



Consultation Response and Policy Paper: Obligated Entity Access to Information

DECEMBER 2022

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Background

1. On 14 October 2022, the Government of Jersey published a consultation paper seeking feedback on the proposal to permit obliged entities access to the central register of beneficial ownership and control for customer due diligence purposes (“CDD”). This paper summarises the feedback received.
2. The consultation closed on 7 November 2022. The Government received four direct responses to the consultation paper. A response from Jersey Finance Limited (“JFL”) was also submitted, containing comments from a further four respondents.
3. Further questions or comments relating to this Consultation Response and Policy Paper may be directed to:

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Question one: Please detail any concerns regarding the proposed data fields to be provided to obliged entities for CDD purposes.

4. A general comment was received regarding the need for one record for each natural person held within the registry system.
5. One respondent suggested that information submitted to the registry by an entity that is not administered by a trust and company service provider (“TCSP”) is not validated and therefore the information held within registry may not be accurate.

Residential address

6. Four of the respondents raised concerns regarding the disclosure of residential addresses and the potential risk to privacy and security. One of those respondents encouraged a period of testing prior to making this information available, whereas the other two considered that residential address should not be included. It was also suggested that inclusion of residential address would go beyond the Financial Action Task Force (“FATF”) and international standards.
7. One respondent acknowledged the potential concern identified within the consultation paper of providing access to residential addresses for the purposes of CDD, however also noted that this information was only to be provided to Jersey regulated services providers and that this mitigated against the concern. This respondent also noted that the proposed fields were necessary to assist with verification against other sources of data and evidence and that they would be necessary fields to discount positive or negative matches under adverse media and screening.
8. The final respondent expressed no concerns in relation to the proposed data fields and welcomed a move towards a simplified and less onerous process.

Extent of beneficial ownership or control (percentage/nature)

9. One respondent queried the benefit of including the percentage of ownership in the entity. Another respondent suggested that it may be appropriate to break this information down into further sub-categories.

Full date of birth

10. Two respondents commented in relation to full date of birth, noting that the UK’s register of persons with significant control (“PSC register”) and Jersey’s significant persons register discloses only the month and year of birth. These respondent suggested that the same approach should apply to CDD information available to obliged entities.

Nationality

11. One respondent noted that nationality may not be useful if a beneficial owner or controller has dual nationality.

Question two: Do you consider any additional data fields are required for stage one implementation?

12. Two respondents considered that no additional data fields should be made available at this stage.
13. One respondent considered that the additional field of country of birth should be included. A further suggestion was that alias or former name would be a useful field, as well as the date of the last update to the information held on the register.
14. Another respondent considered that to meet its obligations under Article 3(2)(a) Money Laundering (Jersey) Order 2008 and section 4.3.2 guidance note 26 of the Handbook, it may be prudent to include passport or national identity number.

Government response to questions one and two

15. Government does not agree with the comment regarding accuracy of information submitted by entities that are not TCSP administered. In those instances, the verification of the information is conducted by the registry team. In addition, and with the introduction of the registry supervision team, inspection visits are being undertaken to further validate information held both at registered offices and submitted to the company registry.
16. At stage one of implementation of access, Government proposes to provide access to the following data fields for obliged entities when conducting CDD:
 - a. Full name
 - b. Full date of birth
 - c. Country of residence
 - d. Place and country of birth
 - e. Nationality
 - f. Residential address
17. This information is considered to be sufficient for the purposes of conducting CDD. Government will continue to monitor the fields of data available to obliged entities conducting CDD as the number of uses increases and the international standards in this area develop further.
18. Government acknowledges the concerns regarding residential address, but notes that this information is relevant for the purposes of conducting CDD. Furthermore, this information would be made available to a limited audience of Jersey Financial Services Commission ("JFSC") regulated service providers. This limits the potential risk of misuse.
19. Government acknowledges that extent of beneficial ownership/controller information may not assist with conducting CDD. Government also recognises that this information is not currently captured within the registry system. Government is conscious that to capture this information at short notice would cause significant disruption to the financial services industry and local companies and other entities. It is not therefore intended to include this data field at stage one of implementation of this policy, however, Government would recommend this

data field is included once the policy and systems are fully developed. This might be considered for inclusion in a regular reporting cycle, at a later stage, so as to minimise disruption to users.

20. While it is recognised that the UK PSC register discloses only month and year of birth, the PSC register is a public register. The policy intention which is the subject of this consultation is to permit access to obliged entities for CDD purposes only. The same risk of identity theft and security risks are not considered to apply where access is provided only to an audience of regulated persons in limited circumstances, such as conducting CDD.
21. The approach taken by the company registry on nationality is to record the primary nationality of the beneficial owner or controller. While an individual may have dual nationality, Government has concluded that providing the nationality held within the central register of beneficial ownership and control for CDD purposes does not undermine CDD information.
22. Government recognises that place and country of birth is captured as “beneficial ownership information” under the Financial Services (Disclosure and Provision of Information) (Jersey) Law and Order 2020. Government also appreciates that this information would be of assistance conducting CDD. As such, it is proposed that this information should also be made available to obliged entities when conducting CDD.
23. While the requirements of the Money Laundering Order and the JFSC Handbook are noted, Government recognises that passport number and/or national identity number is not currently collected and provided to the JFSC as “beneficial ownership information”. Furthermore, it is not the intention that this information can be solely relied on for CDD purposes, but that it would provide an additional layer of validation. As such, Government does not propose to make this information available at stage one implementation.

Question three: Is the proposed definition of obliged entity appropriate? Please justify your answer.

24. Four of the respondents considered that definition was appropriate.
25. Several respondents suggested that it might be helpful to apply a different definition due to the similarities with Article 16 of the Money Laundering Order and existing references to “obliged persons” which has potential for causing confusion.
26. A further respondent considered that a clear definition was required.

Government response to question three

27. Government recognises the potential for confusion between the phrases “obliged entity” and “obliged person” and has taken this into consideration when producing drafting instructions for the appropriate legislation. It is therefore proposed that the term “relevant person” as per the Money Laundering Order is adopted, as persons required to conduct CDD, with the scope of “relevant persons” is being limited to those physically located on Jersey.

Question four: Is one access per licensed/regulated entity sufficient? Please provide reasons for your answer

28. This question elicited mixed responses. One respondent considered it appropriate to limit the access to one licensed/regulated entity so as to reduce the exposure to information contained within the register. This respondent considered that it would be appropriate to limit the access to those in compliance/risk roles within the regulated or licensed entity.
29. The other respondents did not consider it appropriate to limit the access in this manner, citing a number of reasons, including:
- a. The size and scale of the responding entity meant it would not be feasible to limit the access to one person.
 - b. That while it may be appropriate to provide one licence for an entity, there would need to be multiple persons with accessibility, to reduce the key person risk.
 - c. It would not be practical in terms of volume of work to limit access to one person.
30. These respondents considered that persons with the relevant responsibilities should be permitted to access the register on behalf of a regulated/licensed entity. It was further noted that those in compliance and company secretary roles already had portal access via myJFSC and myRegistry systems and it may be appropriate to extend the access to the beneficial ownership register for CDD purposes.

Government response to question four

31. Government recognises the practical challenges of offering one licence per entity and will work with the company registry team and the JFSC to ensure that reasonable levels of access are maintained, while minimising the risk for abuse.

Question five: Would notification of access of beneficial ownership information to the legal person's nominated person be beneficial to your business? Please provide reasons for your response.

32. Respondents were supportive of this proposal, noting that it would act as a deterrent to misuse and would allow for the nominated person to take the appropriate action if required. One respondent considered that access to the information should not be automatic, even where verified login details were used.
33. An alternative proposal put forward in responses was to notify the nominated person prior to the information being disclosed, as a retrospective notification may be too late.
34. One respondent queried whether such a provision could potentially infringe on Article 35 Proceeds of Crime (Jersey) Law 1999 (tipping off) but considered if this could be mitigated against, then such a mechanism may be useful. This respondent considered that an ability for a legal person's nominated person to log in to view the access requests made, which would reduce email traffic.

Government response to question five

35. The implementation of such a notification system to the nominated person is only intended for obliged entity access and would not be applied to any access made by the Financial Intelligence Unit, Revenue Jersey and Attorney General's Department. Such a notification system would therefore only apply where access was made for CDD purposes and therefore would not be an indicator which could amount to "tipping off".
36. Government recognises the value in including such a notification and will continue to liaise with the JFSC and company registry in the development and implementation of this policy.

Question six: Do you consider it appropriate to extend the current Regulation 4 application process of the Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 2020 to access requests made by obliged entities? Please provide reasons for your response.

37. Two respondents considered that it was appropriate to extend the application process, citing the need to protect sensitive information. A further respondent also considered that obliged entity access should be aligned to other registers and that disclosure of information may render named individuals susceptible to risk.
38. It was also suggested that an extension of the application process was necessary to reflect the fact that nominated persons may successfully apply to not have this information disclosed to anyone except for those conducting CDD
39. Another respondent commented that this is a FATF Recommendation, and it would be difficult to justify acting any other way, which could potentially highlight Jersey as an outlier.
40. The suggestion was also made that there would be no reason to prevent access to a service provider as the information would be necessary for onboarding in any event. Caution was issued regarding the potential for slightly outdated information due to the 21 day updating period.

Government response to question six

41. Government notes the concerns expressed in relation to sensitive information and proposes to extend the application process to cover beneficial ownership information where requests are made for CDD purposes. This position aligns with that we anticipate will be adopted by the other Crown Dependencies. Government would, however, reiterate that this information is not being made available to the public at this stage and only to obliged entities who are conducting CDD.

Question seven: Do you consider any additional penalties and/or security provisions necessary to ensure sufficient lines of defence against misuse? Please provide details.

42. Two of the respondents expressed a need for further measures to ensure sufficient lines of defence. These were:
 - a. A mechanism by which the nominated person could refer the access to an authority if they believed that the access had not been for a legitimate purpose.
 - b. Withdrawal of portal access or user rights.
43. It was also highlighted that any unlawful access of the register of beneficial ownership and control would have data protection consequences.
44. One respondent noted the need for security provisions to be applied to third party outsourcing. This respondent queried what would happen in the scenario that a business failed or was no longer operating.
45. One view put forward emphasised that while a penalty may be a deterrent, prevention of misuse was favourable. It was suggested that efforts should therefore be focussed on ensuring systems are sufficiently robust to prevent against misuse.
46. Another respondent considered that all users must be verified and that clear statements specifying liability for misuse should be visible within the system. This was supplemented by another view that a drop-down list of legitimate purposes might be used to identify the reason for the access request.
47. The final respondent considered that further measures were not necessary as the threat of personal liability, legal action or both may act as a deterrent for those seeking to abuse the integrity of the system. This respondent recommended that the system had the ability to track the individuals of the organisation who accessed the database, so that any breaches could be fully investigated.

Government response to question seven

48. Government will continue to work with the JFSC and registry teams to ensure appropriate protections are in place.
49. In addition, the Government agrees that the ability to suspend or revoke access to the system would be beneficial and this will liaise with colleagues at the JFSC and company registry to consider how this can be integrated with JFSC/registry processes.
50. Offences and penalties may be introduced through the Regulations under the Financial Services (Disclosure and Provision of Information) (Jersey) Regulations 2020. Government will continue to explore this route with the Legislative Drafting Office.

Question eight: What do you consider are the relevant legal grounds for access to the beneficial ownership register for CDD purposes?

51. One view expressed was that the legal grounds should be as limited as possible. This respondent considered that “prospective/potential client/customer” would be too broad a category and may be subject of abuse.
52. Another respondent considered that, if the information was accurate and could be considered as “source of document” rather than as reliance, this would assist with new accounts, banking relationships and onboarding.
53. Two of the respondents considered that the purposes of financial crime investigation should be a legal basis to access the information. One of these respondents further suggested access should be permitted for CDD relating to potential/prospective clients/customers and existing customers where there had been a change to an ownership structure.
54. Other suggestions included:
 - a. Prior to entering into a contractual relationship
 - b. For legal purposes such as legal/court proceedings
 - c. To investigate on behalf of a competent authorities.
55. A query was raised in relation to reliance on the information held in the registry for the purpose of CDD.
56. A recommendation was also made by one respondent that access to the information should be available in line with data retention requirements.

Government response to question eight

57. While the concerns regarding the breadth of the definition of a potential or prospective customer are noted, Government considers that the benefits to providing this level of access in assisting in the conduct of CDD outweighs the negatives. Government is working with the Legislative Drafting Office to appropriately define the term customer to limit the potential for misuse.
58. Access to the central register of beneficial ownership and control when undertaking CDD would be for the purpose of validation of the information provided to the obliged entity. It is not intended that this information may be used to replace the CDD processes.

Question nine: Are there any additional defined terms that may be necessary to ensure adequate protections to beneficial owners and businesses? Please provide details.

59. Two of the respondents made no further suggestions to defined terms. One respondent did not answer this question.

60. One suggestion was that it would be useful to provide further definitions to clarify the use that may be made of the information on the central register. This respondent considered that it would be useful to clarify the terms “validation” from “verification” and “reliance”.
61. It was also recommended that the legislation should clearly limit the scope of access to CDD purposes and that there should be sufficient means of protection in place for both beneficial owners and services providers should access be used for any other purposes.
62. Several responses highlighted the need to define “legitimate purpose” in the legislation.
63. One respondent suggested that it was necessary to define “authorised access” and unauthorised access”. This respondent also highlighted the need for sanctions.
64. Another response put forward a number of overarching terms, in addition to those identified above, including:
 - a. Data subject: ie the legal or natural person subject to the request
 - b. Data owner: eg the nominated person

Government response to question nine

65. Government continues to work with the Legislative Drafting Office to prepare the necessary legislation to allow for implementation of this policy. The suggestions noted above will be taken into full consideration as the legislation develops.
66. Government will also work with the JFSC and registry team to ensure appropriate guidance around use of the central register for CDD is produced and will consult further with industry on the content.

Question ten: What is the likely impact of a requirement of reporting discrepancies for your business?

67. One respondent identified that the consultation did not at this stage propose mandatory discrepancy reporting. It noted that ordinarily, discrepancies would initially be brought to the attention of the company or TCSP and a response invited as to how the available information reconciles with verification of identification/address documentation and whether documents or registry information need to be updated. Where a discrepancy cannot be reconciled or remediated it would raise the question as to whether CDD can be completed or whether the relationship should be declined, and consideration be given to submission of a suspicious activity report (SAR).
68. This respondent queried whether, if mandatory discrepancy reporting was introduced, that it was expected of users that notifications to registry should be made immediately, or without delay once identified. This respondent raised a concern that the requesting entity’s understanding or interpretation of the information provided by the registry and in the CDD documentation may be on occasion incorrect and prompt unnecessary and costly reviews by registry.

69. A further respondent considered discrepancy reporting to be helpful and would allow for remedial action.
70. It was noted that a requirement to report discrepancies would create additional work in terms of reporting to registry, however, if a discrepancy was identified in ordinary course, this would result in remedial action with the owner of the information in order to satisfy CDD requirements. Other respondents commented that there would be operational implications as well as the potential need to increase headcount within obliged entities.
71. It was suggested by one respondent that businesses should be provided with an opportunity to explain or justify the information they had reported.
72. One response also suggested that it would be helpful if the JFSC Handbook provided guidance about updating information on a periodic basis.

Government response to question ten

73. The direction of travel in the international community is to require discrepancy reporting. This is already expected of Jersey's FIU, Revenue Jersey and Attorney General's Department when accessing the central register. In time, it is anticipated that discrepancy reporting requirements will be placed on those accessing the register when conducting CDD. This will assist in maintaining Jersey's leading reputation on the adequacy and accuracy of its central register. It should also assist with ensuring as uniform an understanding of beneficial ownership of legal persons exists between the central registry and the industry.
74. The Government and the registry have been involved in discussions relating to discrepancy reporting in an international context and are acutely aware of the impact on both registry teams and industry when discrepancies are reported. The introduction of such measures in Jersey will be subject to further industry engagement and clear guidance and/or additions to the JFSC Handbook. Government seeks a pragmatic and reasonable approach to discrepancy reporting.

Question eleven: What features of obliged entity access would be most beneficial for use by your business?

75. A number of respondents recognised the benefit of verifying Jersey structures and information relating to ultimate beneficial owners, significant persons, significant controllers and senior persons (where tier three of the three tier test applied).
76. It was also suggested that resource may be redeployed from CDD tasks and into other areas of the business, which could result in a cost saving which could be passed on to the end client. This would help Jersey to remain competitive on cost.
77. If it were possible to alert financial institutions to changes in ownership, one respondent considered that this could assist in managing trigger events and enhance the speed at which financial institutions could meet their obligations under Article 3(3) of the Money Laundering Order.

78. One respondent currently relies on exemptions and on source CDD and did not articulate any current benefits to the changes. A further respondent also considered that it did not see a benefit.
79. A response further suggested that as a Reporting Professional, access to the register would be beneficial.

Government response to question eleven

80. Government is grateful for the feedback to this question and will seek to deliver the benefits noted by respondents to the extent possible. Government considers that the introduction of access for obliged entities conducting CDD will further enhance the accuracy of information held within Jersey's company registry through discrepancy reporting. Jersey has long been considered a leading jurisdiction on beneficial ownership and the introduction of further enhancements will help to maintain the respected position of Jersey's corporate registry.
81. Government would remind respondents of the ongoing exemptions review and would recommend that publications on the JFSC website as well as any legislative changes are closely considered.

Question twelve: Please provide any views on how technology would support the proposal to allow obliged entity access.

82. Several respondents commented on the need to involve existing system suppliers and to integrate APIs. The need for robust system testing was also highlighted in response to this question as well as the use of multi-factor authentication and ensuring security of data.
83. Portal access was considered to be an effective means of access if it had the following features:
- a. Obligated Entity submits request and, using a drop-down menu, specifies a legitimate purpose which is pre-defined as to why they are making the request;
 - b. The request is automatically sent to the Nominated Person of the legal person;
 - c. The Nominated Person has a defined timeframe to accept or reject the request and confirm that records are up to date;
 - d. The Obligated Entity is granted access to that record.
84. One respondent queried whether the introduction of the obliged entity access would interfere with the move toward E-ID.

Government response to question twelve

85. Government will liaise with the registry team to explore the suggestions received in response to this question.
86. Both the financial crime strategy team and the financial services policy team (responsible for E-ID) work closely together and are in discussion regarding any overlap or conflict of policy.

Question thirteen: Please provide any general comments regarding the proposal

87. One respondent re-iterated their full support for the proposals contained within the consultation paper. Other respondents noted the following areas of concern:
- a. The potential misuse of information for illegitimate purposes, including by the media, for general curiosity or for commercial purposes.
 - b. Risk of cyber attacks.
 - c. Potential for out of date information as a result of updating within 21 days.
88. One response noted that while the information would be a useful starting point in undertaking CDD on Jersey entities, that it was necessary to highlight that the information cannot be relied on.
89. A further respondent questioned whether it might be possible for incentives to be introduced for the adoption of APIs, such as license fee freezes.
90. One respondent asked a series of questions regarding the practical implementation of this policy, surrounding accessibility of information, revocation of access etc. This respondent further expressed concern surrounding publication of personal information and safeguarding.
91. It was suggested that Jersey would be able to fulfil its obligations whilst ensuring data is only accessed where it is right and proper to do so. It was also suggested that unless the information in registry has been verified to confirm its accuracy then data sharing does not assist with CDD.

Government response to question thirteen

92. Government is well-versed in the risks to data security and privacy surrounding beneficial ownership registers. The company registry houses the beneficial ownership register and has implemented secure access for competent authorities. Government is confident in the ability of the registry to deliver a secure means of access for obliged entities when conducting CDD.
93. The concerns in relation to privacy are somewhat minimised in this proposal as it is not the intention to permit public access at this stage. Further consideration will be given to the recent European Court of Justice case on publicly accessible beneficial ownership registers. Government is seeking both human rights and data protection advice from its legal team.
94. Government agrees with the comment about reliance on information in the registry. The current purpose of extending the access for conducting CDD would be to allow obliged entities access to validate the information that they are provided with. In due course, the Government would intend to consider how this process could be more efficiently integrated into the legislative CDD requirements and would consult further with industry at this time.
95. Government is unable to comment on licence fees and data access fees, which are a matter for the JFSC.

Conclusion

96. Government is grateful to respondents for their comments on the proposal to permit obliged entity access to the beneficial ownership register. These will be considered as the necessary legislation is finalised to permit the introduction of this policy.
97. Government continues to liaise with its legal advisors to ensure that the proposal is introduced in a way that does not infringe on data protection or human rights obligations.
98. Government will look to bring forward legislation on obliged entity access during 2023.