

STATES OF JERSEY



Jersey

DRAFT PROCEEDS OF CRIME (SUPERVISORY BODIES) (AMENDMENT No. 2) (JERSEY) LAW 202-

**Lodged au Greffe on 6th December 2021
by the Minister for External Relations and Financial Services
Earliest date for debate: 18th January 2022**

STATES GREFFE



Jersey

DRAFT PROCEEDS OF CRIME (SUPERVISORY BODIES) (AMENDMENT No. 2) (JERSEY) LAW 202-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for External Relations and Financial Services has made the following statement –

In the view of the Minister for External Relations and Financial Services, the provisions of the Draft Proceeds of Crime (Supervisory Bodies) (Amendment No. 2) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Minister for External Relations and Financial Services

Dated: 3rd December 2021

REPORT

Jersey is a leading and well-regulated International Finance Centre, and it is critical to maintain its prosperity, and therefore its reputation, through its support for the global fight against financial crime, money laundering and the financing of terrorism.

These efforts are based on the standards developed by the Financial Action Task Force (“FATF”). The FATF is the global money laundering and terrorist financing watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society.

The FATF has developed and revised 40 Recommendations (the “Recommendations”), which ensure a coordinated global response to prevent organised crime, corruption, and terrorism and more than 200 countries and jurisdictions, including Jersey, committed to implementing the Recommendations.

At the top of Government’s commitments is the commitment of the Chief Minister of the day to the FATF President to implement, in full, the revised Recommendations and the FATF Methodology post their development and adoption in 2012 and 2013 respectively. This makes compliance with the Recommendations a national commitment and therefore of national interest. Therefore, the Minister for External Relations and Financial Services proposes the Draft Proceeds of Crime (Supervisory Bodies) (Amendment No. 2) (Jersey) Law 202- (the “Amendment”) for adoption by the States Assembly.

The FATF defines Designated non-financial businesses and professions (“DNFBPs”) as casinos, real estate agents, dealers in precious metals or precious stones, and lawyers, notaries, other independent legal professionals, and accountants. This refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to anti-money-laundering and countering the financing of terrorism (“AML/CFT”) measures.

FATF Recommendation 28 “Regulation and supervision of DNFBPs”, section b), requires that the AML/CFT supervisor takes the necessary measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in DNFBPs. The Amendment will enable the Jersey Financial Services Commission (the “JFSC”) as designated AML/CFT supervisor, to perform criminality checks for individuals within DNFBPs and to prevent criminals to act in one of the aforementioned functions where necessary.

The Amendment looks to remove the existing second registration level within the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#) (the “2008 Law”) and bring all businesses from Level 2 into scope for Level 1, which means that going forward, all businesses including DNFBPs would have to complete a Level 1 registration which includes criminality checks.

On a practical basis, it is expected that for the JFSC there would be little change brought about by the Amendment. The JFSC has been required to complete a ‘fit and proper’ (criminality) test on all key and principal persons associated with a Level 1 application already since 2008. Consequently, the JFSC has a mature process, the application of which will be extended to all registration applications made under the 2008 Law.

The vast majority of Level 2, Schedule 2 businesses consistently update the JFSC where relevant changes are made that might affect their ongoing registration, for example

changes in principal persons, however, there is not a strict requirement to do this under the current 2008 Law. The Amendment formalises that requirement to update the JFSC. During a six-month transition period this means that a small number of Level 2 firms will need to prepare to update the JFSC where they have not been doing this as a matter of course.

The Amendment has been subject to consultations with the JFSC and with the DNFBP trade bodies and the I am content that it strikes a pragmatic and sustainable balance between industry needs and the jurisdiction's requirement to meet international AML/CFT standards in order to maintain Jersey's reputation and ultimately, its prosperity.

Financial and manpower implications

There are no financial and manpower implications for the States arising from the adoption of the Amendment.

Human Rights

The Law Officers' Department has indicated that the draft Law does not give rise to any human rights issues. The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

**Human Rights Notes on the Draft Proceeds of Crime (Supervisory Bodies)
(Amendment No. 2) (Jersey) Law 202-**

These notes have been prepared in respect of the Draft Proceeds of Crime (Supervisory Bodies) (Amendment No. 2) (Jersey) Law 202- (the “**draft Law**”) by the Law Officers’ Department.

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law gives rise to no human rights concerns. It provides for amendments to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the “Principal Law”) to introduce the requirement for the Jersey Financial Services Commission to carry out a “fit and proper” test in relation to applications for registration by “Designated non-Financial Services Businesses and Professions” under the Principal Law.

EXPLANATORY NOTE

This Law amends the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 to remove the levels of registration in relation to registration with a supervisory body and to provide for all applicants for registration to meet the same requirements.

Article 1 states that this Law amends the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

Article 2 amends Article 1 to update definitions of words and expressions used throughout the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 in line with the changes introduced by this Law.

Article 3 deletes Article 4 which contains the definition of “level of registration” that is no longer relevant in light of the other amendments made to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.

Article 4 substitutes Article 11 to provide for a person who intends to carry on a specified Schedule 2 business to make application under Article 13 to the relevant supervisory body to be registered. The States is given the power to make Regulations to amend the descriptions of specified Schedule 2 business described in column 2 of the Table in the Schedule. A person carrying on a regulated business who intends to carry on a specified Schedule 2 business is not required to make an application for registration provided that person has previously notified the Commission that the person intends to carry on that specified Schedule 2 business. On receipt of the notification, the Commission is required to give notice of deemed registration to that person.

Article 5 amends Article 12, which provides for the determination of a relevant supervisory body, to remove a reference to deleted Article 15.

Article 6 amends Article 13, which deals with applications for level 1 registration, to remove the references to “level 1” which are no longer relevant in relation to registration.

Article 7 amends Article 14, which provides for the grant or refusal of an application for a level 1 registration, to remove the references to level 1 registration which are no longer relevant.

Article 8 amends Article 15 which deals with applications for level 2 registration and grant or grounds for refusal. Article 15 is no longer relevant as there will no longer be different levels of registration.

Article 9 amends Article 16, which provides for notice of refusal to register, to remove a reference to deleted Article 15.

Article 10 amends Article 17, which makes provision about conditions of registration, to remove a reference to deleted Article 15.

Article 11 amends Article 18, which provides for revocation of registration, to remove references to deleted Article 15 and level 1 registration.

Article 12 amends Article 19, which deals with the procedure on refusal or revocation, or new or varied condition, to remove a reference to deleted Article 15.

Article 13 amends Article 21, which deals with determination of fees and late payment, to change a reference from Article 11(6) to Article 11(3). *Article 13* also amends Article 21 to delete a reference to Article 15 and to delete paragraph (3)(a) which are no longer relevant in light of the other amendments.

Article 14 amends Article 31, which provides for an application for a level 1 registration, to remove the reference to “level 1” which is no longer relevant in relation to registration but preserves the significance of the level 1 registration prior to the commencement of this Act with regard to a registered person being a fit and proper person.

Article 15 amends Article 33A, which deals with communication with supervisory body by auditors and approved professionals, to delete the reference to “level 1” which is no longer relevant in relation to registration.

Article 16 amends Article 34, which deals with supply of information, to remove the references to deleted Article 15 and to “level 1” which are no longer relevant in light of the other amendments. *Article 16* also amends Article 34 to change a reference from Article 11(6) to Article 11(3).

Article 17 amends Article 39, which deals with notice of refusal to register, to remove a reference to deleted Article 15.

Article 18 amends Article 41 to change a reference from Article 11(6) to Article 11(3).

Article 19 amends Article 43, which contains transitional provisions, to insert new paragraph (3A). New paragraph (3A) provides for a person who holds a registration that was a level 2 registration before the commencement of the Proceeds of Crime (Supervisory Bodies) (Amendment No. 2) (Jersey) Law 202- to continue to be a registered person as if registered under Article 14 and must, within 6 months after the commencement of that Law provide the information required under Article 13(1)(b)(v) to the supervisory body exercising functions in respect of that person. New paragraph (3A) also provides that Articles 18(1)(d) and 34(2) do not apply in respect of a registration that was a level 2 registration that occurred prior to the commencement of the Proceeds of Crime (Supervisory Bodies) (Amendment No. 2) (Jersey) Law 202- until the expiry of 6 months after the date of commencement of that Law.

Article 20 amends the Schedule to remove the references to the levels of registration for specified Schedule 2 business which are no longer relevant.

Article 21 gives the name by which this Law may be cited as the Proceeds of Crime (Supervisory Bodies) (Amendment No. 2) (Jersey) Law 202- and provides for it to come into force 7 days after it is registered.



Jersey

DRAFT PROCEEDS OF CRIME (SUPERVISORY BODIES) (AMENDMENT No. 2) (JERSEY) LAW 202-

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Jersey

DRAFT PROCEEDS OF CRIME (SUPERVISORY BODIES) (AMENDMENT No. 2) (JERSEY) LAW 202-

A **LAW** to further amend the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#).

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#) amended

This Law amends the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#).

2 Article 1 (interpretation) amended

In Article 1(1) –

- (a) the definition “level of registration” is deleted;
- (b) in the definition “registered person” there is deleted “or 15”;
- (c) in the definition “specified Schedule 2 business” for “column 3 of” is deleted.

3 Article 4 (meaning of level of registration) deleted

Article 4 is deleted.

4 Article 11 (application for appropriate level of registration and deemed registration) substituted

For Article 11 there is substituted –

“11 Application for registration and deemed registration

- (1) Subject to paragraph (4), a person who intends to carry on a specified Schedule 2 business (an “applicant”) must make an application under Article 13 to the relevant supervisory body to be registered in respect of the specified Schedule 2 business.
- (2) The States may by Regulations amend the descriptions of specified Schedule 2 business described in column 2 of the Table in the Schedule to this Law.
- (3) A person carrying on a regulated business who intends to carry on a specified Schedule 2 business is not required to make an application under paragraph (1) provided that person has previously notified the Commission that he or she intends to carry on that specified Schedule 2 business.
- (4) A notification under paragraph (3) must be in such form as the Commission may determine and must include –
 - (a) the person’s name;
 - (b) the description of the specified Schedule 2 business that the person intends to carry on;
 - (c) the principal address (stating that it is the principal address) and any other address from which the person intends to carry on that business;
 - (d) such other particulars as the Commission may require.
- (5) A notification under paragraph (3) must be accompanied by a fee determined in accordance with Article 21.
- (6) Upon receiving a notification under paragraph (3) from a person, the Commission must give that person written notice that the person is deemed to be registered with or without conditions under Article 17(3), in respect of the specified Schedule 2 business that is the subject of the notification,
- (7) In this Law such registration under paragraph (6) is referred to as “deemed registration” and such a person is referred to as a “deemed registered person”.”.

5 Article 12 (determination of relevant supervisory body) amended

In Article 12, in paragraphs (2)(b) and (3) “or 15” is deleted.

6 Article 13 (application for a level 1 registration) amended

In Article 13, in the Article heading and paragraph (1) “a level 1” is deleted.

7 Article 14 (grant or refusal of application for a level 1 registration) amended

In Article 14 –

- (a) in the Article heading and paragraph (1) “a level 1” is deleted;
- (b) in paragraphs (3) or (5) “for a level 1 registration” is deleted.

8 Article 15 (application for a level 2 registration and grant or grounds for refusal) deleted

Article 15 is deleted.

9 Article 16 (notice of refusal to register) amended

In Article 16(1) “or 15” is deleted.

10 Article 17 (conditions of registration) amended

In Article 17(3) “or 15” is deleted.

11 Article 18 (revocation of registration) amended

In Article 18(1) –

- (a) “or 15” is deleted;
- (b) in sub-paragraph (d) “in the case of a level 1 registration” is deleted;
- (c) for sub-paragraph (e) there is substituted –
 - “(e) if it comes to the attention of the supervisory body after granting registration that an application was not made in accordance with Article 13(1) or that the applicant failed to comply with Article 13(5);”.

12 Article 19 (procedure on refusal or revocation, or new or varied condition) amended

In Article 19(2) “or 15” is deleted.

13 Article 21 (determination of fees and late payment) amended

In Article 21 –

- (a) in paragraph (1) –
 - (i) in sub-paragraph (a) for “11(6)” there is substituted “11(3)”;
 - (ii) in sub-paragraph (b) “or Article 15” is deleted;
- (b) paragraph (3)(a) is deleted.

14 Article 31 (investigations on behalf of a supervisory body) amended

In Article 31(1)(b) for “with or who has had a level 1 registration” there is inserted “who is registered or who, prior to the commencement of the Proceeds of Crime (Supervisory Bodies) (Amendment No. 2) (Jersey) Law 202-, had a level 1 registration”.

15 Article 33A (communication with supervisory body by auditors and approved professionals) amended

In Article 33A(3)(a) “a Level 1” is deleted.

16 Article 34 (supply of information) amended

In Article 34 –

- (a) in paragraph (1)(a) “or 15” is deleted;
- (b) in paragraph (2) for “Subject to paragraph (12), where a person has a level 1 registration, that person” there is substituted “A person who is registered”;
- (c) in paragraph (3), for “11(6)” there is substituted “11(3).”

17 Article 39 (co-operation with relevant overseas supervisory authority) amended

In Article 39(1)(a) “, 15” is deleted.

18 Article 41 (legal proceedings) amended

In Article 41(2)(b) for “11(6)” there is substituted “11(3)”.

19 Article 43 (transitional provisions) amended

In Article 43, after paragraph (3) there is inserted –

“(3A) Despite anything in this Law –

- (a) a person who holds a registration that was a level 2 registration before the commencement of the Proceeds of Crime (Supervisory Bodies) (Amendment No. 2) (Jersey) Law 202- continues to be a registered person as if registered under Article 14 and must, within 6 months after the commencement of that Law, provide the information required under Article 13(1)(b)(v) to the supervisory body exercising functions in respect of that person;
- (b) Articles 18(1)(d) and 34(2) do not apply in respect of a registration that was a level 2 registration that occurred prior to the commencement of the Proceeds of Crime (Supervisory Bodies) (Amendment No. 2) (Jersey) Law 202- until the expiry of 6 months after the date of commencement of that Law.”.

20 Schedule (level of registration for specified schedule 2 business) amended

In the Schedule –

- (a) for the Article reference “Article 11(3)” before the Schedule subheading there is substituted “(Article 1)”;

- (b) for the Schedule subheading there is substituted “**SPECIFIED SCHEDULE 2 BUSINESSES**”;
- (c) column 2 (level of registration) of the table is deleted.

21 Citation and commencement

This Law may be cited as the Proceeds of Crime (Supervisory Bodies) (Amendment No. 2) (Jersey) Law 202- and comes into force 7 days after it is registered.