

STATES OF JERSEY



DRAFT PROCEEDS OF CRIME (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 24th February 2015
by the Chief Minister

STATES GREFFE



Jersey

DRAFT PROCEEDS OF CRIME (AMENDMENT OF LAW) (JERSEY) REGULATIONS 201-

REPORT

Proceeds of Crime (Amendment of Law) (Jersey) Regulations 201- (the “draft Regulations”)

Overview

The draft Regulations make amendments to the Proceeds of Crime (Jersey) Law 1999 (“POCL”) in furtherance to Jersey’s on-site evaluation by MONEYVAL regarding compliance with the FATF Recommendations on anti-money laundering and countering the financing of terrorism. The amendments specifically deal with FATF Recommendation 1 (criminalisation of Money Laundering).

During the on-site visit, in addition to positive comments made by the evaluators as to amendments recently made to POCL by virtue of the Proceeds of Crime (Miscellaneous Provisions) (Jersey) Law 2014, comments were made as to the definition of “property” and the definition of “legal professional privilege” under POCL.

Definition of “Property”

The definition of “property” is relevant to confiscation of property under POCL. The evaluators commented that whilst the definition of “property” in POCL was broad, in their opinion, the international standards in this regard were not comprehensively transposed in domestic legislation. The evaluators considered that the language of the conventions (and the FATF definitions) clearly covering legal documents or instruments evidencing title to or interest in such assets should be adopted to avoid legal uncertainty. They further commented that the UK Proceeds of Crime Act 2002 contained extended definitions of property which could also be relevant in the context of money laundering in Jersey. The evaluators urged the insular authorities to reconsider the relevance of these terms in the local context.

The Chief Minister’s Department, along with the Law Officers’ Department, and with specific advice from H.M. Solicitor General, have considered both section 340 of the UK Proceeds of Crime Act 2002, the FATF definitions, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime and on the Financing of Terrorism (“the Warsaw Convention”) and are of the view that the revised definition contained in draft Regulation 1(b) should therefore meet the evaluators’ concerns.

Definition of legal professional privilege

The evaluators commented that they considered that the definition of legal professional privilege in POCL is wider than the customary law definition. They went

on to recommend that the definition in the POCL should be removed. The Chief Minister's Department, along with the Law Officers' Department, and with specific advice from H.M. Solicitor General, have considered the matter and have concluded that is therefore advisable to remove the definition of legal professional privilege from POCL. Draft Regulation 1(a) should therefore meet the evaluators' concerns.

By removing the definition from Article 1(1) of the Proceeds of Crime Law of "items subject to legal privilege", any references to legal privilege in that Law shall have the meaning as acquired by the customary law of Jersey. In *Bene Ltd. v VAR Hanson & Partners* [1997] JLR N10a, the Royal Court comprehensively described direct communications between a lawyer and his client (or via third-party agents) to be subject to legal privilege if they are confidential and for the dominant purpose of seeking or giving legal advice on the client's legal position or rights ("legal advice privilege"). Also privileged are confidential communications between a lawyer and his client, non-professional agent or third party, made after litigation has been commenced or contemplated and for the sole or dominant purpose of advising in relation to, or seeking evidence or information for, such litigation ("litigation privilege").

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of the draft Regulations.

Explanatory Note

These Regulations amend definitions used in the Proceeds of Crime (Jersey) Law 1999 (the “Law”).

Regulation 1(a) removes the definition of “items subject to legal privilege” from the Law. The effect of this amendment is that the question of whether an item is subject to legal privilege for the purposes of the Law will be determined in accordance with Jersey customary law.

Regulation 1(b) amends the definition of “property” to make it clear that “property” includes legal documents or instruments evidencing title to or interest in property and includes any interest in or power in respect of property and, in relation to movable property, includes a right to possession.

Regulation 2 sets out the title to these Regulations and provides for them to come into force 7 days after the day on which they are made.



Jersey

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Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Article 1(9) of the Proceeds of Crime (Jersey) Law 1999¹, have made the following Regulations –

1 Article 1 amended

In Article 1(1) of the Proceeds of Crime (Jersey) Law 1999² –

- (a) the definition “items subject to legal privilege” shall be deleted;
- (b) for the definition “property” there shall be substituted the following definition –

“ ‘property’ means all property, whether movable or immovable, or vested or contingent, and whether in Jersey or elsewhere, including –

- (a) any legal document or instrument evidencing title to or interest in any such property;
- (b) any interest in or power in respect of any such property;
- (c) in relation to movable property, any right, including a right to possession,

and for the avoidance of doubt, a reference in this Law to property being obtained by a person includes a reference to any interest in that property being obtained;”.

2 Citation and commencement

These Regulations may be cited as the Proceeds of Crime (Amendment of Law) (Jersey) Regulations 201- and shall come into force 7 days after the day they are made.

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- ¹ *chapter 08.780*
² *chapter 08.780*