

STATES OF JERSEY



DRAFT NON-PROFIT ORGANISATIONS (MISCELLANEOUS AMENDMENTS) (JERSEY) LAW 202- (P.56/2022): COMMENTS

**Presented to the States on 20th April 2022
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Introduction

The Panel has, 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. 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, due to take place in 2023 by MONEYVAL.

The Amendment

The purpose of this Amendment is to grant a new power for the Minister to impose obligations by Order on Prescribed Non-Profit Organisations (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 the Interpretive Note 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.

Background

In 2008, the Non-Profit Organisations (Jersey) Law 2008 (the NPO Law), introduced measures set out in Special Recommendation VIII (SR. VIII) of the FATF's 2004 Recommendations, to minimise the risk that NPOs might be abused by those seeking to fund terrorism.

In 2012, the FATF issued revised Recommendations (the FATF Recommendations 2012), to address new and emerging threats as well as to clarify and strengthen many of the existing obligations. The new, enhanced measures in respect of NPOs are set out in Recommendation 8 of the FATF Recommendations 2012 as follows:

“Countries should review the adequacy of laws and regulations that relate to non-profit organisations which the country has identified as being vulnerable to terrorist financing abuse. Countries should apply focused and proportionate measures, in line with the risk-based approach, to such non-profit organisations to protect them from terrorist financing abuse, including:

- (a) by terrorist organisations posing as legitimate entities;*
- (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and*
- (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.”*

Jersey's NPO regime does not adequately meet all the standards set by the FATF in Recommendation 8 and these Amendments set out to address any deficiencies, where required. The Amendments will, if adopted, amend the necessary pieces of legislation in respect of NPOs, in order to meet the standards, set by the FATF in Recommendation 8.

Work to Date

The Amendment is due to be debated at the final States sitting on 25th April following which the new Law will come into force by an Order made by the Minister. A public consultation is due between May and July of this year with the Order coming into force sometime in September. A Risk Assessment of the NPO sector (the NPO Risk Assessment) is currently underway and will be published in April 2022. The aim of the NPO Risk Assessment is to identify the features and types of NPOs in Jersey, which are likely to be at risk of terrorist financing abuse. It is the intention that, once the features and types of higher-risk NPOs have been determined, a public consultation will be conducted in respect of:

- Which NPOs or classes of NPOs constitute higher-risk NPOs (to be defined as Prescribed NPOs/Prescribed Class of NPOs), and
- The appropriate measures which may be introduced in order to protect Prescribed NPOs/Prescribed Class of NPOs from terrorist financing abuse.

The Panel is aware that, although work has begun on the implementation of this piece of legislation, further work will continue throughout the year.

Key Changes to the Law

The Panel notes that the key changes in the Law include the following:

- A new power will be inserted into Article 13A for the Minister to impose Obligations by Order on prescribed NPOs. This power is limited in that the obligations imposed must relate to a measure recommended by FATF in the Interpretive Note to Recommendation 8.
- A prescribed NPO or an NPO that belongs to a prescribed class of NPOs will be guilty of an offence and be liable to a fine if it fails to comply, without reasonable excuse, with a requirement of the prescribed NPO Order.
- The exemption from registration with the JFSC for NPOs that have not raised funds in the preceding 12 months of more than £1000 is removed. This means that all NPOs (as defined by the NPO Law), will be obliged to register with the Jersey Financial Services Commission (JFSC). This is a once-off registration, and the NPO will only be obliged to notify the JFSC if its circumstances change.
- The JFSC will have the power to determine the 'Application for Registration' form, as it sees fit. Currently, the Application Form is set out in Schedule 1 of the NPO Law and can only be amended by Regulation. Removing the Schedule to the NPO Law, and allowing for the JFSC to incorporate any application for registration form, as it sees fit, will better safeguard the Island, as threats and vulnerabilities can develop at a very fast rate, and require a quick and agile response in order to ensure effective mitigation by the JFSC.
- The JFSC will have the power to supply information which is not available to the public and has come into the JFSC's possession when carrying out its

obligations under the NPO Law to specified 3rd parties (including the Charities Commissioner and the Jersey Gambling Commission).

- The power of the Court is extended, so that it can order the JFSC to deregister an NPO where it is convicted of any offence under Jersey law and the Court considers the criminal conduct to be serious enough to justify it.
- The supervisory powers of the JFSC are extended to Prescribed NPOs. The JFSC will have the power to issue a code of practice, directions, public statements, and appoint investigators in relation to requirements of the Prescribed NPO Order.

Conclusion

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.