible, movable or immovable, however acquired; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

8. What does it mean to “keep a record”?

A detailed list or register of entries is likely to be sufficient.

9. What does “sufficient to identify” mean?

Obtaining identity information such as name, date of birth, address, capacity in which they are acting. There is no requirement to obtain evidence of identity, such as passports etc.

10. What are “reasonable steps”

Reasonable steps will differ based on the NPO’s programme risk assessment, e.g. a higher level of assessed risk might mean a greater amount of identity and other information collected.

11. What is an “Associate NPO”?

An NPO with whom the prescribed NPO collaborates or works jointly in carrying out its activities.

12. What is a “beneficiary”?

A person (including another NPO) who receives assistance through the activities of the prescribed NPO.

13. When will these additional obligations come into force?

It is proposed that the Order will come into force immediately after the Non-Profit Organisations (Miscellaneous Amendments) (Jersey) Law 2022 comes into force, expected by 1 January 2023.

Data Protection (Jersey) Law 2018 Privacy Notice

How will we use the information about you?

We will use the information you provide in a manner that conforms to the Data Protection (Jersey) Law 2018.

We will endeavour to keep your information accurate and up to date and not keep it for longer than is necessary. In some instances the law sets the length of time information has to be kept. Please ask to see our retention schedules for more detail about how long we retain your information.

We may not be able to provide you with a service unless we have enough information or your permission to use that information.

We will not pass any personal data on to anyone outside of the Government of Jersey, other than those who either process information on our behalf, or because of a legal requirement, and we will only do so, where possible, after we have ensured that sufficient steps have been taken by the recipient to protect your personal data.

We will not disclose any information that you provide 'in confidence', to anyone else without your permission, except in the few situations where disclosure is required by law, or where we have good reason to believe that failing to share the information would put someone else at risk. You will be told about this unless there are exceptional reasons not to do so.

We do not process your information overseas using web services that are hosted outside the European Economic Area.

Data Sharing

We may need to pass your information to other Government of Jersey departments or organisations to fulfil your request for a service. These departments and organisations are obliged to keep your details securely, and only use your information for the purposes of processing your service request.

We may disclose information to other departments where it is necessary, either to comply with a legal obligation, or where permitted under other legislation. Examples of this include, but are not limited to:

- where the disclosure is necessary for the purposes of the prevention and/or detection of crime;
- for the purposes of meeting statutory obligations; or to prevent risk of harm to an individual, etc.

At no time will your information be passed to organisations for marketing or sales purposes or for any commercial use without your prior express consent.

Your rights

You can ask us to stop processing your information

You have the right to request that we stop processing your personal data in relation to any of our services. However, this may cause delays or prevent us delivering a service to you. Where possible we will seek to comply with your request but we may be required to hold or process information to comply with a legal requirement.

You can withdraw your consent to the processing of your information

In the few instances when you have given your consent to process your information, you have the right to withdraw your consent to the further processing of your personal data. However, this may cause delays or prevent us delivering a service to you. We will always seek to comply with your request but we may be required to hold or process your information in order to comply with a legal requirement.

You can ask us to correct or amend your information

You have the right to challenge the accuracy of the information we hold about you and request that it is corrected where necessary. We will seek to ensure that corrections are made not only to the data that we hold but also any data held by other organisations/parties that process data on our behalf.

You request that the processing of your personal data is restricted

You have the right to request that we restrict the processing of your personal information. You can exercise this right in instances where you believe the information being processed is inaccurate, out of date, or there are no legitimate grounds for the processing. We will always seek to comply with your request but we may be required to continue to process your information in order to comply with a legal requirement.

You can ask us for a copy of the information we hold about you

You are legally entitled to request a list of, or a copy of any information that we hold about you. However where our records are not held in a way that easily identifies you, for example a land registry, we may not be able to provide you with a copy of your information, although we will do everything we can to comply with your request.

You can ask us:

- to stop processing your information
- to correct or amend your information
- for a copy of the information we hold about you.

You can also:

- request that the processing of your personal data is restricted
- withdraw your consent to the processing of your information.

You can complain to us about the way your information is being used by contacting us at dataprotection2018@gov.je alternatively you can complain to the Information Commissioner by emailing enquiries@dataci.org.