

# STATES OF JERSEY



## DRAFT TERRORIST ASSET-FREEZING (JERSEY) LAW 201-

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Lodged au Greffe on 21st December 2010  
by the Chief Minister

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STATES GREFFE





Jersey

## **DRAFT TERRORIST ASSET-FREEZING (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Terrorist Asset-Freezing (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

## REPORT

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### **Purpose of the draft Law**

The purpose of the Law is to give effect to Resolution 1373 (2001) adopted by the Security Council of the United Nations on 28 September 2001 relating to terrorism and Resolution 1452 (2002) adopted on 20 December 2002 relating to humanitarian exemptions. It also provides for the enforcement of European Council Regulation 2580/2001 on specific measures directed at certain persons and entities with a view to combating terrorism.

UN Resolution 1373 includes a requirement that Member States of the United Nations must (a) prevent the financing of terrorist acts, including the freezing of funds and economic resources of persons who commit or attempt to commit terrorist acts or participate in or facilitate such acts, and (b) prohibit their nationals and those within their territories from making funds, financial services or economic resources available to such persons.

UN Resolution 1452 introduces exemptions to prohibitions on making funds, financial assets or economic resources available to permit payments necessary to meet basic humanitarian needs (such as payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, public utility charges and legal fees and expenses) and payments necessary to meet extraordinary expenses.

Council Regulation (EC) 2580/2001 also aims to prevent and prohibit the financing of terrorist acts. The EU regulation applies to funds, economic resources, financial assets of every kind, insurances, lending of all types, guarantees and commitments. These financial assets must not, directly or indirectly, be made available to nor be used for the benefit of certain natural or legal persons listed in the regulation. Any financial assets belonging to these persons are also frozen.

### **Reason for replacing the existing asset-freezing regime**

Under Section 1 of the United Nations Act 1946 (“the UN Act”) in the United Kingdom, there is a power to make an Order in Council to give effect to any decision of the UN Security Council where such provision appears “*necessary or expedient for enabling those measures to be effectively applied*”. Obligations placing prohibitions on the availability of funds, financial services and economic resources have to date been implemented in Jersey by an Order in Council made under Section 1 of UN Act extended to the Island. The existing legislation is the Terrorism (United Nations Measures) (Channel Islands) Order 2001 (“2001 Order”).

On 27th January 2010 the Supreme Court of England decided in the case of Ahmed & Ors v HM Treasury [2010] UKSC 2 that an equivalent UK Order made under Section 1 of the UN Act was *ultra vires*. On 4th February 2010 the Supreme Court made an order quashing the equivalent Order in the UK. The Supreme Court did not rule upon the lawfulness of the 2001 Order but the decision leaves the 2001 Order vulnerable to challenge on the same grounds.

The UK Terrorist Asset-Freezing (Temporary Provisions) Act 2010 (the “Temporary Provisions Act”) provided that the 2001 Order, along with other Orders, was deemed to have been validly made under Section 1 of the UN Act. Furthermore, any directions made imposing asset freezes under such legislation were to have effect for the period

from Royal Assent (10th February 2010) until 31st December 2010. The Temporary Provisions Act therefore maintained terrorist asset-freezing restrictions which had either been quashed by the Supreme Court ruling or which were vulnerable to being quashed as a consequence of that ruling. The Temporary Provision Act has been extended to the Channel Islands and registered by the Royal Court in respect of the 2001 Order. That extension is valid until 31st December 2010.

The draft Law closely replicates the equivalent UK Legislation the Terrorist Asset Freezing Bill. The Terrorist Asset Freezing Bill, once in force, will prolong the provisions of the Temporary Provisions Act in as far as it applies to Jersey until 31st March 2010. After that date it will be necessary to have domestic legislation in place to maintain the continuity of a terrorist asset-freezing regime in Jersey.

### **Operation of the draft Law**

The Terrorist Asset Freezing Bill reached the Report Stage of the House of Commons on 14th December 2010, and all remaining stages were completed on that date. Due to the late date of completion of the Bill, there may need to be minor amendments to this draft Law in the course of the lodging period, following consultation with HM Treasury, to take into account any points that are essential to the operation of the Law in parallel with the UK legislation.

The UN does not maintain a list of terrorist targets in respect Resolution 1373. However, since the European Union adopted Council Regulation (EC) No 2580/2001 to give effect to UNSCR 1373 (2001), the targets listed in Council Decisions implementing the Regulation are deemed to be the relevant targets. These are included in the consolidated targets list shown on HM Treasury's website under the Terrorist Financing regime.

Under the draft Law, terrorism designations made in the UK under the Terrorist Asset Freezing Bill will automatically be designations in Jersey as well. Currently Jersey makes reference to the list of UK terrorism designations in deciding whether funds or economic resources should be frozen or the provision of financial services prohibited in the Island under the 2001 Order. The Law formalises that position so that UK designations are, as a matter of law, designations in Jersey as well. Furthermore the Law gives the Chief Minister the ability to designate persons, in addition to those designated in the UK.

### **Financial and manpower implications**

There are no manpower or revenue implications arising directly from implementation of the Draft Terrorist Asset-Freezing (Jersey) Law 201-.

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 17th December 2010 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Terrorist Asset-Freezing (Jersey) Law 201- are compatible with the Convention Rights.

## Explanatory Note

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This Law requires that funds, financial services and economic resources not be made available to designated persons – designated because they are suspected or believed to be supporting terrorist activities. Many of the provisions of the Law run parallel to those of the United Kingdom’s Terrorist Asset-Freezing etc. Act 2010, though none is a copy of the other.

*Part 1 defines various terms used in the Law.*

*Article 1* defines various terms.

*Article 2* defines a designated person to be one designated on either an interim basis or a final basis –

- (a) under this Law; or
- (b) under the Terrorist Asset-Freezing etc. Act 2010 of the United Kingdom (referred to in this explanatory note as the “UK Act”).

Designation under the UK Act is referred to in this explanatory note as a “UK designation”.

A designated person also includes a person on the list provided for by Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (listing referred to in this explanatory note as “EU listing”).

*Article 3* defines financial services to include insurance, banking and other financial services.

*Article 4* defines funds as financial assets and benefits of every kind. Article 4 also defines economic resources as any assets that may be used to obtain funds or goods or services.

*Article 5* defines a relevant institution as a person who carries on financial services business in Jersey (or who, being incorporated in Jersey, carries on financial services business anywhere in the world).

*Part 2 provides for the Chief Minister to have power to designate persons (whose assets are to be subject to financial restrictions).*

Under *Article 6*, the Chief Minister may make an interim designation of a person if the Chief Minister considers that the designation is necessary to protect the public against terrorism and has a reasonable suspicion that the person is involved in terrorist activity, is controlled by another person so involved or is acting on behalf of a person so involved.

*Article 7* provides that a Jersey interim designation does not operate when a related UK designation (interim or final) or a related EU listing is in force and that it expires after 30 days (unless it is revoked or a final designation is made).

Under *Article 8*, the Chief Minister may make a final designation of a person if the Chief Minister considers that the designation is necessary to protect the public against terrorism and has a reasonable belief that the person is involved in terrorist activity, is

controlled by another person so involved or is acting on behalf of a person so involved.

*Article 9* provides that a Jersey final designation does not operate when a related UK designation (interim or final) or a related EU listing is in force and that it expires after 12 months (unless renewed or revoked).

*Article 10* requires notice of a designation to be given to the person designated as well as to the public (subject to certain exceptions for security and other reasons).

*Article 11* provides that designations may be varied or revoked as required.

*Article 12* requires information in a notice of designation to be treated as confidential if the Chief Minister so specifies.

*Part 3 makes it illegal to make funds and other resources available to designated persons except under licence.*

*Article 13* prohibits a wide range of dealings with funds or economic resources of designated persons.

*Article 14* prohibits persons from making funds or financial services available to designated persons.

*Article 15* prohibits persons from making funds or financial services available for the benefit of designated persons.

*Article 16* prohibits persons from making economic resources available to designated persons.

*Article 17* prohibits persons from making economic resources available for the benefit of designated persons.

*Article 18* sets out a number of exceptions to the prohibitions in this Part, allowing certain contract payments, interest payments and social security payments to be credited to frozen accounts. Some of these need to be notified to the Chief Minister.

*Article 19* enables the Chief Minister to grant (or vary or revoke) licences to do things that would otherwise be prohibited under this Part. A licence under the UK Act is effective in Jersey. A Jersey licence does not operate when a relevant designation under the UK Act (or a relevant EU listing) is in force.

*Article 20* is a general prohibition against activities designed to circumvent the requirements of the Law.

*Part 4 relates to the reporting of information and to its disclosure.*

*Article 21* requires financial institutions to report to the Chief Minister if they are aware that they hold accounts of, deal with, or have been approached by, designated persons.

*Article 22* enables the Chief Minister for the purposes of the administration of the Law to require –

- (a) designated persons to provide information about their funds, economic resources or expenditure;
- (b) licence holders to give information about operations under their licences;

- (c) any persons to give information to aid in monitoring and enforcement of the Law.

*Article 23* contains various ancillary provisions relating to the production of documents for the purposes of Article 22.

*Article 24* sets out offences of failing to provide information, providing false information and obstruction.

*Article 25* allows the Chief Minister to disclose information obtained under this Part to law enforcement officers and agencies in Jersey and elsewhere.

*Article 26* requires the Chief Minister and the Attorney General each to co-operate in investigations relating to the subject matter of the Law and the UK Act.

*Article 27* sets out various refinements of and restrictions on Part 4's powers to demand information and Part 4's obligations to disclose information.

*Part 5 sets out avenues for the review of decisions made under the Law.*

*Article 28* allows designated persons to appeal to the Royal Court against the Chief Minister's decisions about designations of those persons.

*Article 29* allows persons affected by other decisions of the Chief Minister under the Law to apply to the Royal Court for a review of those decisions.

*Article 30* and *Schedule 1* set out certain requirements for rules of court as to appeals and reviews under the Law. The rules must ensure proper review is possible but at the same time ensure that information is not disclosed against the public interest. The rules may provide for the appointment of special counsel who, having a security clearance, may act in such appeals and reviews.

*Article 31* requires the Chief Minister to make quarterly reports to the States about the operation of the Law.

*Article 32* requires the Chief Minister to arrange for the independent review of the operation of the Law in any year where a designation made or licence granted under the Law was in force or the Chief Minister performed any function under the Law.

*Part 6 sets out general provisions about offences.*

*Article 33* provides for a degree of extra-territorial operation of the provisions of the Law that create offences.

*Article 34* is a standard provision making officers of companies criminally responsible in certain cases for the offences for which the companies are also criminally responsible.

*Article 35* requires the consent of the Attorney General before certain prosecutions may go ahead.

*Article 36* makes special provision for the prosecution of offences committed by unincorporated associations.

*Part 7 sets out provisions as to the service of notices, delegation, saving of legislation etc.*

*Article 37* makes provision as to the service of notices under the Law.

*Article 38* makes provision for the delegation of the functions of the Chief Minister under the Law.

*Article 39* allows the Chief Minister to make Orders for the purposes of the Law.

*Article 40* allows the States to make Regulations for the purposes of the Law, including Regulations amending certain provisions of the Law or making consequential amendments to other enactments.

*Article 41* and *Schedule 2* make changes to other legislation as a consequence of the enactment of the Law.

*Article 42* enables the States to make Regulations setting out savings and transitional provisions.

*Article 43* names the Law and provides for the Law to come into force when it is registered in the Royal Court.

*Schedule 1* (Rules for review and appeals) is referred to above at Article 30.

*Schedule 2* (Amendment of other legislation) is referred to above at Article 41.





Jersey

## DRAFT TERRORIST ASSET-FREEZING (JERSEY) LAW 201-

### Arrangement

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Jersey

## DRAFT TERRORIST ASSET-FREEZING (JERSEY) LAW 201-

A **LAW** to provide for financial restrictions on persons suspected of involvement in terrorist activities; and for related purposes

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

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

### PART 1

#### INTERPRETATION

##### 1 Interpretation

(1) In this Law –

“association” includes an unincorporated body;

“designated person” has the meaning set out in Article 2;

“designation” means final designation or interim designation, as the case requires;

“document” means a recording of information in any form, including a form illegible to the naked eye;

“economic resources” has the meaning set out in Article 4(2);

“final designation” means a designation made under Article 8;

“financial services” has the meaning set out in Article 3;

“funds” has the meaning set out in Article 4(1);

“interim designation” means a designation made under Article 6;

“produce”, in relation to information recorded in a form illegible to the naked eye, includes producing a copy of the information in legible form;

“relevant institution” has the meaning set out in Article 5;

“the relevant Security Council resolutions” means –

- (a) resolution 1373 (2001) adopted by the Security Council of the United Nations on 28th September 2001; and
- (b) resolution 1452 (2002) adopted by the Security Council of the United Nations on 20th December 2002;

“renew” means, in respect of a final designation, renew under Article 9;

“special counsel” means a person appointed under paragraph 5 of Schedule 1;

“terrorism” has the same meaning as in the Terrorism (Jersey) Law 2002<sup>1</sup>.

- (2) A reference in this Law to an Act of the United Kingdom is a reference to that enactment as amended from time to time.

## **2 Meaning of “designated person”**

In this Law, “designated person” means –

- (a) a person who is the subject of a designation under this Law;
- (b) a person who is the subject of a designation, being a designation within the meaning of the Terrorist Asset-Freezing etc. Act 2010 (c.38) of the United Kingdom; or
- (c) a natural or legal person, group or entity included in the list (as in force from time to time) provided for by Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (as that Regulation is amended from time to time).

## **3 Meaning of “financial services”**

- (1) In this Law, “financial services” means any services of a financial nature, including (but not limited to) –
  - (a) insurance-related services consisting of any of the following –
    - (i) direct life assurance,
    - (ii) direct insurance other than life assurance,
    - (iii) reinsurance and retrocession,
    - (iv) insurance intermediation, such as brokerage and agency,
    - (v) services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services;
  - (b) banking and other financial services consisting of any of the following –
    - (i) accepting deposits and other repayable funds,

- 
- (ii) lending (including consumer credit, mortgage credit, factoring, and financing of commercial transactions),
  - (iii) financial leasing,
  - (iv) payment and money transmission services (including by credit, charge and debit cards, travellers' cheques and bankers' drafts),
  - (v) providing guarantees or commitments,
  - (vi) financial trading,
  - (vii) participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues,
  - (viii) money brokering,
  - (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services,
  - (x) settlement and clearing services for financial assets (including for securities, derivative products and other negotiable instruments),
  - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services),
  - (xii) providing advisory or other auxiliary financial services in respect of any activity listed in clauses (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy); and
- (c) any financial service business within the meaning of Article 2 of the Financial Services (Jersey) Law 1998<sup>2</sup> and not included in subparagraph (a) or (b).
- (2) In paragraph (1)(b)(vi), “financial trading” means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in any of the following –
- (a) money market instruments (including cheques, bills and certificates of deposit);
  - (b) foreign exchange;
  - (c) derivative products (including futures and options);
  - (d) exchange rate and interest rate instruments (including products such as swaps and forward rate agreements);
  - (e) transferable securities;
  - (f) other negotiable instruments and financial assets (including bullion).

#### **4 Meaning of “funds” and “economic resources”**

- (1) In this Law, “funds” means financial assets and benefits of every kind, including (but not limited to) any of the following –

- 
- (a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
  - (b) deposits with relevant institutions or other persons, balances on accounts, debts and debt obligations;
  - (c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivative products;
  - (d) interest, dividends and other income on or value accruing from or generated by assets;
  - (e) credit, rights of set-off, guarantees, performance bonds and other financial commitments;
  - (f) letters of credit, bills of lading and bills of sale;
  - (g) documents providing evidence of an interest in funds or financial resources;
  - (h) any other instrument, being an instrument of export financing.
- (2) In this Law, “economic resources” means assets of every kind, whether tangible or intangible, and movable or immovable, that are not funds but can be used to obtain funds, goods or services.

## **5 Meaning of “relevant institution”**

- (1) In this Law, “relevant institution” means –
- (a) a person (whether or not an individual) who carries on financial services business in or from within Jersey; or
  - (b) a person (not being an individual) who is incorporated or constituted under the law of Jersey and carries on financial services business in any part of the world.
- (2) For the purposes of paragraph (1), “financial services business” has the same meaning as in the Proceeds of Crime (Jersey) Law 1999<sup>3</sup>.

## **PART 2**

### **INTERIM DESIGNATION AND FINAL DESIGNATION**

## **6 Power to make interim designation**

- (1) The Chief Minister may make an interim designation of a person if the Chief Minister considers that it is necessary, for purposes connected with protecting members of the public from terrorism, that financial restrictions should be applied in relation to the person and –
- (a) the Chief Minister reasonably suspects that the person is or has been involved in terrorist activity;
  - (b) the Chief Minister reasonably suspects that the person is owned or controlled directly or indirectly by a person who the Chief Minister reasonably suspects is or has been involved in terrorist activity; or

- (c) the Chief Minister reasonably suspects that the person is acting on behalf of or at the direction of a person who the Chief Minister reasonably suspects is or has been involved in terrorist activity.
- (2) Article 8(2) to (4) apply for the purposes of this Article as they apply for the purposes of Article 8.
- (3) The Chief Minister can not make more than one interim designation of the same person in relation to the same, or substantially the same, evidence and cannot renew an interim designation.
- (4) Nothing in this Article, however, prevents the making of a final designation in accordance with Article 8 of a person who has been the subject of an interim designation.

#### **7 Duration of interim designation**

- (1) An interim designation of a person –
  - (a) is of no effect during any period when the person is a designated person by virtue of Article 2(b) or (c); and
  - (b) expires at the end of the 30 days beginning with the day on which it was made, or when a final designation of the person is made, whichever is earlier.
- (2) Where an interim designation expires the Chief Minister must –
  - (a) give written notice of the expiry to the designated person; and
  - (b) take reasonable steps to bring the expiry to the attention of the persons who were informed of the designation under Article 10.
- (3) Where an interim designation expires on the making of a final designation in relation to the same person –
  - (a) a notice under paragraph (2) may be combined with written notice under Article 10 of the final designation; and
  - (b) steps under paragraph (2) may be combined with steps under Article 10 to publicize the final designation.

#### **8 Power to make final designation**

- (1) The Chief Minister may make a final designation of a person if the Chief Minister considers that it is necessary, for purposes connected with protecting members of the public from terrorism, that financial restrictions should be applied in relation to the person and –
  - (a) the Chief Minister reasonably believes that the person is or has been involved in terrorist activity;
  - (b) the Chief Minister reasonably believes that the person is owned or controlled directly or indirectly by a person who the Chief Minister reasonably believes is or has been involved in terrorist activity; or
  - (c) the Chief Minister reasonably believes that the person is acting on behalf of or at the direction of a person who the Chief Minister reasonably believes is or has been involved in terrorist activity.

- (2) For the purposes of this Article, involvement in terrorist activity is any one or more of the following –
  - (a) the commission, preparation or instigation of acts of terrorism;
  - (b) conduct that facilitates the commission, preparation or instigation of such acts, or that is intended to do so;
  - (c) conduct that gives support or assistance to persons who are known or believed by the person giving the support or assistance to be involved in conduct falling within sub-paragraph (a) or (b).
- (3) For the purposes of this Article, it is immaterial whether the acts of terrorism in question are specific acts of terrorism or acts of terrorism generally.
- (4) The reference in paragraph (1) to financial restrictions includes a reference to restrictions relating to economic resources.

## **9 Duration and renewal of final designation**

- (1) A final designation of a person –
  - (a) is of no effect during any period when the person is a designated person by virtue of Article 2(b) or (c); and
  - (b) expires 12 months after it was made, unless it is renewed.
- (2) The Chief Minister may renew a final designation of a person at any time before it expires, if the requirements for final designation under Article 8 are met in respect of the person at the time of the renewal.
- (3) A final designation so renewed expires 12 months after it was renewed (or last renewed), unless it is renewed again.
- (4) Article 10 applies to the renewal under this Article of a final designation in the same way as it applies to a final designation under Article 8.
- (5) Where a final designation expires the Chief Minister must –
  - (a) give written notice of the expiry to the designated person; and
  - (b) take reasonable steps to bring the expiry to the attention of the persons who were informed of the designation under Article 10.
- (6) Nothing in this Article prevents the Chief Minister from designating a person more than once under Article 8.

## **10 Notification of designation (interim or final)**

- (1) Where the Chief Minister makes a designation of a person, the Chief Minister must –
  - (a) give written notice of the designation to the person; and
  - (b) take steps to publicize the designation.
- (2) Unless one or more of the following conditions is satisfied, the Chief Minister must take steps to publicize the designation generally –
  - (a) the Chief Minister believes that the designated person is an individual under the age of 18;

- (b) the Chief Minister considers that disclosure of the designation should be restricted –
  - (i) in the interests of the security of Jersey or of any other country or territory,
  - (ii) for reasons connected with the prevention or detection of serious crime, or
  - (iii) in the interests of justice.
- (3) If one or more of those conditions is satisfied, the Chief Minister must inform only such persons of the designation as the Chief Minister considers appropriate.
- (4) If one or more of the conditions referred to in paragraph (2) is satisfied in respect of a designation, but later none of the conditions referred to in paragraph (2) is satisfied in respect of the designation, and the designation is still in effect, the Chief Minister must –
  - (a) give written notice of that fact to the designated person; and
  - (b) take steps to publicize the designation generally.

## **11 Variation or revocation of designation (interim or final)**

- (1) The Chief Minister may at any time vary or revoke a designation.
- (2) Where the Chief Minister varies or revokes a designation of a person, the Chief Minister must –
  - (a) give written notice of the variation or revocation to the person; and
  - (b) take reasonable steps to bring the variation or revocation to the attention of the persons who were informed of the designation under Article 10.
- (3) If the Chief Minister refuses an application by a person for the variation or revocation of the person's designation by the Chief Minister, the Chief Minister must give written notice of the refusal to the person.

## **12 Confidential information**

- (1) Where the Chief Minister in accordance with Article 10(3) informs only certain persons of the designation of a person, the Chief Minister may specify that the information conveyed in so informing those people is to be treated as confidential.
- (2) A person who –
  - (a) is provided with information that is so specified as to be treated as confidential; or
  - (b) obtains such information,must not disclose it if the person knows, or has reasonable cause to suspect, that the information has been specified under paragraph (1) as information to be treated as confidential.
- (3) Paragraph (2) does not apply to any disclosure made by the person if that disclosure is made with lawful authority.

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- (4) For the purposes of paragraph (3), information is disclosed with lawful authority only if and to the extent that –
    - (a) the disclosure is made by the Chief Minister or authorized by the Chief Minister;
    - (b) the disclosure is made by the designated person or made with the consent of the designated person;
    - (c) the disclosure is necessary to give effect to a requirement imposed under or by virtue of this Law or any other enactment; or
    - (d) the disclosure is required, under rules of court, tribunal rules or a court or tribunal order, for the purposes of legal proceedings of any description.
  - (5) This Article does not prevent the disclosure of information that is already, or has previously been, available to the public from other sources.
  - (6) A person who contravenes paragraph (2) commits an offence and is liable to imprisonment for a term of 2 years and to a fine.
  - (7) The Royal Court may, on the application of the designated person who is the subject of the information, or on the application of the Attorney General or the Chief Minister, grant an injunction to prevent a breach of paragraph (2).

### **PART 3**

#### **PROHIBITIONS IN RELATION TO DESIGNATED PERSONS**

##### **13 Freezing of funds and economic resources**

- (1) A person (“P”) must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.
- (2) In paragraph (1) “deal with” means –
  - (a) in relation to funds –
    - (i) use, alter, move, allow access to, or transfer, the funds,
    - (ii) deal with the funds in any other way that would result in any change in their volume, amount, location, ownership, possession, character or destination, or
    - (iii) make any other change that would enable use of the funds, including by way of, or in the course of, portfolio management; or
  - (b) in relation to economic resources, exchange, or use in exchange, for funds, goods or services.
- (3) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

**14 Making funds or financial services available to designated person**

- (1) A person (“P”) must not make funds or financial services available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.
- (2) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

**15 Making funds or financial services available for benefit of designated person**

- (1) A person (“P”) must not make funds or financial services available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.
- (2) For the purposes of paragraph (1) –
  - (a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and
  - (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (3) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

**16 Making economic resources available to designated person**

- (1) A person (“P”) must not make economic resources available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect –
  - (a) that P is making the economic resources so available; and
  - (b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.
- (2) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

**17 Making economic resources available for benefit of designated person**

- (1) A person (“P”) must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.
- (2) For the purposes of paragraph (1) –
  - (a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and

- (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (3) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

## 18 Exceptions

- (1) Article 13(1), 14(1) or 15(1) is not contravened by a relevant institution crediting a frozen account with –
  - (a) interest or other earnings due on the account; or
  - (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.
- (2) Article 14(1) and 15(1) do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.
- (3) Article 15(1) is not contravened by the making of a payment that –
  - (a) is a benefit under or by virtue of an enactment relating to social security (irrespective of the name or nature of the benefit); and
  - (b) is made to a person who is not a designated person, whether or not the payment is made in respect of a designated person.
- (4) A relevant institution must, as soon as practicable but in any case within 14 days, inform the Chief Minister if it credits a frozen account with a payment referred to in paragraph (1)(b) or in the circumstances referred to in paragraph (2).
- (5) A failure to comply with paragraph (4) does not constitute an offence but the Royal Court may, on the application of the Attorney General or the Chief Minister, grant an injunction or other order in respect of compliance with paragraph (4).
- (6) In this Article “frozen account” means an account with a relevant institution, being an account held or controlled (directly or indirectly) by a designated person.

## 19 Licences

- (1) Article 13(1), 14(1), 15(1), 16(1) or 17(1) does not apply to anything done under the authority of –
  - (a) a licence granted by the Chief Minister under this Article; or
  - (b) a licence granted under the Terrorist Asset-Freezing etc. Act 2010 (c.38) of the United Kingdom.
- (2) The Chief Minister may, by Order, prescribe (whether generally or in respect of a specific case) such adaptations of the application of a licence referred to in paragraph (1)(b) as may be necessary in order to enable that application to be effective in Jersey or to be effective in relation to one or more persons who carry on business in or from within Jersey.
- (3) Those adaptations shall have effect for that purpose.

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- (4) The Chief Minister may grant a licence in respect of a person, being a person who is the subject of a designation under this Law.
  - (5) A licence granted by the Chief Minister under this Article –
    - (a) must specify the acts authorized by it;
    - (b) may be general or granted to a category of persons or to a particular person;
    - (c) may be unconditional or subject to conditions;
    - (d) may be unlimited or limited in duration;
    - (e) where relevant, constitutes authorisation under Article 6 of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (as that Regulation is amended from time to time); and
    - (f) is of no effect during any period when the person is a designated person by virtue of Article 2(b) or (c).
  - (6) The Chief Minister may at any time vary or revoke a licence granted under this Article.
  - (7) On the grant, variation or revocation of a licence under this Article, the Chief Minister must –
    - (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person; or
    - (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Chief Minister considers appropriate to publicize the grant, variation or revocation of the licence.
  - (8) A person who, for the purpose of obtaining a licence under this Article, knowingly or recklessly –
    - (a) provides information that is false in a material respect; or
    - (b) provides or produces a document that is not what it purports to be,commits an offence and is liable to imprisonment for a term of 2 years and to a fine.
  - (9) A person who purports to act under the authority of a licence (whether granted under this Article or granted under the Terrorist Asset-Freezing etc. Act 2010 (c.38) of the United Kingdom) but fails to comply with any conditions included in the licence commits an offence and is liable to imprisonment for a term of 2 years and to a fine.

## **20 Circumventing prohibitions etc.**

- (1) A person must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly) –
  - (a) to circumvent Article 13(1), 14(1), 15(1), 16(1) or 17(1); or
  - (b) to enable or facilitate the contravention of any of those provisions.
- (2) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

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## PART 4

### INFORMATION

#### 21 Reporting obligations of relevant institutions

- (1) A relevant institution must inform the Chief Minister as soon as practicable if –
  - (a) it holds an account of a person, has entered into dealings or an agreement with a person or has been approached by or on behalf of a person;
  - (b) it knows, or has reasonable cause to suspect, that the person –
    - (i) is a designated person, or
    - (ii) has committed an offence under Part 3; and
  - (c) the information or other matter on which the knowledge or reasonable cause for suspicion is based came to it in the course of carrying on its business.
- (2) The information given to the Chief Minister under paragraph (1) must include –
  - (a) the information or other matter on which the institution's knowledge or reasonable cause for suspicion is based;
  - (b) any information that the institution holds about the person by which the person can be identified; and
  - (c) if the person is a customer or client of the institution, the nature and amount or quantity of any funds or economic resources held by the institution for the person at the time when –
    - (i) the institution first had the knowledge or reasonable cause for suspicion, or
    - (ii) this Article came into force,whichever time is the later.
- (3) A relevant institution that fails to comply with paragraph (1) commits an offence and is liable to imprisonment for a term of 12 months and to a fine of level 4 on the standard scale.

#### 22 Powers to require information

- (1) The Chief Minister may require a designated person to provide information concerning –
  - (a) funds or economic resources owned, held or controlled by, or on behalf of, the designated person; or
  - (b) any disposal of such funds or economic resources.
- (2) The Chief Minister may require a designated person to provide such information as the Chief Minister may reasonably require about expenditure –
  - (a) by or on behalf of the designated person; or
  - (b) for the benefit of the designated person.

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- (3) The power in paragraph (1) or (2) is exercisable only where the Chief Minister believes that it is necessary for the purpose of monitoring compliance with or detecting evasion of this Law.
  - (4) The Chief Minister may require a person acting under a licence granted under Article 19 to provide information concerning –
    - (a) funds or economic resources dealt with under the licence; or
    - (b) funds, economic resources or financial services made available under the licence.
  - (5) The Chief Minister may require any person in or resident in Jersey to provide such information as the Chief Minister may reasonably require for the purpose of –
    - (a) establishing for the purposes of this Law –
      - (i) the nature and amount or quantity of any funds or economic resources owned, held or controlled by or on behalf of a designated person,
      - (ii) the nature and amount or quantity of any funds, economic resources or financial services made available directly or indirectly to, or for the benefit of, a designated person, or
      - (iii) the nature of any financial transactions entered into by a designated person;
    - (b) monitoring compliance with or detecting evasion of this Law; or
    - (c) obtaining evidence of the commission of an offence under this Law.
  - (6) The Chief Minister may specify the manner in which, and the period within which, information is to be provided, being information that the Chief Minister requires to be provided under this Article.
  - (7) If no such period is specified, the information so required to be provided must be provided within a reasonable time.
  - (8) A requirement under this Article may impose a continuing obligation to keep the Chief Minister informed as circumstances change, or on such regular basis as the Chief Minister may specify.
  - (9) Information required to be provided under this Article may relate to any period during which a person is, or was, a designated person.
  - (10) Information referred to in paragraph (1)(b), (2) or (5)(a)(iii) and required under this Article to be provided in relation to a designated person may relate to any period before the person became a designated person (as well as, or instead of, any period during which the person is a designated person).

## **23 Production of documents**

- (1) A requirement under Article 22 may include a requirement to produce specified documents or documents of a specified description.
- (2) Where the Chief Minister requires under Article 22 that one or more documents be produced, the Chief Minister may –

- (a) take copies of or extracts from any document so produced;
  - (b) require any person so producing a document to give an explanation of the document; and
  - (c) where a person so producing a document is a partnership, association or body corporate, require a person who is –
    - (i) in the case of a partnership, a present or past partner or employee of the partnership,
    - (ii) in any other case, a present or past officer or employee of the association or body corporate,to give an explanation of the document.
- (3) Where the Chief Minister requires under Article 22 a designated person, or a person acting under a licence granted under Article 19, to produce one or more documents, the person must –
- (a) take reasonable steps to obtain the documents (if not already in the person's possession or control); and
  - (b) keep the documents under the person's possession or control (except for the purpose of providing them to the Chief Minister or as the Chief Minister may otherwise permit).

#### **24 Failure to comply with requirement for information**

- (1) A person commits an offence and is liable to imprisonment for a term of 12 months and to a fine of level 4 on the standard scale if the person –
- (a) without reasonable excuse refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with a requirement made under this Part;
  - (b) knowingly or recklessly gives any information, or produces any document, that is false in a material particular in response to such a requirement;
  - (c) with intent to evade the provisions of this Part, destroys, mutilates, defaces, conceals or removes a document; or
  - (d) otherwise intentionally obstructs the Chief Minister in the exercise of the Chief Minister's powers under this Part.
- (2) A court that convicts a person of an offence under this Article may make an order requiring the person, within such period as may be specified in the order, to comply with the relevant requirement in accordance with the order, or to do such other thing relating to the requirement as the court orders.

#### **25 General power to disclose information**

- (1) The Chief Minister may disclose any information obtained by him or her in exercise of his or her powers under this Part (including any document so obtained and any copy or extract made of any document so obtained) –
- (a) to the Attorney General;

- (b) to a member of the States of Jersey Police Force;
  - (c) to a person holding or acting in any office under or in the service of –
    - (i) the Crown in right of the Government of the United Kingdom,
    - (ii) the Crown in right of the Scottish Administration, the Northern Ireland Administration or the Welsh Assembly Government,
    - (iii) the States of Jersey, Guernsey or Alderney or the Chief Pleas of Sark,
    - (iv) the Government of the Isle of Man, or
    - (v) the Government of any British overseas territory;
  - (d) to any law officer of the Crown for Guernsey;
  - (e) to the Legal Services Commission (of the United Kingdom), the Scottish Legal Aid Board or the Northern Ireland Legal Services Commission;
  - (f) to the Financial Services Authority (of the United Kingdom), the Jersey Financial Services Commission, the Guernsey Financial Services Commission, the Isle of Man Insurance and Pensions Authority or the Isle of Man Financial Supervision Commission;
  - (g) for the purpose of giving assistance or co-operation, pursuant to the relevant Security Council Resolutions, to –
    - (i) any organ of the United Nations, or
    - (ii) any person in the service of the United Nations, the Council of the European Union, the European Commission or the Government of any country;
  - (h) with a view to instituting, or otherwise for the purposes of, any proceedings –
    - (i) in the United Kingdom, for an offence under the Terrorist Asset-Freezing etc. Act 2010 (c.38) of the United Kingdom,
    - (ii) in Jersey, for an offence under this Law, or
    - (iii) in any of the other Channel Islands, in the Isle of Man or in any British overseas territory, for an offence under an enactment in force there, being an enactment that is similar to the enactment referred to in clause (i) or (ii); or
  - (i) with the consent of a person who, in his or her own right, is entitled to the information or to possession of the document, copy or extract, to a third party.
- (2) In paragraph (1)(i) “in his or her own right” means not merely in the capacity as a servant or agent of another person.

## 26 Co-operation with investigations

- (1) The Attorney General must take such steps as he or she considers appropriate to co-operate with an investigation relating to the funds, economic resources or financial transactions of a designated person.

- (2) The Chief Minister must take such steps as he or she considers appropriate to co-operate with an investigation relating to the funds, economic resources or financial transactions of a designated person.
- (3) Paragraphs (1) and (2) apply whether the investigation takes place in Jersey or elsewhere.

## **27 Application of provisions**

- (1) Nothing done in accordance with this Part is to be treated as a breach of any restriction imposed by contract, enactment or otherwise.
- (2) However, nothing in this Part authorizes a disclosure that –
  - (a) contravenes the Data Protection (Jersey) Law 2005<sup>4</sup>; or
  - (b) is prohibited by Part 2 of the Regulation of Investigatory Powers (Jersey) Law 2005<sup>5</sup>.
- (3) Nothing in this Part is to be read as requiring a person (“P”) who has acted for another person in the capacity of advocate, counsel or solicitor, or otherwise in the capacity of lawyer, to disclose any privileged information that is in P’s possession in that capacity.
- (4) This Part does not limit the circumstances in which information may be disclosed otherwise than by virtue of this Part.
- (5) This Part does not limit the powers of the Chief Minister to impose conditions in connection with the performance of the Chief Minister’s functions under Article 19.
- (6) In this Article –

“information” includes documents;

“privileged information” means information with respect to which a claim to legal professional privilege could be maintained in legal proceedings.

## **PART 5**

### **REVIEW**

## **28 Appeal to Royal Court**

- (1) This Article applies to any decision of the Chief Minister –
  - (a) to make or vary an interim or final designation of a person;
  - (b) to renew a final designation of a person; or
  - (c) not to vary or revoke an interim or final designation of a person.
- (2) The person may appeal against any such decision to the Royal Court.
- (3) On such an appeal, the Royal Court may make such order as it thinks appropriate.
- (4) The making of an appeal under this Article does not suspend the effect of the decision to which the appeal relates.

**29 Review of decisions by Royal Court**

- (1) This Article applies to any decision of the Chief Minister taken in the performance of, or in connection with, his or her functions under this Law, other than a decision to which Article 28 applies.
- (2) A person affected by a decision to which this Article applies may apply to the Royal Court for the decision to be set aside.
- (3) In determining whether the decision should be set aside, the Court must apply the principles applicable on an application for judicial review.
- (4) If the Court decides that the decision should be set aside it may make any such order, or give any such relief, as may be made or given in proceedings for judicial review.

**30 Rules for appeals and reviews**

Schedule 1 has effect.

**31 Report on operation of Law**

- (1) As soon as reasonably practicable after the end of each reporting period during which the Chief Minister performs any function under this Law, the Chief Minister shall –
  - (a) prepare a report about the performance of that function during that period; and
  - (b) lay a copy of the report before the States.
- (2) For the purposes of paragraph (1), the reporting periods are the 3-month periods ending at midnight on 31st March, 30th June, 30th September and 31st December in each year, being 3-month periods during which this Article is in force.
- (3) However, the first reporting period is to commence with the commencement of this Article and to end on whichever of the days specified in paragraph (2) first falls at least 3 months after that commencement.

**32 Independent review of operation of Law**

- (1) The Chief Minister must appoint a person to review the operation, during any year, of this Law if –
  - (a) during part or all of the year a designation under this Law, or a licence granted under Article 19, was in effect; or
  - (b) during the year the Chief Minister performed any function under this Law (other than the function under Article 31(1)).
- (2) The person so appointed must carry out a review of the operation of this Law as soon as reasonably practicable after the end of the relevant year and send the Chief Minister a report of the findings of the review as soon as reasonably practicable after completing the review.

- (3) On receiving such a report, the Chief Minister must lay a copy of it before the States.
- (4) The Chief Minister may pay the expenses of a person who conducts such a review and also such allowances as the Chief Minister determines.

## **PART 6**

### **OFFENCES**

#### **33 Extra-territorial application of provisions about offences**

- (1) An offence under this Law may be constituted by conduct (including acts and omissions) wholly or partly outside Jersey by –
  - (a) a UK national who is ordinarily resident in Jersey; or
  - (b) a person incorporated or constituted under the law of Jersey.
- (2) In paragraph (1) “UK national” means –
  - (a) a British citizen, a British National (Overseas), a British Overseas citizen or a British overseas territories (where each of those terms has its meaning in the British Nationality Act 1981 (c. 61) of the United Kingdom);
  - (b) a person who under that Act is a British subject; or
  - (c) a British protected person within the meaning of that Act.
- (3) Where an offence under this Law is committed outside Jersey –
  - (a) proceedings for the offence may be brought in Jersey; and
  - (b) the offence may for all incidental purposes be treated as having been committed in Jersey.
- (4) Nothing in this Article affects any criminal liability arising otherwise than by virtue of this Article.

#### **34 Responsibility of directors, partners and officers**

- (1) Where an offence under this Law committed by a partnership, association or body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
  - (a) a person who is a partner of the partnership, or a director, manager, secretary or other similar officer of the association or body corporate; or
  - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership, association or body corporate to the penalty provided for that offence.
- (2) If the affairs of an association or of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the association or body corporate.

**35 Consent to prosecution**

Proceedings for an offence under this Law (other than an offence under Article 21(3) or 24) may not be instituted except by, or with the consent of, the Attorney General.

**36 Procedure for offences by unincorporated associations**

- (1) A fine imposed on an unincorporated association on its conviction of an offence under this Law must be paid out of the funds of the association.
- (2) Paragraphs (3) and (4) apply if it is alleged that an offence under this Law has been committed by an unincorporated association (that is, not by a member of the association).
- (3) Proceedings for such an offence must be brought in the name of the association.
- (4) For the purposes of such proceedings, any rules of court relating to the service of documents have effect as if the association were a body corporate (to the extent that those rules do not make specific provision for service on unincorporated associations).

**PART 7****MISCELLANEOUS****37 Service of notices**

- (1) This Article applies to any notice to be given to a person by the Chief Minister under this Law.
- (2) Any such notice may be given –
  - (a) by posting it to the person's last known address; or
  - (b) where the person is a body corporate, partnership or unincorporated body other than a partnership, by posting it to the registered or principal office of the body or partnership concerned.
- (3) If the Chief Minister does not have an address for the person, the Chief Minister must take reasonable steps to give the notice to the person at the first available opportunity.

**38 Delegation**

- (1) The Chief Minister may, by instrument in writing, delegate wholly or partly any of his or her functions under this Law to any other person or to any body.
- (2) The delegation may be unconditional or subject to any condition specified in the instrument of delegation.
- (3) The Chief Minister shall not delegate any power to make Orders under this Law.

- (4) The delegation of functions by the Chief Minister under this Article shall not prevent the Chief Minister performing those functions personally.
- (5) Where any licence, permit or authorization is granted in purported performance of a function delegated under paragraph (1), no criminal proceedings shall lie against any person for any act done, or omitted to be done, in good faith and in accordance with the terms of the licence, permit or authorization, by reason that the function had not been delegated, or that any requirement attached to the delegation of the function had not been complied with.
- (6) Nothing in this Article affects the operation of Article 28 of the States of Jersey Law 2005<sup>6</sup>.

### **39 Orders**

- (1) The Chief Minister may make Orders, not inconsistent with this Law, for or with respect to any matter that by this Law is required or permitted to be prescribed by Order or that is necessary or convenient to be prescribed by Order for carrying out or giving effect to this Law.
- (2) An Order made under this Law may contain such transitional, consequential, incidental or supplementary provisions, or such savings, as appear to the Chief Minister to be necessary or expedient for the purposes of the Order.

### **40 Regulations in general and for consequential purposes**

- (1) The States may by Regulations amend Schedule 1 and any of Articles 1, 2, 3, 4, 5, 6 and 8.
- (2) The States may by Regulations make amendments to enactments other than this Law, being amendments consequential on the enactment of this Law.
- (3) The States may make Regulations, not inconsistent with this Law, for or with respect to any matter that by this Law is required or permitted to be prescribed by Regulations or that is necessary or convenient to be prescribed by Regulations for carrying out or giving effect to this Law.
- (4) Regulations made under this Law may contain such transitional, consequential, incidental or supplementary provisions, or such savings, as appear to the States to be necessary or expedient for the purposes of the Regulations.

### **41 Amendment of other legislation**

Schedule 2 has effect.

### **42 Savings and transitional provisions**

- (1) The States may, by Regulations, make provision of a saving or transitional nature consequent on the enactment of this Law.

- (2) A provision of Regulations made under this Article may, if the Regulations so provide, come into force on the day on which this Article comes into force or on a later day.
- (3) To the extent to which any such provision comes into force on a date that is earlier than the date of its promulgation, the provision does not operate so as –
  - (a) to affect, in a manner prejudicial to any person (other than the States or an administration of the States), the rights of that person existing before the date of its promulgation; or
  - (b) to impose liabilities on any person (other than the States or an administration of the States) in respect of anything done or omitted to be done before the date of its promulgation.

#### **43 Citation and commencement**

- (1) This Law may be cited as the Terrorist Asset-Freezing (Jersey) Law 201-.
- (2) This Law shall come into force on registration.

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**SCHEDULE 1**

(Article 30)

**RULES FOR REVIEWS AND APPEALS****1 Application of this Schedule**

This Schedule applies to –

- (a) proceedings under Article 28 or 29; or
- (b) proceedings on an appeal relating to proceedings under Article 28 or 29.

**2 This Schedule is part of rule-making powers**

Article 13 of the Royal Court (Jersey) Law 1948<sup>7</sup> and Article 19 of the Court of Appeal (Jersey) Law 1961<sup>8</sup> shall be read to include the provisions of this Schedule for the purpose of making rules of court in relation to proceedings to which this Schedule applies.

**3 General provisions about rules of court**

- (1) In making rules of court, the Royal Court or Court of Appeal must have regard to –
  - (a) the need to secure that the decisions that are the subject of the proceedings are properly reviewed; and
  - (b) the need to secure that disclosures of information are not made where they would be contrary to the public interest.
- (2) Rules of court may make provision –
  - (a) about the mode of proof and about evidence in the proceedings;
  - (b) enabling or requiring the proceedings to be determined without a hearing; and
  - (c) about legal representation in the proceedings.
- (3) Rules of court may make provision –
  - (a) enabling the proceedings to take place without full particulars of the reasons for the decisions to which the proceedings relate being given to a party to the proceedings (or to any legal representative of a party to the proceedings);
  - (b) enabling the court to conduct proceedings in the absence of any person, including a party to the proceedings (or any legal representative of a party to the proceedings);
  - (c) about the functions of special counsel; and
  - (d) enabling the court to give a party to the proceedings a summary of evidence taken in the party's absence.

- (4) In this paragraph –
  - (a) references to a party to the proceedings do not include the Chief Minister; and
  - (b) references to a party's legal representative do not include special counsel.

#### **4 Rules of court about disclosure**

- (1) Subject to sub-paragraphs (2) to (5), rules of court must secure that the Chief Minister is required to disclose –
  - (a) material on which he or she relies;
  - (b) material that adversely affects his or her case; and
  - (c) material that supports the case of a party to the proceedings.
- (2) Rules of court must secure –
  - (a) that the Chief Minister has the opportunity to make an application to the court before which the proceedings take place for permission not to disclose material otherwise than to –
    - (i) the court, or
    - (ii) special counsel;
  - (b) that such an application is always considered in the absence of every party to the proceedings (and in the absence of every legal representative of every party to the proceedings);
  - (c) that the court is required to give permission for material not to be disclosed if it considers that the disclosure of the material would be contrary to the public interest;
  - (d) that, if permission is given by the court not to disclose material, it must consider requiring the Chief Minister to provide a summary of the material to every party to the proceedings (and to every legal representative of every party to the proceedings); and
  - (e) that the court is required to ensure that such a summary does not contain material the disclosure of which would be contrary to the public interest.
- (3) Rules of court must secure that in cases where the Chief Minister –
  - (a) does not receive the court's permission to withhold material, but elects not to disclose it; or
  - (b) is required to provide every party to the proceedings (and every legal representative of every party to the proceedings) with a summary of material that is withheld, but elects not to provide the summary,provision applies to the effect set out in sub-paragraph (4).
- (4) The court must be authorized by the rules of court –
  - (a) if it considers that the withheld material (whether or not a summary of that material is required) might adversely affect the Chief Minister's case or support the case of a party to the proceedings, to direct that the Chief Minister shall not rely on the material, or shall

- make such concessions or take such other steps, as the court may specify; or
- (b) in any other case, to ensure that the Chief Minister does not rely on the withheld material (whether or not a summary of that material is required).
- (5) Nothing in this paragraph, or in rules of court as referred to in it, is to be read as requiring the court to act in a manner inconsistent with Article 6 of the Human Rights Convention.
- (6) In this paragraph –
- (a) references to a party to the proceedings do not include the Chief Minister;
  - (b) references to a party’s legal representative do not include special counsel; and
  - (c) “the Human Rights Convention” means the Convention within the meaning of the Human Rights (Jersey) Law 2000<sup>9</sup>.

## **5 Appointment of special counsel**

- (1) The Attorney General shall, for the purposes of this paragraph, appoint a panel of persons, such panel consisting of no fewer than 10 advocates of the Royal Court.
- (2) A person so appointed may be removed from the panel at any time by the Attorney General whether or not at the person’s request.
- (3) Subject to sub-paragraph (5), the Royal Court or Court of Appeal, as the case requires, may appoint a person who is –
- (a) a member of the panel; or
  - (b) a person who is eligible under the Counter-Terrorism Act 2008 (c.28) of the United Kingdom to be appointed as a special advocate for the purposes of that Act,
- for the purposes described in sub-paragraph (4).
- (4) Those purposes are to represent the interests of a party to –
- (a) proceedings from which the party (and any legal representative of the party) is excluded; or
  - (b) proceedings (being proceedings on an appeal) from which the party (and any legal representative of the party) is excluded.
- (5) A person referred to in sub-paragraph (3)(b) shall not be appointed under sub-paragraph (3) unless the Royal Court or the Court of Appeal, as the case requires, is satisfied that it is in the public interest or in the interests of justice to appoint such a person in the particular circumstances of the proceedings in question.
- (6) A person appointed as special counsel is not responsible to the party to the proceedings whose interests the person is appointed to represent.

**SCHEDULE 2**

(Article 41)

**AMENDMENT OF OTHER LEGISLATION****1 Amendment of Proceeds of Crime (Jersey) Law 1999**

In the Proceeds of Crime (Jersey) Law 1999 –

- (a) in the definition of “money laundering” in Article 1(1), before the word “means” there shall be inserted the words “, except in Article 37,”;
- (b) after Article 1(8) there shall be inserted the following paragraph –  
“(9) The States may amend paragraph (1) by Regulations.”;
- (c) after Article 2(10) there shall be inserted the following paragraph –  
“(11) The States may amend this Article (except this paragraph) by Regulations.”;
- (d) after Article 37(10) there shall be inserted the following paragraph –  
“(11) In this Article, despite anything in Article 1, ‘money laundering’ means –
  - (a) conduct that is an offence under any one or more of the following Articles –
    - (i) Articles 32, 33, 34 and 34A of this Law,
    - (ii) Articles 30, 37 and 38 of the Drug Trafficking Offences (Jersey) Law 1988<sup>10</sup>,
    - (iii) articles 7, 8 and 10 of the Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002<sup>11</sup>,
    - (iv) Articles 15, 16, 17 and 18 of the Terrorism (Jersey) Law 2002<sup>12</sup>,
    - (v) Articles 13, 14, 15, 16, 17 and 19 of the Terrorist Asset-Freezing (Jersey) Law 201-<sup>13</sup>; or
  - (b) conduct outside Jersey that, if occurring in Jersey, would be an offence specified in sub-paragraph (a);”;
- (e) after Article 42 there shall be inserted the following Article –

**“42A Regulations**

- (1) The States may make Regulations not inconsistent with this Law, for or with respect to any matter that by this Law is required or permitted to be prescribed by Regulations or that is necessary or convenient to be prescribed by Regulations for carrying out or giving effect to this Law.

- (2) Regulations made under this Law may contain such transitional, consequential, incidental or supplementary provisions, or such savings, as appear to the States to be necessary or expedient for the purposes of the Regulations.”.

## 2 Amendment of Terrorism (Jersey) Law 2002

For Article 2(1)(b) of the Terrorism (Jersey) Law 2002 there shall be substituted the following sub-paragraph –

- “(b) the use or threat is designed to influence the States of Jersey, the government of any other place or country or an international organization or to intimidate the public or a section of the public; and”.

## 3 Amendment of Police Procedures and Criminal Evidence (Jersey) Law 2003

In Part 2 of Schedule 1 to the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>14</sup>, after item 15 there shall be inserted the following item –

- “16. In the Terrorist Asset-Freezing (Jersey) Law 201-<sup>15</sup> –
  - (a) Articles 13, 14, 15, 16, 17 and 20; and
  - (b) Article 21 (except that an offence against Article 21 is not a serious offence for the purposes of Article 13 of this Law).”.

## 4 Amendment of Regulation of Investigatory Powers (Jersey) Law 2005

In Article 22 of the Regulation of Investigatory Powers (Jersey) Law 2005 –

- (a) after paragraph (1)(d) there shall be inserted the following sub-paragraph –
  - “(da) any proceedings –
    - (i) on an appeal under Article 28 of the Terrorist Asset-Freezing (Jersey) Law 201-<sup>16</sup>, or on an application under Article 29 of that Law, or
    - (ii) on a claim arising from any matter to which such an appeal or application relates,or any proceedings arising out of such proceedings;”;
- (b) after paragraph (2) there shall be inserted the following paragraph –
  - “(2A) Paragraph (1) shall not, by virtue of sub-paragraph (da), authorize the disclosure of anything to –
    - (a) any person, other than the Chief Minister, who is a party to the relevant proceedings; or
    - (b) any person who for the purposes of the relevant proceedings (but otherwise than by virtue of appointment as special counsel) represents a person who falls within sub-paragraph (a).”.

**5 Amendment of Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008**

For Article 3(1)(d) of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>17</sup> there shall be substituted the following sub-paragraph –

█ “(d) Terrorist Asset-Freezing (Jersey) Law 201-<sup>18</sup>”.

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- 1 *chapter 17.860*
  - 2 *chapter 13.225*
  - 3 *chapter 08.780*
  - 4 *chapter 15.240*
  - 5 *chapter 08.830*
  - 6 *chapter 16.800*
  - 7 *chapter 07.770*
  - 8 *chapter 07.245*
  - 9 *chapter 15.350*
  - 10 *chapter 08.580*
  - 11 *chapter 17.910*
  - 12 *chapter 17.860*
  - 13 *P.191/2010*
  - 14 *chapter 23.750*
  - 15 *P.191/2010*
  - 16 *P.191/2010*
  - 17 *chapter 08.785*
  - 18 *P.191/2010*