

STATES OF JERSEY



DRAFT NON-PROFIT ORGANISATIONS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-. (P.104/2022): COMMENTS

**Presented to the States on 8th December 2022
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

As part of the ongoing preparation to ensure that Jersey is ready for the upcoming assessment by MONEYVAL, various pieces of legislation are due to be lodged by the Minister for External Relations and Financial Services throughout the course of 2022 and 2023. Some of these changes form part of the global standards required by the Financial Action Task Force (FATF) and the implementation of this legislation is key to the upcoming assessment of Jersey's Financial Services Industry, due to take place in 2023 by MONEYVAL.

Part of this legislation relates to ensuring the Island is doing everything possible to combat terrorists and terrorist organisations from exploiting nonprofit organisations (NPO) to raise funds to provide logistical support, or facilitate terrorist recruitment or other forms of terrorist operations .

Background

The Minister for External Relations and Financial Services lodged *DRAFT NON-PROFIT ORGANISATIONS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202- P.56/2022* on 9th March 2022, which was approved by the States on 27th April 2022. This amendment granted the Minister the power to impose obligations by Order on Prescribed Non-Profit Organisations¹ (NPOs), or NPOs belonging to a Prescribed class of NPOs (the Prescribed NPO Order). The obligations that may be imposed under the Prescribed NPO Order are limited in that they must relate to Recommendation 8 of the FATF Recommendations and reduce the risk of a prescribed NPO, or an NPO that belongs to a prescribed class of NPOs, being used to assist terrorism or the financing of terrorism or becoming likely to assist or be used to assist terrorism or the financing of terrorism.

Scrutiny's previous Economics and International Affairs Panel had, during the course of its role in Scrutiny, received regular briefings from the Minister and the Financial Services Team on upcoming changes to existing legislation relating to the MONEYVAL assessment. One of these briefings was in relation to P.56/2022 on which the previous Panel presented [comments](#). The previous Panel was supportive of P.56/2022 stating in its comments that:

The Panel is satisfied with the road map laid out for the future work in the implementation of this piece of legislation, particularly the process of public consultation and the imminent publication of the NPO Risk Assessment. The Panel is supportive of this Amendment and is satisfied with the content of the Proposition. The Panel has made reference to this Amendment and the ongoing work that it will entail within its Legacy Report and it is hoped the incoming EIA Scrutiny Panel will be able to follow up on any upcoming changes.²

¹ A NPO will fall within the definition of "Prescribed NPO" if it raises and/or disburses funds in excess of £1,000 outside of Jersey, Guernsey, Isle of Man, Scotland, England and Wales.

² EIA Panel Comments – P.56/2022

The Amendment

On 31st October 2022, the Minister for External Relations and Financial Services lodged [P.104/2022](#) *DRAFT NON-PROFIT ORGANISATIONS (AMENDMENT OF LAW) (JERSEY) REGULATIONS 202-* which is due to be debated by the States Assembly on 13th December 2022. The Purpose of this amendment is to introduce provisions to adequately meet the criteria set out in Recommendation 8 of the FATF Recommendations and will come into force on 1st January 2023.

Recommendation 8.3 of the FATF Recommendations 2012 requires that:

“countries should take steps to promote effective supervision or monitoring such that they are able to demonstrate that risk-based measures apply to Non-Profit Organisations (NPOs) at risk of terrorist financing abuse.”

In order to meet FATF Recommendation 8 to ensure that the Jersey Financial Services Commission (JFSC) has the necessary supervisory, monitoring and enforcement powers in respect of all relevant NPOs, this amendment will bring NPOs that are provided with a prescribed service in the course of trust company business under the Financial Services (Jersey) Law 1998 within the regulatory scope of the NPO Law, just like registered NPOs.

The Panel has received a briefing on the upcoming amendment along with various pieces of background documentation from the Department. The Panel understands the importance of the amendment being adopted in time for the 1st January 2023 implementation and notes that should this not be implemented, the repercussions would be as follows:

- Jersey’s NPO regime will not comply with the FATF Standards, as the Jersey Financial Services Commission will not have the required monitoring, supervisory or enforcement powers in the case of those NPOs that are provided with a prescribed service in the course of trust company business under the Financial Services (Jersey) Law 1998.
- A delay in the implementation of this Regulation will mean that Jersey will not be able to evidence that it has an effective regime in place. This will negatively impact MONEYVAL’s assessment of Jersey in September 2023.

Conclusion

Ideally, the Panel would have revisited the work of the former Panel but, given the short timeframe and the Panel’s review of the Government Plan 2023 – 2026, the Panel has not been able to undertake a detailed analysis of this amendment.

The Panel has had sight of a Ministerial Order that prescribes certain NPOs for the purposes of Article 13 of the NPO Law and understands that it is in compliance with the Interpretation Note that accompanies FATF Recommendation 8. The Order has been consulted on, amendments have been made as a result of the feedback received and it is due to be signed this week by the Minister. Following signature of the Order, the Panel understands that there is a wide-reaching awareness campaign due to start on 12th December in which the Minister is continuing outreach to the sector, which to date has been carried out in partnership with the JFSC, Office of the Charity Commissioner and

Association of Jersey Charities. The Panel asks that the campaign is robust enough to raise awareness in all sectors affected, in particular smaller NPOs who may not be part of any other organisation and which did not previously have to register under the NPO Law until the approval of the amendment to the NPO Law by the Assembly in April this year.

The Panel understands that the main part of the legislation was adopted under the last assembly and that this amendment may be considered relatively minor. On that basis and taking into consideration the short timeframe in which the Panel had to undertake scrutiny, it is supportive of this amendment as drafted.