



Response Paper

Consultation on
amendments under the
Proceeds of Crime (Jersey) Law 1999

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Background

1. On 28 January 2022, the Government of Jersey published a [Consultation Paper](#) seeking feedback on proposed amendments (the “**Amendments**”) under the Proceeds of Crime (Jersey) Law 1999 (the “**1999 Law**”) regarding the creation of a failure-to-prevent money laundering and terrorist financing criminal offence.
2. As part of the consultation process, Government also directly engaged with the trade bodies, the Law Society of Jersey, and a number of other representatives from the finance industry and the legal sector with regards to the Amendments.
3. The consultation closed on 21 February 2022. Government received one response to the Consultation Paper. However, Government also collected feedback as part of the aforementioned direct engagement with trade bodies, the Law Society, and the other representatives. This included two responses regarding the draft language of the Amendments.
4. Jersey Finance supported the consultation process but did not receive any responses to the Consultation Paper.
5. Since then, Government has considered all the feedback received as part of its policy formation. The responses to the consultation are summarised below and Government has stated its position in relation to the questions posed in the Consultation Paper.
6. Further questions or comments relating to this Response Paper may be directed to:

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Publication Date: 4 March 2022

Question 1: Do you agree that the introduction of an FTP ML/TF offence will enhance the overall effectiveness of AML enforcement? If not, please provide details.

The feedback regarding Question 1 was almost unanimously that the introduction of the new offence would enhance the overall effectiveness of AML enforcement. It was considered important that legal entities can be held responsible for and sanctioned against potential misconduct in a similar way as natural persons. Industry representatives furthermore agreed that it is of utmost importance for the jurisdiction to being able to demonstrate effectiveness in line with the FATF Methodology.

One respondent argued that overall effectiveness might also be improved through the incorporation of quantitative AML measures within the supervisory process which would also support financial services businesses with their reasonable steps defence.

The biggest agreement amongst respondents was that the new offence would also increase the deterrence against criminal actors which might tarnish the Islands well-earned reputation. Therefore, the creation of new offence was considered beneficial to complement the existing regulations to protect the local finance industry from being exploited by criminal actors.

Given the supportive feedback, Government considers it appropriate to move forward with the proposal to create the new offence in the 1999 Law.

All other comments provided to Government were in relation to the draft language of the Amendments, rather than any policy considerations, and are outlined below.

Question 2: Do you agree with the proposed scope of the offence? If not, please provide details.

There were two comments with regards to Question 2. Firstly, under the 1999 Law, “financial services business” (FSB) covers corporate bodies as well as individuals which might, for example, provide any of the services under Part B of Schedule 2. Thus, Article 35A (1) of the Amendments will be revised regarding those FSBs in order to capture businesses which are not body corporates. Government agrees that it is important to bring those FSBs into scope, particularly to capture Designated Non-financial Services Businesses (DNFBPs), i.e. lawyers, accountants and estate agents etc, in line with the FATF Methodology. The other important consideration for the revised wording of Article 35A (1) is to capture individuals which consent or connive to the commission of the offence by the FSB and make them liable in the same manner as the FSB under Article 39A (2). The revised wording of Article 35A (1) will be constructed similarly to the existing provisions under Article 37 (7) of the 1999 Law.

The second comment queried whether the wording Article 35A (3) (b) might be ambiguous, but Government is content that the meaning is sufficiently clear given that the commission of a substantive offence needs to be established to the criminal standard of proof.

Question 3: Do you agree with the proposed definition of the reasonable steps defence? If not, please provide details.

There was one comment with regards to Question 3, which considered the current definition of the reasonable steps defence ambiguous. On further review, Government will revise the wording of the reasonable steps defence under Article 35A, providing for the court to take supervisory Codes of Practice or any other relevant guidance into account.

Question 4: Do you agree with the proposed definition of an associated person? If not, please provide details.

There was one comment with regards to Question 4, querying whether the inclusion of “any” customer of B under Article 35A (4) (d) would be too wide. However, Government is content with the draft language since said paragraph provides for “*any customer [...] in relation to the services performed by or on behalf of B*”, i.e. services performed by or on behalf of the FSB, clearly linking the customer to the FSB’s services.

Government will revise the Amendments where necessary and in line with the comments outlined herein, in order to lodge the revised Amendments for a debate by the States Assembly at the next possible date.

Government would like to take this opportunity to thank all consultation respondents for their feedback. Furthermore, Government would like to thank Jersey Finance for their support and cooperation during the consultation process.