

Consent Regime

Frequently Asked Questions (FAQs)

ATTENTION:

This FAQ document is issued by the Financial Intelligence Unit (FIU) to provide clearer understanding on the consent process. It is provided for general information only and does not constitute legal advice or a replacement for such. Independent legal advice should be sought as required and dependent on relevant circumstances. This FAQ document may be revoked or amended at any time.

Assumptions

In issuing these FAQs, an assumption has been made that those directly concerned with its content will be familiar with:

- Part 3 of the Proceeds of Crime (Jersey) Law 1999, as amended (POCJL) - Money Laundering.
- Part 3 of the Terrorism (Jersey) Law 2002, as amended (TJL) - Offences relating to Terrorist Financing.
- The relevant AML/CFT Handbook(s) issued by the JFSC;
- Any relevant guidance issued by the JFSC; and
- Part 5 of the Money Laundering (Jersey) Order 2008 (MLO).

The FAQs refer primarily to consent requests made under POCJL; similar provisions are contained in the TJL.

Frequently Asked Questions

Q1: What Article of the POCJL relates to consent requests?

A1: Article 32 of the POCJL states:

- (3) *Where the person making the disclosure does any act, or deals with the property in any way which apart from this provision would amount to the commission of an offence under Article 30 or 31, the person shall not be guilty of such an offence if the conditions set out in paragraph (4) are fulfilled.*
- (4) *The conditions mentioned in paragraph (3) are that the disclosure is made in good faith and either -*
- (a) *if the disclosure is made before the person does the act in question, the act is done with the consent of the FIU; or*
- (b) *if the disclosure is made after the person does the act in question, it is made on the person's own initiative and as soon as reasonably practicable after the person has done the act in question.*

The FIU wishes to highlight other relevant provisions within the POCJL which are interconnected and should be considered on each occasion when consent is sought, including the following:

- Article 29 - Criminal Property;
- Article 30 - Dealing with criminal property;
- Article 31 - Concealment etc. of criminal property;
- Article 34A - Failure to disclose knowledge or suspicion of money-laundering;
- Article 34D - Failure in a financial institution to report to the FIU or a nominated officer; and the reporting procedures set out in Art 37 POCJL/Art 21 of the Money Laundering (Jersey) Order 2008.

Q2: How should consent requests be communicated to the FIU?

A2: Consent requests should be sent to the FIU via the PoISAR Portal, either as part of an initial SAR submission or as part of a Continuation Report (CR) using the Consent Requests tab. Consent requests should not be made via telephone, email or by letter.

The FIU recognises there may be instances where access to the PoISAR portal for registered Schedule 2 businesses is not possible. In these instances, Schedule 2 users may contact the FIU by emailing fiu.admin@jersey.police.je, or telephoning 612250 to discuss their consent submission. However, this is the exception and should only be utilised when the PoISAR portal is not accessible to Schedule 2 businesses.

Note: Where possible, the FIU will endeavour to respond to consent requests within two working days that have been submitted via the PoISAR portal.

Q3: What response(s) will we receive from the FIU on requesting consent pursuant to Article 32(4) of the POCJL?

A3: The FIU will give the response that it thinks is appropriate in all the circumstances. The most common responses are:-

- Consent Request - Consent Provided
- Consent Request - Consent Not Provided
- Consent Request - Consent Not Provided (Inadequate Information)
- Consent Request - The FIU does not consider this is a consent request under Article 32(4)

Consent Request - Consent Provided

When consent to an act(s) is provided, the FIU will write to the submitter of the consent request (the requester) informing them of its decision.

It is important to note that in granting consent to an act(s), the FIU:-

- does so based on the information available to it at that point in time.
- does not oblige the requester or disclosing institution to undertake the proposed action(s) for which consent has been provided.
- reminds the requester that the obligations to report are ongoing.
- reminds the requester of all of its other ongoing regulatory obligations.
- does not provide the MLRO or the disclosing institution with a defence against other criminal offences pertaining to the proposed act(s) – whilst the provision of consent(s) may provide a defence against the commission of an offence under Article 30 or 31 POCJL, there are other criminal offences which may be committed including:
 - Article 35 POCJL – Tipping off;
 - Article 37 POCJL – Procedures to prevent and detect money laundering.

Consent Request - Consent Not Provided

Where consent is not provided to an act(s), the FIU will notify the requester of its decision. The legislation does not prescribe that the FIU has to provide a rationale when consent is provided or not provided, and the FIU might not do so in any particular case.

Consent Request – Consent Not Provided (Inadequate Information)

Where information or particulars provided is inadequate to allow the FIU to make a determination on a consent request, the response from the FIU will be: Consent Not Provided.

Where the FIU believes that further information is required for its decision-making process, the FIU will email the requester asking for further information. It is, therefore, vitally important that in seeking consent for an act(s), the requester provides full details as to why they need consent.

If you are submitting multiple consent requests, the FIU will address each consent request individually.

Consent Request – The FIU does not consider this is a consent request under article 32(4)

The request does not seem to contain information sufficient, or specific enough, to understand how Article 30 or 31 is engaged. You are encouraged to submit further information.

Q4: If I have previously received a “consent to transact”, do I need to ask for further consents?

- A4:** You should take legal advice as to whether consent covers a particular transaction. However, we would usually expect a further request for consent concerning any change of circumstances or significant transaction or if a significant period has passed since the previous consent was provided.

Q5: Within the request, can consent be sought for a range of transactions / types of payments?

- A5:** The FIU will need clarity around the precise nature of the transactions you wish to carry out.

For example, different types of transactions or fees should not be bundled or grouped together. However, the FIU does recognise that in order to prevent multiple consent requests, for similar classes of transactions (e.g., recurring mortgage payments or administration fees), it will consider requests for multiple payments in one consent request.

If a requester is unsure when completing the ‘Consent Request’ tab, they should seek clarity in the first instance.

Q6: Having submitted a consent request how do we deal with our client? What should we do whilst we are awaiting consent?

- A6:** The FIU draws your attention to Article 35 of the POCJL – Tipping Off. A misconception sometimes exists that contact with the client is greatly restricted once a SAR has been submitted. It is the FIU’s view that this is not the case: provided that you do not inform your client that you are aware that a criminal investigation is/has commenced or that a SAR has been submitted, you can still deal with your client, and in fact are obliged to comply with the other legislation requiring you to understand your client and their financial activity fully.

Example: If you have filed a SAR because adverse media suggests that your client is connected with some form of criminal activity, then you might challenge your client, referring to adverse media, seeking an explanation and documentation from them to alleviate - or confirm - your suspicions. You might point out to your client that your regulatory requirements need to be satisfied before you go ahead with the client’s instruction. If you are concerned that by having that conversation with your client you would be committing the ‘Tipping Off’ offence in Article 35 POCJL of “disclosing information relating to the investigation/“disclosing information...relating to (your SAR)”, you may ask the FIU to release you from that Tipping-Off offence using its power in Regulation 2(1)(c) of the Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations 2014 (Tipping Off Regulations).

Release from Tipping Off

Before asking for specific guidance from the FIU, submitters should familiarise themselves with the Tipping Off Regulations. The FIU does not generally provide guidance on what may or may not constitute tipping-off or prejudice a criminal investigation. However, specific concerns regarding what questions may be put to a client/customer can be discussed with the FIU on a case-by-case basis.

‘Release from Tipping Off’ is not a ‘Consent’ matter under Article 32(4), and therefore the ‘Consent’ tab should not be used.

Q7: Where a relationship is managed in the UK and the assets held in Jersey, if UKFIU approval has been received for a transaction, do we also need separate approval from FIU Jersey or can reliance be placed solely on the UKFIU approval?

- A7:** You should take legal advice, but any person at risk of committing the Jersey offences in Articles 30 and 31 should seek consent.

Consent of the UKFIU will be relevant information to pass on to FIU Jersey.

It should not be assumed that the consent of UKFIU is enough. Nor should it be assumed that FIU Jersey will follow the UK's decision as to consent - the two consent regimes are legally different and the respective investigations and considerations may be different.

Q8: Having submitted a consent request pursuant to Article 32(4) of the POCJL, how long will it take for the FIU to respond to me with its decision?

A8: The FIU will endeavour to acknowledge and respond to a consent request within two working days. The determination may, however, take longer, given that the request will have to be considered on its own merits and require the FIU to understand the consent(s) being sought against the suspicion(s) identified. Enquiries of others, in Jersey or abroad, may need to be made and answered. The greater the (relevant) detail that is included in the SAR, the greater the likelihood of a swift response. If the consent request requires complex considerations (e.g. restructuring of legal ownership of assets through share dilutions), this may extend the time needed before a decision can be provided.

It will be for the relevant institution to manage its relationship with its client.

Q9: If the FIU don't provide consent, are you going to provide release from tipping off? If you don't then how long will it take for this to come through?

A9: The FIU recognises that managing a client/customer relationship where the local financial institution holds a suspicion, may be challenging. We aim to release from Tipping Off restrictions where appropriate and the circumstances allow.

Where such a release from Tipping Off could affect a criminal investigation or proposed criminal investigation, it will not usually be possible to release from Tipping-Off. The FIU seeks to work closely with the submitting institution. However, sensitivities surrounding a SAR submission may mean that the FIU cannot divulge information other than a basic response of "You are not at this time released from Tipping Off".

Note: The FIU cannot provide a definitive time frame for when an institution may be released from Tipping Off, if

indeed it is. Decisions are taken by the FIU dependent on the contents of the SAR submitted and its investigation, which may include: - the suspicion and rationale provided in the SAR, the jurisdiction of subjects/companies/assets/relationships (which may require the FIU to contact international counterparts); and any known ongoing investigations in this jurisdiction or internationally.

Q10: Having previously requested consent for a transaction on the submission of an initial SAR, I have now made enquiries and am no longer suspicious that I am dealing with 'criminal property'. What do I do now?

A10: It is a matter for the reporting entity whether the initial suspicion(s) have been allayed. If you no longer have any suspicions that you are dealing with the proceeds of criminal property, you can submit a Continuation Report stating why this is the case. In submitting any Continuation Report, please fully state all enquiries and additional information obtained and what has led to your suspicions being allayed.

Q11: Can consent be sought in relation to an individual or entity which has not been the subject of a SAR, but has been mentioned in a Continuation Report?

A11: It is a legal requirement that a suspicion be reported in the prescribed form. As a SAR has not been submitted concerning this individual or entity, this would amount to a new suspicion, and therefore, a new SAR should be submitted to the FIU before consent can be sought and considered.

Q12: If I have submitted a SAR stating that other property of my client, elsewhere, appears to be the proceeds of crime, can I have consent to maintain his account in Jersey?

A12: The FIU's power to consent (Article 32(4)) relates only to your acts or dealings with suspected criminal property. If your client's Jersey account is not suspected of containing criminal property and you are not dealing with their other property, you do not need the FIU consent. A financial services business nonetheless has an obligation to report knowledge, suspicion, or grounds for suspicion that any property is related to criminal conduct – see Article 34A(2) PoCJL.



Using the Consent request function on the PolSAR Portal

In order for consent to be considered, it must be requested. For example, where we have received the following text:

"We intend to do [an act(s)], but should you not wish us to do this, then we await to hear from you" or "We intend to do the following [an act(s)] in the absence that you do not have any objections".

The FIU does not view this as a valid consent request made under Article 32(4) of the POCJL, as such, the submitting institution will receive an acknowledgement response only; the FIU cannot provide consent by silence.