



Bailiwick of Guernsey
Financial Intelligence Unit

Bailiwick of Guernsey Consent Regime Guidance

Financial Intelligence Unit

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This guidance is issued to assist the Bailiwick's financial sector in discharging their legal duties in respect of consent matters and does not constitute legal advice. Anyone who has concerns about any of the matters covered in this guidance should obtain independent legal advice. This guidance may be revoked or amended at any time.

1. Introduction

The Bailiwick of Guernsey Financial Intelligence Unit (“FIU”), acts as the competent authority with the sole responsibility for the receipt, analysis and timely dissemination of Suspicious Activity Reports (“SARs”) filed by Financial Services Businesses and Non-Financial Services Businesses to fulfil obligations set out in Part I of The Disclosure (Bailiwick of Guernsey) Law, 2007, or Sections 12, 15 or 15A of Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.

The FIU also maintains responsibility for addressing any ‘consent’ requests as a result of a SARs being submitted.

2. Purpose of the Guidance Document

This document is intended to provide information as to the approach that the FIU will adopt when an appointed Money Laundering Reporting Officer (“MLRO”) or Nominated Officer (‘NO’) of a reporting institution seeks consent from the FIU in respect of an act that may constitute a money laundering and/or terrorist financing offence according to relevant legislation.

This document intends to outline the consent regime, expected responses, and address some common misinterpretations with regards to the application of consent.

All MLROs must be familiar with the following, in addition to this document when submitting a disclosure to the FIU:

- Part I of The Disclosure (Bailiwick of Guernsey) Law, 2007 (“Disclosure Law”), ‘Disclosure of Information by Financial Services Businesses and by Non-Financial Services Businesses’;
- Part II of the Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law, 1999 (“POCL”), ‘Offences in Connection with the Proceeds of Criminal Conduct’;
- Part III of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (“TACL”), ‘Terrorist Property’;
- Part IV of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (“DTL”), ‘Offences in Connection with the Proceeds of Drug Trafficking’;
- Schedule 3 of the Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey) Law, 1999 (“POCL”) ‘Specified Businesses’
- Chapter 13 of Guernsey Financial Services Commission (“GFSC”) Handbook on Countering Financial Crime and Terrorist Financing, ‘Reporting Suspicion’;
- FIU Guidance to Improve Suspicious Activity Reports;
- FIU Guidance on Requests for Additional Information

3. The Consent Regime

The only legal effect of consent is that it provides a statutory defence to money laundering or terrorist financing offences. The money laundering offences apply when a person **has knowledge or suspicion that any property, in whole or in part directly or indirectly represents the proceeds of criminal conduct, and that person undertakes a particular 'act' which comprises concealing, disguising, converting, transferring, acquiring, using or possessing those proceeds, or entering into an arrangement to assist another to retain or control those proceeds.**

The terrorist financing offences apply when a person **knows or has reasonable cause to suspect that property may be terrorist property or intended for use for the purposes of terrorism and that person solicits, uses, possesses, enters into a money laundering arrangement or makes an insurance payment in relation to that property.**

The Consent Regime is **not a substitute** for reporting entities to discharge their obligations under the legal and regulatory framework.

Reporting entities should take a risk-based approach when considering business relationships, to prevent their products and services being used for the purpose of money laundering or terrorist financing.

The FIU will only grant or withhold consent, when a reporting entity is seeking a statutory defence to an 'act' defined under;

- Sections 38 to 40 of the POCL;
- Sections 57 to 59 of the DTL;
- Sections 8 to 11A of the TACL.

As such letters acceding to a request for consent (sometimes referred to as consent granted letter or granted responses) will instead refer to the terms 'defence to a money laundering offence' or 'defence to a terrorist financing offence'.

However, the FIU will continue to use the term 'no consent' upon refusal.

4. What is the Defence under POCL and TACL?

When a SAR is submitted where there is knowledge, suspicion or reasonable grounds for knowing or suspecting that another person is engaged in money laundering, or that certain property is, or is derived from the proceeds of criminal conduct, you can seek a statutory defence from the FIU to an offence under POCL (or under the DTL in drugs related cases). There is a corresponding defence in relation to terrorist financing and terrorist property under the TACL.

The wording of the statutory defence makes it clear that it only applies to a specific act.

This statutory defence is only available where consent is obtained prior to a person undertaking the relevant act which they anticipate could result in them committing a principle money laundering offence.

A person who has submitted a SAR and has received a 'defence to a money laundering offence' response from the FIU in respect of a particular act, based on the information disclosed at that time, will have acquired a defence to money laundering, or, terrorist financing offence as the case may be, when carrying out that act.

5. When Should I Seek Consent from the FIU?

The purpose of seeking consent is to seek a defence to an 'act' that could constitute an offence under the law.

If a reporting entity is being asked to carry out an act that may comprise any concealment, conversion or transfer of such property or its removal from the Bailiwick, they must seek a defence from the FIU before they undertake that act.

6. What are the consequences if insufficient information is submitted?

If the SAR and/or consent request does not contain sufficient information to demonstrate why suspicion has been raised or to enable the FIU to fully understand the purpose and intended nature of the business relationship or occasional transaction, the FIU may not be able to have sufficient information to provide you with such a defence.

You should include within the consent request the nature of the act such as converting, transferring or removing property that you believe may represent money laundering or the financing of terrorism and the rationale as to why you would wish to carry out the act.

Failure to provide sufficient details will delay the FIU's decision making process.

There is no statutory time limit in which the FIU must respond to a consent request. However, the FIU will aim to respond to the request within 14 working days of the submission.

7. 'No Consent'

The legal effect of a consent request being refused is that if a reporting entity proceeds with the relevant act, they will not have a statutory defence to a charge of money laundering or terrorist financing in relation to that act.

The FIU is entitled to withhold consent for as long as it has grounds to suspect that an act involves funds that represent the proceeds of crime or comprise terrorist property, notwithstanding that there may be a desire to exit the relationship, which is business decision for the reporting entity.

A SAR is a living document and therefore if a reporting entity becomes aware of new information that they believe negates the original suspicion, they should provide that information and the rationale behind it to the FIU as soon as practicable. This will enable the FIU to reconsider whether the original 'No Consent' should be rescinded. .

8. 'Consent granted letter'

Upon receiving a 'granted' response, the corresponding letter issued by the FIU via THEMIS will now refer to the terms 'defence to a money laundering/terrorist financing offence' as applicable under the relevant legislation.

A granted response (and the subsequent defence):

- **Does not** imply FIU approval of the proposed act(s), persons, corporate entities or circumstances contained within the disclosure.
- **Should not** be taken as a statement that the property in question does or does not represent the proceeds of criminal conduct/terrorist property.
- **Does not** provide you with a defence against other criminal offences or any regulatory breaches relating to the proposed act(s).
- **Does not** oblige or mandate you to undertake the proposed act(s).
- **Does not** override the private law rights of any person who may be entitled to the property specified in the disclosure.

A granted response only provides a criminal defence to the money laundering or terrorist financing offences, in relation to the act specified in the request and the information disclosed at the time. Any changes in circumstance thereafter may impact on the validity of the defence.

It should also be noted that such a consent does not release the firm, group or person from their obligation in respect of all future transactions and activity on the account or arising from the relationship, or other regulatory requirements.

The granting of consent does not mean that other regulatory and legal obligations, such as the prevention of corruption, fraud, common reporting standards reporting and regulatory legislation, are discharged and you should therefore consider how you proceed with the client/customer accordingly.

9. Ongoing Obligations

Once you have submitted a SAR to the FIU, it does not release you from your ongoing obligations in respect of all future transactions. You will need to consider what you are going to do next including negating the original suspicion identified and this may require you to seek further information from the client surrounding the suspicion identified, having due regard to the Guernsey Financial Services Commission Handbook. The suspicion may be such that a reporting entity may wish to consider terminating the business relationship, which is a commercial decision for the business. On occasions the reporting entity may agree a joint strategy with the FIU in respect of exiting a relationship. , However, the FIU will not seek to influence a decision to exit by the business.

10. Tipping Off Offences

Under no circumstances must you inform your client or customer that you have submitted a SAR to the FIU, or that you intend to submit a SAR. If you do inform your client as such, you could be committing an offence under the relevant legislation:

- Section 4 of the Disclosure Law;
- Section 41 of the POCL;
- Section 40 of the TACL;
- Section 61 of the DTL.

11. Can I Discuss this Consent Issue or SAR with the Regulator or Revenue Service?

There is no need for you to seek permission from the FIU to discuss a SAR with the Guernsey Financial Services Commission (GFSC), the Alderney Gambling Control Commission (AGCC) or the Revenue Service, as the FIU provides such AML authorities with SAR information under the provisions (gateway) of the Disclosure Law.

12. Contact

The Financial Intelligence Unit can be contacted by telephone 01481 225824 or email FIS@gba.gov.gg.

Guidance issued by the FIU can be found on the website www.guernseyfis.gg.

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13.Appendix: Consent Regime Flow Chart

