



**CONSULTATION IN RELATION TO TRANSPARENCY AND BENEFICIAL OWNERSHIP
OF LEGAL ARRANGEMENTS
23 JANUARY 2023**

1. Introduction

- 1.1 This consultation document makes proposals to address Recommendation 25 of the Recommendations issued by the Financial Action Task Force (FATF); this Recommendation covers transparency and beneficial ownership of legal arrangements.
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- 1.2 Although the language of the measures needed under Recommendation 25 only refers to express trusts, equivalent measures are required for other forms of legal arrangement with a similar structure or function. This consultation therefore makes proposals for all legal arrangements that may be created under the law of the Bailiwick, namely express trusts, limited partnerships without legal personality (LPs)¹ and general partnerships.
- 1.3 This document follows a consultation in 2020 which was issued to a number of associations. That consultation sought input in particular in relation to the treatment of trusts subject to the law of the Bailiwick but which have no other nexus or link to the jurisdiction. The current document takes account of the response to that consultation and also legislation enacted in other international finance centres following their most recent evaluations of compliance with the FATF standards. The legislation of those two jurisdictions very strongly point to how the Bailiwick should look to meet FATF Recommendation 25.
- 1.4 In order to ensure clarity of what is proposed, draft legislation is attached as two appendices to this document. Please note that these are policy drafts only, and the final versions may be subject to some minor changes to the wording or formatting. This legislation comprises drafts of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023 and the Criminal Justice (Proceeds of Crime) (Trustees and Partners) (Amendment) Regulations, 2023. The Regulations deal with trustees and partners that are acting as such under a fiduciary licence from the Guernsey Financial Services Commission (GFSC) and therefore comprise specified businesses (i.e. businesses subject to AML/CFT requirements under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the Proceeds of Crime Law). The Ordinance deals with situations where a licensed fiduciary is not involved as a trustee or partner.
- 1.5 The draft legislation covers the following points required by Recommendation 25:

¹ Limited partnerships with legal personality are legal persons rather than legal arrangements, so are not covered by Recommendation 25.

1. Obtaining and maintaining accurate and up to date information on the identity of the persons linked to a trust, LP or general partnership subject to Bailiwick law (for example, settlors, beneficiaries or partners) and of any other natural persons exercising ultimate effective control over the trust, LP or general partnership;
 2. Obtaining and maintaining accurate and up to date information on parties providing services to the trust, LP or general partnership, for example investment advisers or managers, accountants and tax advisers (also see the section on guidance below in relation to this point);
 3. Disclosure of status as a trustee or partner to financial institutions and others;
 4. Provision of information to competent authorities and financial institutions or other businesses that are subject to the FATF Recommendations.
- 1.6 The proposals for both the Regulations and the Ordinance are made on the basis that in most respects, they make explicit what is already implicit in the current legal framework (see below) or is already happening as a matter of good practice. However, compliance based on implicit obligations or practice will not be sufficient to meet Recommendation 25 because assessment of the FATF standards looks for explicit and specific language. Hence, the revisions to legislation of other financial centres used as a model for the draft legislation in the appendices.
- 1.7 In addition, while the FATF is considering amendments to Recommendation 25, these amendments have not been decided and will not in any case come into effect until the next round of international AML/CFT evaluations; the MoneyVal evaluation of the Bailiwick of Guernsey in 2024 will evaluate compliance with Recommendation as it is currently written and interpreted and will not take account of any revisions to it.

2. Current position

- 2.1 Specified businesses that provide trustee or partnership services are subject to the requirements in Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Schedule 3). In addition, there are some obligations imposed by the legislation governing the creation of trusts and partnerships, namely the Trusts (Guernsey) Law, 2007 (the Trusts Law), the Limited Partnerships (Guernsey) Law, 1995 (the LP Law), and the Partnership (Guernsey) Law, 1995 (the Partnership Law). While the vast majority of trusts in the Bailiwick are Guernsey trusts that are subject to the Trusts Law, there is also a small number established by statute or customary law in the other islands in the Bailiwick.
- 2.2 Under Schedule 3, regulated trustees and partners are already explicitly obliged to obtain and maintain the information required at point 1.5.1 above. Some of the information required at point 1.5.2 will be implicitly captured by the general record keeping obligations in Schedule 3, but this will not apply in all cases and in any event there is no specific obligation to that effect. Unregulated trustees and partners are

currently subject to some record keeping or other information-related obligations under section 25 of the Trusts Law, section 15 of the LP Law and section 27 of the Partnership Law as the case may be. Some of these obligations may be said implicitly to cover the information required at points 1.5.1 and 1.5.2. However, these obligations vary in scope as between one another (with the requirements in the LP Law being the most detailed), and none is explicitly in line with points 1.5.1 and 1.5.2. In addition, the Bailiwick trusts that are not within the scope of the Trusts Law are not covered by any express obligations in this area unless they have a regulated official who is subject to Schedule 3.

- 2.3 Point 1.5.3 is not currently covered in Schedule 3. It is implicitly addressed by section 42 of the Trusts Law, which provides that a trustee will be personally liable to a third party in respect of a transaction or matter affecting the trust if he or she does not disclose their status to the third party and the third party is unaware of it. However, while this is a powerful incentive for trustees to disclose their status and it is likely therefore that in practice, the vast majority of both regulated and unregulated trustees routinely make such disclosures, it falls short of a legal requirement to do so. For LPs, general partnerships and non-Guernsey trusts, there is no legal requirement for their officials to disclose the capacity in which they are acting (although in practice this will be obvious to third parties in most cases).
- 2.4 Point 1.5.4 addresses the requirement in Recommendation 25 to ensure that the officers of legal arrangements are not prevented from providing information about the legal arrangement to competent authorities. and to financial institutions or other obliged entities (i.e. parties who are subject to AML/CFT obligations) in respect of the assets or beneficial ownership of a legal arrangement to be held or managed under the terms of a business relationship. The competent authorities already have information gathering powers that are sufficient to address this requirement, but these powers are located in various different parts of the legal framework and are not consistently worded, and there is merit in dealing with the requirements of Recommendation 25 in one place. As to the provision of information to financial institutions and other obliged entities, at present this is dealt with at a contractual level, but there is currently no express provision to address this in the legal framework.

3. The Regulations

- 3.1 It is proposed that the Regulations would amend Schedule 3 to the Proceeds of Crime Law.
- 3.2 The draft sets out some additional provisions applicable to a person who is subject to Schedule 3 and acting as a trustee or partner in that regard of any express trust or any partnership governed under Bailiwick law. In summary, they are as follows:
1. An obligation to:
 - hold basic information on other regulated agents of, and service providers to, the trust or partnership as the case may be, including investment advisory or

management services, managerial services, accountancy services, tax advisory services, legal services, trust services, partnership services or corporate services This information must be kept accurate, up to date and updated on a timely basis;

- disclose status as trustee/partner when transacting with a financial services business or other business subject to AML/CFT standards;

2. A power to disclose the information mentioned above to third parties; this will leave no doubt in the minds of assessors that relevant authorities and obliged entities have timely access to information about legal arrangements.

4. The Ordinance

4.1 In order to address scenarios where a licensed fiduciary is not involved as a trustee or partner, it is proposed that the attached draft Ordinance will amend the Proceeds of Crime Law to bring “unregulated officers” of trusts and partnerships within its scope. An unregulated officer is defined as a person who does not have a fiduciary licence and who acts as a trustee of a "relevant trust" or the partner of a "relevant partnership". A relevant trust is defined as an express trust in the Bailiwick or elsewhere that is created under or subject to the law of any part of the Bailiwick. A relevant partnership is defined as an LP under the LP Law or a partnership in the Bailiwick or elsewhere that is subject to the Partnership Law. However, with regard to LPs, the definition of unregulated officer excludes limited partners. This is because limited partners do not have any role in the running or administration of LPs.

4.2 It is envisaged that the substantive provisions applicable to unregulated officers will be set out in a proposed new Schedule to the Proceeds of Crime Law. As with the provisions in the regulations, these provisions are in line with the provisions in the Isle of Man and Cayman and in summary are as follows:

1. An obligation to:

- keep up to date information on the identity of settlors, co-trustees, protectors, beneficiaries and any other controllers/partners and any other controllers;
- hold basic information on other regulated agents of, and service providers to, the trust or partnership as the case may be, including investment advisory or management services, managerial services, accountancy services, tax advisory services, legal services, trust services, partnership services or corporate services This information must be kept accurate, up to date and updated on a timely basis;
- keep records for at least 5 years;
- disclose status as trustee/partner when transacting with a financial services business or other business subject to AML/CFT standards;

2. A power to disclose the information mentioned above to third parties;
 3. Criminal offences for breach of obligations mentioned above;
- 4.3 As can be seen, the effect of the proposals in the Ordinance is the same as the regulations, the key difference being the inclusion in the Ordinance of provisions relating to settlors etc. and criminal penalties and record keeping obligations. This is because, as explained above, Schedule 3 already includes provisions about settlors etc. and it also contains generally applicable criminal penalties and record keeping obligations which will apply to the new provisions in the regulations. Therefore, it is not necessary to include these aspects in the regulations.

5. Guidance

- 5.1 For regulated trustees and partners, the existing general power of the GFSC to issue guidance in relation to the obligations in Schedule 3 will apply in respect of the new provisions introduced by the regulations. For unregulated officers, the Ordinance provides for the issue of guidance by the Policy & Resources Committee. It is envisaged that the Committee would work closely with the GFSC and sector representatives on the issuing of any necessary guidance. By way of illustration (see sub paragraph 2 of paragraph 1.5 on page 2), guidance could usefully provide further detail as to which parties in the Guernsey context could be considered to be “relevant parties” for the purposes of the FATF requirement on obtaining and maintaining accurate and up to date information on parties providing services to the trust, LP or general partnership; the Committee would welcome input at this stage on this point.

6. Consultation

- 6.1 If you would like to make any comments on the proposals above, would you kindly email policyandresources@gov.gg by the close of business on 28 February 2023.

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023

THE STATES, in pursuance of their Resolutions of the, 2023² and in exercise of the powers conferred on them by sections 53A and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999³, and all other powers enabling them in that behalf, hereby order:-

Amendment of the Proceeds of Crime Law.

1. (1) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 is amended as follows.

(2) After section 49AA, insert –

"Unregulated officers

Unregulated officers.

49AB. (1) Schedule 6 (Unregulated officers) has effect.

(2) Sections 49AA (4) and (5) have effect in relation to Schedule 6 and unregulated officers as if references in those subsections to Schedules 3, 4 and 5 and financial services businesses were references respectively to Schedule 6 and unregulated officers.

(3) The Committee may issue guidance for the purposes of Schedule 6.

(4) Sections 49AA (7) and (8) have effect in relation to guidance issued under subsection (3) as if references in those subsections to rules, instructions or guidance made by the Commission were references to guidance issued by the Committee. "

² Article * of Billet d'État No. * of 2023.

³ Ordres en Conseil Vol. XXXIX, p. 137; this enactment has been amended.

(2) In section 51 (1), in the appropriate places, insert the following definitions –

(a) "**relevant partnership**" means

(a) a limited partnership within the meaning of, and subject to the provisions of, the Limited Partnerships (Guernsey) Law, 1995 that does not have legal personality, or

(b) a partnership established in the Bailiwick or elsewhere within the meaning of, and subject to the provisions of, the Partnership (Guernsey) Law, 1995,"

(b) "**relevant trust**" means an express trust established in the Bailiwick or elsewhere that is governed by or is otherwise subject to the law of any part of the Bailiwick, and

(c) "**unregulated officer**" means an individual who is resident, or an entity that is incorporated, in the Bailiwick or elsewhere who -

(a) is a trustee of a relevant trust or a partner of a relevant partnership (other than a limited partner in the case of a limited partnership), and

(b) in that capacity, neither holds, nor is required to hold, a fiduciary licence within the meaning of Schedule 1,".

(3) In section 52, in the appropriate places, insert "**relevant partnership**" (section 51(1)", "**relevant trust**" (section 51(1)", and "**unregulated officer**" (section 51(1)," .

(4) After Schedule 5, insert Schedule 6 set out in the Schedule.

Extent.

2. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

3. This Ordinance may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2023.

Commencement.

4. This Ordinance shall come into force on the day appointed for this purpose by regulations made by the Committee; and different dates may be appointed for different provisions and for different purposes.

SCHEDULE

Section 1(2)

"SCHEDULE 6

Section 49AB(1)

UNREGULATED OFFICERS

Application.

1. This Schedule applies to all unregulated officers.

Information duties.

2. (1) An unregulated officer shall obtain and hold adequate, accurate and current information ("**the required information**") within the meaning of subparagraphs (2) to (4).

(2) In the case of a relevant trust, the required information is information on the identity of -

(a) the settlor of the trust,

(b) any other trustee of the trust,

(c) the protector (if any) of the trust,

(d) subject to subparagraph (4), the beneficiaries of the trust, and

(e) any other natural person exercising ultimate effective control over the trust.

(3) In the case of a relevant partnership, the required information is information on the identify of -

(a) any other general partner of the partnership,

(b) where the relevant partnership is a limited partnership, and subject to subparagraph (4), the limited partners of the partnership, and

(c) any other natural person exercising ultimate effective control over the partnership.

(4) In respect of a class of beneficiaries or limited partners of such a size that it is not reasonably practicable to identify each member of the class, the information that should be obtained and held is information sufficient to identify and describe the class of individuals who are beneficiaries or limited partners as the case may be, with sufficient accuracy to make it possible to ascertain that an individual is or is not a member of that class.

(5) An unregulated officer must hold information on the identity of any regulated agents and service providers to the relevant trust or relevant partnership as the case may be.

(6) An unregulated officer must ensure so far as is possible that all information required to be held by him or her under this paragraph is -

- (a) accurate and up to date, and
- (b) updated on a timely basis.

Record keeping etc.

3. (1) Records of the information required to be obtained and held under paragraph 2 -

(a) must be maintained for the period specified within the meaning of subparagraph (2) ("**the specified period**"), and

(b) may be kept in any manner or form, provided that they are readily retrievable.

(2) The specified period is -

(a) in the case of the required information, a period of at least five years starting from the date of the dissolution or termination of the relevant trust or relevant partnership in question, as the case may be,

(b) in the case of information within paragraph 2(5), a period of at least

five years starting from the date-

- i. where the regulated agent or service provider has established a business relationship in respect of the trust or partnership, as the case may be, that relationship ceased, or
- ii. where the regulated agent or service provider has carried out an occasional transaction in respect of the trust or partnership, the transaction was completed.

(2) Without prejudice to subparagraphs (1) and (2), where an unregulated officer is requested to retain or provide any information obtained and held under paragraph 2 by any of the relevant authorities in the exercise of their functions (including, for the avoidance of doubt, assessing the risks to the Bailiwick from money laundering, terrorist financing, breach of international sanctions measures or any other form of economic or financial crime) the unregulated officer should retain that information for as long as requested by the relevant authority in question.

Disclosure of status.

4. (1) Where -
 - (a) an unregulated officer -
 - i. enters into a business relationship with, or
 - ii. carries out or is otherwise involved in an occasional transaction with,
a financial services business or a relevant business, and
 - (b) the unregulated officer is carrying out the activity at subparagraph (a) in his or her capacity as a trustee of a relevant trust or a partner of a relevant partnership, as the case may be,

the unregulated officer must disclose the matters in subparagraph (b) to the financial services business or relevant business in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable.

Power to disclose information

5. (1) An unregulated officer of a relevant trust or a relevant partnership may disclose
- (c) to a relevant authority any information relating to the trust or partnership, as the case may be, and
 - (d) to a financial services business or a relevant business in the circumstances described in paragraph 3(1)(a), any information relating to
 - i. the beneficial ownership of the trust or partnership, as the case may be, and
 - ii. any assets of the trust or partnership, as the case may be, that are to be held or managed under the terms of a business relationship or occasional transaction in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable.

Offences as to false and misleading information.

6. If a person -
- (a) in purported compliance with a requirement imposed by this Schedule, or
 - (b) otherwise than as mentioned in subparagraph (a) but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by the person would or might be relied upon by, as the case may be, a relevant authority, a financial services business or a relevant business,

does any of the following –

- i. makes a statement which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- ii. dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- iii. produces or furnishes or causes or permits to be produced or furnished any information or document which the person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- iv. dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

the person is guilty of an offence and liable on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both or on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale or both.

Offences: general.

7. (1) Any person who contravenes any requirement of this Schedule shall be guilty of an offence and liable -

- (a) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both,

(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the Uniform Scale or both.

(2) In determining whether a person has contravened a requirement of this Schedule, a court may take account of any guidance issued by the Committee that the court considers relevant to the requirement concerned.

(3) It is a defence for a person charged with an offence under this paragraph to prove that he or she has taken all reasonable precautions to avoid the commission of the offence.

Interpretation.

8. (1) In this Schedule, unless the context requires otherwise, expressions defined in this Law have those meanings, and –

"**regulated agent**": see Schedule 3,

"**relevant authorities**": see Schedule 3,

"**the required information**": see paragraph 2,

"**service provider**": see Schedule 3, and

"**specified period** ": see paragraph 3.

GUERNSEY STATUTORY INSTRUMENT
2023 No.

The Criminal Justice (Proceeds of Crime)

**(Bailiwick of Guernsey) (Trustees and Partners) (Amendment) Regulations,
2023**

Made , 2023

Coming into operation , 2023

Laid before the States

THE POLICY & RESOURCES COMMITTEE, in exercise of the powers conferred on it by sections 49AA and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999⁴ ("the Law") and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Amendment of the Law.

1. (1) Schedule 3 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 is amended as follows.

(2) In the arrangement, in the appropriate place, insert –

" PART IIIA
PROVISIONS APPLICABLE TO TRUSTEES AND PARTNERS
15A. Application.
15B. Regulated agents and service providers.
15C. Disclosure of status.
15D. Disclosure of information."

(3) After paragraph 15, insert –

⁴ Ordres en Conseil Vol. XXXIX, p. 137; this enactment has been amended.

"

PART IIIA

PROVISIONS APPLICABLE TO TRUSTEES AND PARTNERS

Application.

15A. This Part applies to any specified business that

- (a) carries out regulated activities within the meaning of Schedule 1, and,
- (b) in the course of those activities, acts as a trustee of a relevant trust or a partner of a relevant partnership.

Regulated agents and service providers.

15B. (1) A specified business to whom this Part applies must hold information on the identity of any regulated agents and service providers to the relevant trust or relevant partnership as the case may be

(2) A specified business that holds information within subparagraph (1) must ensure so far as is possible that the information is

- (a) accurate and up to date and
- (b) updated on a timely basis.

Disclosure of status.

15C. (1) Where

- (a) a specified business to whom this Part applies -
 - iii. enters into a business relationship with, or
 - iv. carries out or is otherwise involved in an occasional transaction with,
a financial services business or a relevant business, and
- (e) the specified business is carrying out the activity at subparagraph (a) in its capacity as a trustee of a relevant trust or a partner of a relevant partnership, as the case may be,

the specified business must disclose the matters in subparagraph (b) to the financial services

business or relevant business in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable.

Disclosure of information

15D. (1) A specified business within paragraph 15A may disclose upon request

(a) to any of the relevant authorities any information relating to the trust or partnership, as the case may be, and

(b) to a financial services business or a relevant business in the circumstances described in paragraph 3(1)(a), any information relating to

i. the beneficial ownership of the trust or partnership, as the case may be, and

ii. any assets of the trust or partnership, as the case may be, that are to be held or managed under the terms of a business relationship or occasional transaction in question.

(2) The provisions of this paragraph are without prejudice to any powers or duties of disclosure that may otherwise be applicable."

(4) In paragraph 21, in the appropriate places, insert the following-

" **regulated agent** " means a person who

(a) is acting in relation to or on behalf of a relevant trust or relevant partnership, as the case may be, and

(b) for the purposes of so doing is required to hold, and does hold, a licence from the Commission or a corresponding body in another jurisdiction, "

" **relevant authorities**" means –

- (a) HM Procureur,
- (b) a police officer,
- (c) the Committee,
- (d) the Commission,
- (e) the Alderney Gambling Control Commission,
- (f) the Director of the Economic and Financial Crime Bureau,
- (g) the Head of the Financial Intelligence Unit,
- (h) the Director of the Revenue Service,
- (i) the Registrar of Charities and other Non Profit Organisations,
- (j) the Registrar of Non-Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010,
- (k) the Registrar for the purposes of each of the Beneficial Ownership Laws,
- (l) the Registrar of Companies,
- (m) the Registrar of Limited Liability Partnerships,
- (n) the Registrar of Foundations,
- (o) the Greffier, and

(p) the Register for the purposes of the Companies (Alderney) Law, 1994,

"" **service provider** " means a person, other than a regulated agent, who is providing investment advisory or management services, managerial services, accountancy services, tax advisory services, legal services, trust services, partnership services or corporate services in relation to a relevant trust or relevant partnership, as the case may be,".

Citation.

3. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Trustees and Partners) (Amendment) Regulations, 2023.

Commencement.

4. These Regulations shall come into force on the , 2023.

Dated this day of, 2023

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Deputy P. T. R. Ferbrache
President of the Policy & Resources Committee
For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations introduce some amendments to the provisions in respect of specified businesses under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999. The amendments require specified businesses that act as trustees or partners in the course of their business to hold information on parties that provide services to a trust or partnership, and to disclose to such parties their status as a trustee or partner. There are also amendments governing the provision of information about a trust or partnership to third parties.

These Regulations come into force on the, 2023.