



**CONSULTATION PAPER: 25 OCTOBER 2022**  
**BENEFICIAL OWNERSHIP: LEGAL PERSONS**  
**INCREASED ACCESS BY SUPERVISED BUSINESSES TO BENEFICIAL OWNERSHIP**  
**INFORMATION HELD BY THE GUERNSEY REGISTRY**

**About this consultation**

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This consultation paper is seeking views from businesses supervised by the Guernsey Financial Services Commission (“GFSC”) and the Alderney Gambling Control Commission (“AGCC”), and subject to the AML/CFT requirements of, respectively, Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (“Proceeds of Crime Law”) and the Alderney eGambling Ordinance, 2009 (“eGambling Ordinance”), on proposed changes to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (“the Beneficial Ownership Law”) so as to allow increased access to information held by the Guernsey Registry. It is issued by the States of Guernsey Policy and Resources Committee (the “Committee”).<sup>1</sup>

The proposed changes will seek to meet a commitment made jointly by the Crown Dependencies in 2019 to the UK on increased access to information as part of the increased global drive on further transparency of beneficial ownership of legal persons. This consultation paper seeks views on the way in which the commitment is proposed to be met in relation to those businesses subject to the Bailiwick’s AML/CFT obligations.

**How to submit comments to the consultation**

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If you have any comments you wish to submit to this consultation, these can be made by emailing a response to [policyandresources@gov.gg](mailto:policyandresources@gov.gg) by the close of business on 17 November 2022.

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<sup>1</sup> Changes to the Beneficial Ownership of Legal Persons (Alderney) Law, 2017 will be considered under a separate workstream. Legal persons are not formed in Sark and, therefore, there is no need for a similar framework to be established in that Island.

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**Background**

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*Legal Persons and the Beneficial Ownership Law*

1. Legal persons incorporated in the island of Guernsey can be structured as companies, foundations, limited partnerships or limited liability partnerships. The coming into force of the Beneficial Ownership Law in 2017 required resident agents of these legal persons to provide beneficial ownership information to the Guernsey Registry. The information is provided electronically by resident agents and held and maintained on a secure register administered by the Registry.
2. Representatives of the Registry, the Financial intelligence Unit, law enforcement and the Guernsey Financial Services Commission can access the register directly from secure terminals in the Registry and the Financial Intelligence Unit. In addition, other AML/CFT authorities in Guernsey and elsewhere can be provided with information from the register on a case by case basis by approaching the Registry with specific and justifiable reasons for receiving the information. Businesses and the public do not have access to the register and do not have the right to be provided with the information.

*The International Context and the Commitment*

3. Increasing the transparency of beneficial ownership information of legal persons has been an increasing concern internationally for more than a decade in light of the opacity, particularly layers of ownership, that legal structures can provide. International expectations on transparency continue to develop.
4. This concern can be noted in the establishment by the United Kingdom (“UK”) in 2016 of a publicly accessible register of beneficial owners of legal persons and in the introduction of requirements in the European Union (“EU”). While Member States are at different points in their journey to compliance with EU requirements it is notable that the EU has legislated twice in relation to transparency via the establishment and maintenance of a central register, first in 2015 by the fourth anti-money laundering directive (the so called 4AMLD) to provide for central registers with access to information by authorities and some stakeholders and again in 2018 (the so called 5AMLD) so as to provide access to registered information by the public and an electronically linked framework of registers across the EU.
5. More recently, the UK has enacted the Economic Crime (Transparency and Enforcement) Act 2022. This is relevant to Guernsey as all overseas entities, i.e. legal persons outside the UK which own real property in the UK, will (via an authorised person) by 1 February 2023 have to register with Companies House and provide information about their beneficial owners, which will be publicly accessible. A

relatively substantial number of Guernsey legal persons are affected by this requirement and their beneficial ownership will therefore become publicly accessible in the UK.

6. Further, the establishment of central beneficial ownership registers, with substantial access to information, is becoming more widespread. By way of illustration, Bermuda, the BVI and the Cayman Islands have commitments to establish registers of beneficial ownership information of legal persons for which there is public access to that information. In addition, the UK Government has enacted legislation which requires all of the Overseas Territories to have established public registers by the end of 2023.
7. In June 2019 the Crown Dependencies jointly published a commitment (“the Commitment”), including an action plan, on beneficial ownership, which is available here: <https://www.gov.gg/CHttpHandler.ashx?id=119715&p=0>
8. The action plan contains three steps: (1) interconnection with the EU (which was a commitment made in part as a response to the EU Code of Conduct work on tax cooperation on third countries; (2) providing access to obliged entities for due diligence purposes; and (3) consideration of wider access based on EU and global standards. The aim of this consultation paper is to propose a framework for meeting step two; reference is made to steps one and three only for the purposes of context.
9. With regard to step one, the action plan specifies that the Islands (i.e. the Crown Dependencies) will work collaboratively with the EU on the interconnection of the Islands’ existing central registers of beneficial ownership of companies (i.e. all legal persons in practice) with the registers in the EU. Therefore, the Islands actively sought a relationship with the European Commission. The EU project fell substantially behind schedule, and it remains some way from completion. In addition, legal issues were identified by the EU which prevent the interconnection by the EU framework with the registers in the Islands.
10. In respect of step three, the action plan specifies that the EU was due to publish an Implementation Review of 5AMLD in January 2022 and that, within twelve months of that publication, the Islands bring each bring forward to their own parliament legislative proposals to establish public access to beneficial ownership data of companies held on the Islands’ registers, in line with the principles of 5AMLD. However it became clear at an early stage that publication of the Implementation Review had fallen substantially behind schedule, and it is not clear at this juncture whether any Review report will be published.
11. The Commitment advises that the Islands will be informed by global best practice, including progress in EU Member States to introduce processes to verify, vet and regulate trust and company service providers (“TCSPs”) and the submission of information. The Committee notes that, as part of its review of Recommendation 24 (which addresses transparency of legal persons), the Financial Action Task Force (“FATF”) recently considered whether or not publicly accessible registers should be a requirement in meeting the Recommendation. In this regard, the revised

Recommendation indicates that it is a requirement to consider such an approach while not creating a requirement for public access. With reference to the regulation of TCSPs within the EU, there has been relatively little progress.

12. The remaining part of the action plan, step two, is for each Island to enable access by obliged entities to its beneficial ownership register for customer due diligence purposes as soon as reasonably practicable following the interconnection with the EU beneficial ownership register framework and, in any event by the end of 2022. As indicated above, this is the theme of this consultation paper. "Obliged entities" is an expression which is widely used internationally and is one of several expressions used to refer to persons subject to AML/CFT requirements. In the Bailiwick context these are businesses supervised by the GFSC or the AGCC and subject to Schedule 3 to the Proceeds of Crime Law or the eGambling Ordinance as the case may be. The Committee emphasises that obliged entities means those businesses (including individuals) authorised, registered or licensed by the two supervisory authorities in the Bailiwick rather than the obliged entities of all jurisdictions. For the purposes of the proposals below the concept of "Bailiwick obliged entities" will be used.
13. Since the Commitment the Committee and its officers have liaised with their counterparts in the other Islands so as to develop a way forward which is as consistent as possible. The proposals in this paper reflect this liaison.

### **Access to Information by Bailiwick Obligated Entities**

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14. The guiding approach of the action plan is for the Islands to be in line with the principles of 5AMLD. Noting that the UK was in the EU when the directive framework was being introduced, that its legislation is in line with that of the EU, and that Guernsey's legislation is based on that in the UK, bringing the Beneficial Ownership Law into line with that of the EU is not a significant hurdle. The Bailiwick already meets a substantial part of the EU directive requirements in relation to central registration.

#### *Accessible Information*

15. The EU directive requires the following specific data to be made available on beneficial owners: name; month and year of birth; jurisdiction of residence; nationality; and the nature and extent of the beneficial interest held. The directive allows for additional information to be provided but the Committee considers that the specific data required by the directive is proportionate and sufficient for the purposes of Bailiwick obliged entities. (This specific data mirrors the data currently required to be provided to the Registry, except that the Registry must also be provided with date of birth; it is proposed that this detail will be withheld). A similar approach will apply to the data required for the limited number of corporate beneficial owners on the register (i.e. States trading companies, companies listed on recognised stock exchanges and legal persons already on the register). For them, the data will comprise the following: name; date of incorporation; and place of incorporation.

16. The directive allows for exemptions to access in exceptional circumstances. These are where access would expose the beneficial owner to disproportionate risk, risk of fraud, kidnapping, blackmail, extortion, harassment, violence or intimidation, or where the beneficial owner is a minor or legally incapable. However, the directive requires exemptions to be on a case-by-case basis and that any exemption granted must be upon a detailed evaluation of the exceptional nature of the circumstances. Rights to an administrative review of the exemption decision and to an effective judicial remedy must be guaranteed. Notwithstanding this, the exemptions do not apply to credit institutions and financial institutions when seeking information for customer due diligence purposes.
17. In preparing the necessary regulations, the Committee would consider whether it is necessary to provide a procedure for individuals (natural persons) to request an exemption from disclosure to Bailiwick obliged entities (other than credit institutions and financial institutions) if they satisfy certain, narrow criteria based on the directive.
18. Further, it is proposed that information on minors (individuals who are under eighteen years of age) who are beneficial owners will only be provided to Bailiwick obliged entities who can establish that this is justified in the public interest. This would replicate the position in Ireland for obliged entities (the Irish framework also gives members of the public the ability to access the information on public interest grounds).

#### *Accessing Information*

19. So as to seek to ensure the most easily manageable transition from the current position to wider access, at this stage it is not proposed that Bailiwick obliged entities will have digital access to the beneficial ownership register. The Committee proposes that a notification will be made by a Bailiwick obliged entity to the Registry by email. In order to meet the requirements of 5AMLD, this will be a notification and not an application.
20. In order to prevent unauthorised access to beneficial ownership data, security measures should be established. These are outlined below.
21. The Registry will establish an appropriately secure electronic means for its receipt of a notification. Moreover, it is proposed that only specific designated persons acting on behalf of a Bailiwick obliged entity should be able to make a notification. The Committee would welcome feedback on the appropriateness and practicality of each Bailiwick obliged entity being able to appoint a single designated person. In addition, the Committee would welcome feedback as to whether the designated person should have to meet any criteria for designation, for example, whether they should occupy a particular position or role.

22. The Registry might need to verify that a notification has been made by a designated person or by a Bailiwick obliged entity. However, the Registry will have no responsibility to vet a notification (except when any exemption might apply). The Registry will ensure that the form has been fully completed before obtaining the requisite information from the register.
23. Notifications will be made by using a standard form issued by the Registry. Based on the Commitment, the notification will confirm that the Bailiwick obliged entity requires the information for a lawful reason, namely for the purposes of customer due diligence (including whether for customer take-on or ongoing due diligence purposes). This requirement for a notification to be made only where there is a lawful reason will be an important feature of the legislation. As part of this, the Committee envisages that it will be necessary to clearly define terms such as “customer” and “potential customer” and to be able to identify when a person becomes a potential customer for the purposes of the lawful reason.
24. The Committee envisages that a designated person within the obliged entity will both make the notification to the Registry and sign the form.
25. It is proposed that each notification would apply in relation to a single, specific legal person (i.e. a notification would cover no more than one Guernsey legal person). This will also allow easier categorisation of notifications by the Registry and easier interrogation of the pattern of notifications for risk assessment purposes. A notification may request all or some of the information which might be disclosed pertaining to a legal person.
26. As there will be a lawful purpose attached to providing a notification and security measures which attach to the access, provision and use of the beneficial ownership information, Bailiwick obliged entities should legally be required to ensure that only persons who need to do so access to the information. The Committee would welcome input on who within a Bailiwick obliged entity should justifiably have access to the information and what safeguards should be in place, both in general and where the obliged entity is a branch of a business outside the Bailiwick.
27. The directive allows for a fee to be paid to a registry for access to information. This must not exceed the administrative costs of making the information available, although this includes the costs of maintenance and development of the register. In practice, this could allow for very significant fees to be levied but, bearing in mind that an overarching policy in the Commitment is to facilitate better access to information, the Registry has confirmed to the Committee that a fee of £125 for each notification would be reasonable. Where exemptions might apply e.g. (when a Bailiwick obliged entity is seeking to justify access to beneficial ownership information on a minor, which will require review by the Registry and a decision on the appropriateness of the justification), a significantly higher fee will be charged. The Registry will commence its process to obtain beneficial ownership information only after payment has been received.

28. The Registry will provide information in response to the notification by encrypted email.
29. The directive requires that there must be timely access to information. In light of this, the Registry will be required by legislation to provide a response to a notification by a Bailiwick obliged entity by the end of the business day following the business day on which both a complete notification and payment have been received. Where an exemption might be applicable, this deadline will not apply.

#### *Discrepancies*

30. The directive requires that discrepancies in the data held by obliged entities compared with information held in the central register must be reported. Guernsey will need to reflect this provision in legislation, and a standard form (a Discrepancy Notice) will be issued. The aim of the Notice will be to focus on discrepancies rather than typographical differences.

#### *Use of Information*

31. The directive provides that obliged entities must not rely exclusively on beneficial ownership information in the central register. This is to prevent situations where such entities reduce their customer due diligence on the basis of reliance on a government source of information. Hence, it is proposed to incorporate language in legislation on this point and confirm that Registry information must not be relied on exclusively and that it does not detract in any way from the risk based requirements in Schedule 3 to the Proceeds of Crime Law or the eGambling Ordinance.

#### *Further Data Protection Safeguards*

32. The Committee will consider if any other safeguards need to be introduced in the framework proposed above to minimise risks to beneficial owners in relation to the disclosure of personal data relating to them. This might include additional restrictions or duties relating to access to the data, or further disclosure, use and retention of that data by the obliged entities to which that data is disclosed. This is to ensure compliance with the Data Protection (Bailiwick of Guernsey) Law, 2017 as well as to ensure that the personal data of these individuals are protected in a proportionate and appropriate manner.

#### **Legislation**

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33. The Committee intends to continue to work with its counterparts in the other Islands on developing as consistent an approach as possible between the Islands on the way forward, including in relation to the timing of legislation. In this connection, it is envisaged that the proposals in this consultation paper will be achieved by regulations, either under the Beneficial Ownership Law or elsewhere.

34. The process of notification and access described above is important in allowing processes and forms to be developed easily without the implications of revisions to information technology ("IT") systems - should amendment be needed. In turn this will allow a smooth transition to an IT based system. A date will be set for this in due course.
35. Inevitably, Bailiwick obliged entities, and their customers, will be interested in the timing of further revisions to allow for the additional access to beneficial ownership information to the public specified in step 3 of the Commitment. The Committee will engage further with industry on step 3 following the implementation of access for Bailiwick obliged entities. The Committee will take into account international developments, as well as developments in the EU, when considering its approach to step 3.

### **Concluding Remarks**

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36. The Committee is of the view that the proposed changes provide a pragmatic and proportionate approach to meeting the Commitment and looks forward to receiving comments from stakeholders on the proposed changes set out in this consultation paper.