



RESPONSE PAPER

Consultation regarding amendments to the Money Laundering (Jersey) Order 2008

CONSULTATION REGARDING AMENDMENTS TO THE MONEY LAUNDERING (JERSEY) ORDER 2008

RESPONSE PAPER

BACKGROUND

On 12 May 2023, the Government of Jersey published a [public consultation](#) regarding proposed Draft Amendments to the [Money Laundering \(Jersey\) Order 2008](#) (the “MLO”).

The Draft Amendments look to better align the legislative anti-money laundering (AML) and countering the financing of terrorism (CFT) regime with the terminology and requirements under international AML/CFT standards and international best practices. The Draft Amendments either look to align, clarify, or expand existing provisions in the MLO. Inter alia, it was proposed that the existing additional obligations imposed on financial groups regarding group-wide policies and procedures also apply to groups of designated non-financial businesses and professions. Finally, the insertion of new provisions was proposed in order to enable the declassification of Politically Exposed Persons, after a certain period and subject to the application of a risk-based approach.

The consultation closed on 9 June 2023 and in total, Government received 16 responses to the consultation.

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.

Further questions or comments relating to this Response Paper may be directed to:

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QUESTIONS AND RESPONSES

Question 1: Do you agree with the proposed amendments regarding Article 1 (Interpretation)? If not, please explain.

All responses to Question 1 were supportive and welcomed the amendment to Article 1, except for one respondent who was of the view that the amendment might cause confusion and create uncertainty, although this response might be due to a misinterpretation of the amendment, because this amendment in relation to the reference to the FATF recommendations, not to the Order.

Given the predominantly supportive feedback, Government considers it appropriate to move forward with the proposed amendment.

Question 2: Do you agree with the proposed amendments regarding Article 3 (Meaning of “customer due diligence measures”)? If not, please explain.

All responses to Question 2 were supportive of the Amendment to Article 3. One respondent pointed out the importance of alignment between the terminologies used in the MLO and the JFSC’s AML/CFT/CPF Handbook regarding digital ID systems while another respondent was of the view that the JFSC’s guidance regarding digital ID system does not fully align with the FATF’s guidance in this area and that it would be important that local guidance aligns with the FATF.

Government agrees regarding the importance of alignment between the MLO and the AML/CFT/CPF Handbook and between regulatory guidance and FATF guidance and will therefore flag this point to the JFSC, where appropriate. This will also include the request for potential further guidance regarding the use of digital ID systems.

Given the fully supportive feedback, Government considers it appropriate to move forward with the proposed amendment.

Question 3: Do you agree with the proposed amendments regarding Article 4 (Meaning of “one-off transaction”)? If not, please explain.

Respondents were fully supportive of the proposed amendments, and Government considers it therefore appropriate to move forward with the proposed amendment.

Question 4: Do you agree with the proposed amendments regarding Article 11 (Policies, procedures and training to prevent and detect money laundering)? If not, please explain.

Respondents were fully supportive of the proposed amendments, and Government considers it therefore appropriate to move forward with the proposed amendment.

Question 5: Do you agree with the proposed amendments regarding Article 11A (Additional requirements for financial groups)? If not, please explain.

One respondent requested to define DNFBPs in Article 1, however, the newly inserted paragraph (4) under Article 11A provides a definition of DNFBP, linking back to Part 3 of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999.

The same respondent suggested to add clarifications, outlining that Jersey-based entities may adopt requirements which might be stricter than under group policies, which might be based on requirements in other jurisdictions. However, this is already the case and is applied by many entities which are part of international groups.

Respondents were fully supportive of the proposed amendments, and Government considers it therefore appropriate to move forward with the proposed amendment.

Questions 6: Do you agree with the proposed amendments regarding Article 15A (Enhanced customer due diligence measures in relation to politically exposed persons)? If not, please explain.

All respondents were generally fully supportive of the proposed amendments. A small number of respondents questioned whether the time period before declassification could be “more aligned” with other jurisdictions, such as the UK. However, Government considers the proposed time periods of 2 years for domestic PEPs and 5 years for international PEPs as appropriate, given Jersey’s national risk appetite and Jersey’s role as an International Finance Centre.

Furthermore, aligning the time periods with one particular jurisdiction, would not prevent discrepancies between Jersey and the time periods applied in some other jurisdictions since these time periods are different across different jurisdictions, therefore, aligning with the UK, for example would still leave discrepancies for businesses which operate across Jersey, Guernsey, the Isle of Man, and the UK.

One respondent questioned whether the wording of subparagraph (2A)(b) would be “too narrow”, but Government considers the proposed draft wording appropriate. Should the need ever arise to provide further guidance regarding the meaning of (2A)(b), then the JFSC’s AML/CFT/CPF Handbook would be the appropriate medium to do so.

One respondent queried the declassification of close associates, this is however, already covered in the proposed new paragraph (2D).

Despite supporting the draft amendments generally, one respondent requested the ability to declassify PEPs from the outset under certain conditions. However, this is not a viable option since it would be in complete contravention of the FATF Recommendations, making Jersey an extreme outlier internationally. This position would also be outside of Jersey’s national risk appetite, which is based on the findings of the National Risk Assessments on Money Laundering and Terrorist Financing.

Two other respondents submitted their general support for the draft amendments but requested further guidance regarding the application of the amended Article 15A, for example regarding the use of “equivalent function” in paragraph (2D), which is in the JFSC’s remit to provide as part of the respective section in its AML/CFT/CPF Handbook.

Since respondents were fully supportive of the proposed amendments, Government considers it appropriate to move forward with the proposed amendment.

Question 7: Do you agree with the proposed amendments regarding Article 15B (Enhanced customer due diligence measures in relation to banking relationships outside Jersey)? If not, please explain.

Respondents were fully supportive of the proposed amendments, and Government considers it therefore appropriate to move forward with the proposed amendment.

Question 8: Do you agree with the proposed amendments regarding Article 17A (Circumstances in which exemptions under this Part do not apply)? If not, please explain.

Respondents were fully supportive of the proposed amendments, and Government considers it therefore appropriate to move forward with the proposed amendment.

Question 9: Do you agree with the proposed amendments regarding Article 23A (Shell banks)? If not, please explain.

Respondents were fully supportive of the proposed amendments, and Government considers it therefore appropriate to move forward with the proposed amendment.

In addition to the proposed amendments, the definition of “relevant person” under Article 1(1) will be amended by replacing the term “by way of business” with the term “as a business”, in line with the amendments made in January this year to Article 36 of the Proceeds of Crime (Jersey) Law 1999, thereby better aligning the MLO terminology with FATF terminology.

Government would like to take this opportunity to thank all consultation respondents for their feedback.

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