

STATES OF JERSEY



DRAFT EU LEGISLATION (INFORMATION ACCOMPANYING TRANSFERS OF FUNDS) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 25th April 2017
by the Chief Minister

STATES GREFFE



Jersey

DRAFT EU LEGISLATION (INFORMATION ACCOMPANYING TRANSFERS OF FUNDS) (JERSEY) REGULATIONS 201-

REPORT

The Draft EU Legislation (Information Accompanying Transfers of Funds) (Jersey) Regulations 201- (the “draft Regulations”) provide for the implementation in Jersey of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1) (“Regulation (EU) 2015/847”) subject to certain exceptions, adaptations and modifications that are specified in *the Schedule (Regulation 2)*.

Jersey had previously implemented Regulation (EC) No 1781/2006 by virtue of the Community Provisions (Wire Transfers) (Jersey) Regulations 2007. The draft Regulations provide for the repeal of those Regulations.

Regulation (EU) 2015/847 imposes certain duties on payment service providers with regard to transfers of funds in order to prevent money laundering and terrorist financing. Under Regulation (EU) 2015/847, the competent Authority is under a duty to monitor payment service providers and to take measures that are necessary to ensure compliance by payment service providers with the requirements of the Regulation. The changes specified in *the Schedule* include a provision which makes the Jersey Financial Services Commission the competent authority for the purposes of the Regulation.

The Draft Regulations permit Jersey (along with the other Crown Dependencies) to obtain a derogation from the European Commission to be considered to be part of the UK Payments Area, whereby reduced “Complete Information on Payer” (“CIP”) can be provided with a wire transfer which is required for the operation of payments systems such as BACS.

Pursuant to the European Parliament and the European Council adopting Regulation 2015/847 on information accompanying transfers of funds on 20 May 2015, the draft Regulations implement equivalent provisions to Regulation 2015/847 in Jersey legislation. Regulation 2015/847 comes into force on 26 June 2017.

Financial and manpower implications

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

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Explanatory Note

These Regulations provide for the implementation in Jersey of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1) (“Regulation (EU) 2015/847”) subject to certain exceptions, adaptations and modifications that are specified in *the Schedule (Regulation 2)*.

Regulation (EU) 2015/847 imposes certain duties on payment service providers with regard to transfers of funds in order to prevent money laundering and terrorist financing. Under Regulation (EU) 2015/847, the competent Authority is under a duty to monitor payment service providers and to take measures that are necessary to ensure compliance by payment service providers with the requirements of the Regulation. The changes specified in *the Schedule* include a provision which makes the Jersey Financial Services Commission the competent authority for the purposes of the Regulation.

Regulation 3 establishes that breaches of certain provisions of Regulation (EU) 2015/847 are criminal offences.

Regulation 4 provides for the criminal liabilities of partners and directors and other officers of bodies corporate.

Regulation 5 provides for the repeal of the Community Provisions (Wire Transfers) (Jersey) Regulations 2007.

Regulation 6 provides for the citation of these Regulations and provides that they will come into force 7 days after they are made.



Jersey

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EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS TO PROVISIONS OF REGULATION (EU) 2015/847 IN RESPECT OF ITS EFFECT IN JERSEY

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Jersey

DRAFT EU LEGISLATION (INFORMATION ACCOMPANYING TRANSFERS OF FUNDS) (JERSEY) REGULATIONS 201-

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

THE STATES, in pursuance of Article 2 of the European Union Legislation (Implementation) (Jersey) Law 2014¹, have made the following Regulations –

1 Interpretation

In these Regulations –

“payee” means a person that is the intended final recipient of transferred funds;

“payer” means a person that is the holder of an account held with a payment service provider that allows a transfer of funds from the account or, where there is no account, a person that places an order for a transfer of funds;

“Regulation (EU) 2015/847” means Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

2 Implementation of Regulation (EU) 2015/847

- (1) Regulation (EU) 2015/847 has effect in Jersey as if it were an enactment –
 - (a) to any extent that it does not otherwise have effect in Jersey; and
 - (b) subject to the exceptions, adaptations and modifications specified in the Schedule.
- (2) Any reference in the Schedule to a numbered Article, without more, is a reference to the Article so numbered of Regulation (EU) 2015/847.

3 Offences

- (1) A payer's payment service provider who contravenes any requirements of Articles 4, 5, 6, 14, 15(2) or (3), 16 or 21(2) of Regulation (EU) 2015/847, as those Articles have effect in Jersey by virtue of Regulation 2, shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (2) A payee's payment service provider who contravenes any requirements of Articles 7, 8, 9, 14, 15(2) or (3), 16 or 21(2) of Regulation (EU) 2015/847, as those Articles have effect in Jersey by virtue of Regulation 2, shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (3) An intermediary payment service provider who contravenes any requirements of Articles 10, 11, 12, 14, 15(2) or (3), 16 or 21(2) of Regulation (EU) 2015/847, as those Articles have effect in Jersey by virtue of Regulation 2, shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
- (4) In deciding whether a person has committed an offence under this Regulation, the court shall take into account whether the person followed any relevant guidance that applies to the person and which was at the time issued, adopted or approved by the Jersey Financial Services Commission under any other enactment.
- (5) A person shall not be guilty of an offence under this Regulation if he or she took all reasonable steps, and exercised all due diligence, to avoid committing the offence.
- (6) In this Regulation –
 - “intermediary payment service provider” means a payment service provider that is neither that of the payer nor that of the payee and that participates in the execution of transfers of funds;
 - “payment service provider” means a person, being a person registered under the Banking Business (Jersey) Law 1991², when –
 - (a) the person is carrying out payment services in or from within Jersey; or
 - (b) being a legal person established under Jersey law, the person is carrying out payment services in any part of the world other than in or from within Jersey.

4 Criminal liability of partners, directors and other officers

- (1) If an offence under these Regulations committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate is proved to have been committed with the consent or connivance of –
 - (a) a person who is a partner of the partnership, or a director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,

the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

- (2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

5 Repeal of Community Provisions (Wire Transfers) (Jersey) Regulations 2007

The Community Provisions (Wire Transfers) (Jersey) Regulations 2007³ are repealed.

6 Citation and commencement

These Regulations may be cited as the EU Legislation (Information Accompanying Transfers of Funds) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

SCHEDULE

(Regulation 2)

EXCEPTIONS, ADAPTATIONS AND MODIFICATIONS TO PROVISIONS OF REGULATION (EU) 2015/847 IN RESPECT OF ITS EFFECT IN JERSEY

1. Except where otherwise provided in this Schedule, references in Regulation (EU) 2015/847 to “Member State” and “the Union” shall be read as if Jersey were itself a Member State, its territory were included within the Union territory and for the purposes of European Union law were a separate country from the United Kingdom.
2. Any reference in Regulation (EU) 2015/847 to an amount of currency expressed in euro (EUR) shall be construed as also meaning that amount converted into, and expressed as, an amount of any other currency.
3. In Article 1, for the words “the Union” there shall be substituted the word “Jersey”.
4. In Article 2 –
 - (a) in paragraph 1, for the words “the Union” there shall be substituted the word “Jersey”;
 - (b) in paragraph 4(b), for the words “a Member State” there shall be substituted the words “the British Islands”;
 - (c) in paragraph 5 –
 - (i) for the words “its territory” there shall be substituted the words “the British Islands”;
 - (ii) in subparagraph (a) for the words “Directive (EU) 2015/849” there shall be substituted the words “the requirements of the Money Laundering (Jersey) Order 2008⁴ or the Terrorism (Jersey) Law 2002⁵ or is subject to equivalent requirements under enactments of the United Kingdom, Guernsey or the Isle of Man”.
5. In Article 3 –
 - (a) in paragraph (1), for the words “means terrorist financing as defined in Article 1(5) of Directive (EU) 2015/849” there shall be substituted the words “means an offence referred to in Article 15 or 16 of the Terrorism (Jersey) Law 2002”;
 - (b) in paragraph (2), for the words “means the money laundering activities referred to in Article 1(3) and (4) of Directive (EU) 2015/849” there shall be substituted the words “means money laundering as defined in Article 1(1) of the Proceeds of Crime (Jersey) Law 1999⁶”;
 - (c) paragraphs (3) and (4) shall be omitted;
 - (d) after paragraph (12) there shall be inserted the following paragraphs –

“(13) ‘British Islands’ means the United Kingdom, Jersey, Bailiwick of Guernsey and the Isle of Man;

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- (14) ‘competent authority’ means the Jersey Financial Services Commission established by Article 2 of the Financial Services Commission (Jersey) Law 1998’;
- (15) ‘electronic money’ means electronically (including magnetically) stored monetary value, as represented by a claim on the issuer, which is issued on receipt of funds for the purpose of making a payment transaction, and which is accepted by a person other than the issuer of the electronic money;
- (16) ‘payment transaction’ means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.”.
6. In Article 4, for paragraph 5 there shall be substituted the following paragraph –
- “5. Verification as referred to in paragraph 4 shall be deemed to have taken place where the payer’s payment service provider has complied with –
- (a) the requirements of Article 13(1)(a) of the Money Laundering (Jersey) Order 2008 that apply in relation to the payer and the information obtained pursuant to that Article has been stored in accordance with Part 4 of that Order ; or
- (b) Article 13(1)(c) of the Money Laundering (Jersey) Order 2008.”.
7. In Article 5, in the heading and in paragraph 1, for the word “Union” there shall be substituted the words “British Islands”.
8. In Article 6, in the heading and in paragraphs 1 and 2, for the word “Union” there shall be substituted the words “British Islands”.
9. In Article 7 –
- (a) in paragraph 2, for the word “Union”, wherever it appears, there shall be substituted the words “British Islands”;
- (b) in paragraph 3, for the words “Articles 69 and 70 of Directive 2007/64/EC” there shall be substituted the words “Regulations 36 and 37 of the EU Legislation (Payment Services – SEPA) (Jersey) Regulations 2015⁸⁷”;
- (c) for paragraph 5 there shall be substituted the following paragraph –
- “5. Verification as referred to in paragraphs 3 and 4 shall be deemed to have taken place where the payee’s payment service provider has complied with –
- (a) the requirements of Article 13(1)(a) of the Money Laundering (Jersey) Order 2008 that apply in relation to the payee and the information obtained pursuant to that Article has been stored in accordance with Part 4 of that Order; or
- (b) Article 13(1)(c) of the Money Laundering (Jersey) Order 2008.”.
10. In Article 8, in paragraph 1, for the words “procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/849” there shall

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- be substituted the words “the measure referred to in Article 3(5) of the Money Laundering (Jersey) Order 2008”.
11. In Article 9, for the words “whether it is to be reported to the Financial Intelligent Unit (FIU) in accordance with Directive (EU) 2015/849” there shall be substituted the words “whether a disclosure is to be made under Article 34D(4) of the Proceeds of Crime (Jersey) Law 1999, Article 21(2) of the Money Laundering (Jersey) Order 2008 or Article 21(4) of the Terrorism (Jersey) Law 2002”.
 12. In Article 11, for the word “Union”, wherever it appears, there shall be substituted the words “British Islands”.
 13. In Article 13, for the words “whether it is to be reported to the FIU in accordance with Directive (EU) 2015/849” there shall be substituted the words “whether a disclosure is to be made under Article 34D(4) of the Proceeds of Crime (Jersey) Law 1999, Articles 21(2) of the Money Laundering (Jersey) Order 2008 or Article 21(4) of the Terrorism (Jersey) Law 2002”.
 14. In Article 14, the words “, including by means of a central contact point in accordance with Article 45(9) of Directive (EU) 2015/849, where such a contact point has been appointed,” shall be omitted.
 15. In Article 15 –
 - (a) in paragraph 1 –
 - (i) for the words “Directive 95/46/EC, as transposed into national law” there shall be substituted the words “the Data Protection (Jersey) Law 2005”;
 - (ii) the second sentence shall be omitted;
 - (b) in paragraph 3, for the words “Article 10 of Directive 95/46/EC” there shall be substituted the words “the Data Protection (Jersey) Law 2005”.
 16. In Article 16 –
 - (a) In paragraph 1, for the words “five years” there shall be substituted the words “six years”;
 - (b) paragraphs 2 and 3 shall be omitted.
 17. Articles 17, 18, 19 and 20 shall be omitted.
 18. In Article 21 in paragraph 1, the second sentence shall be deleted.
 19. In Article 22, paragraph 2 shall be omitted.
 20. Articles 23 to 27 shall be omitted.
 21. After Article 27, the words “This Regulation shall be binding in its entirety and directly applicable in all Member States.” shall be omitted.

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- 1 *chapter 17.245*
 - 2 *chapter 13.075*
 - 3 *R&O.88/2007 (chapter 17.245.57)*
 - 4 *chapter 08.780.30*
 - 5 *chapter 17.860*
 - 6 *chapter 08.780*
 - 7 *chapter 13.250*
 - 8 *chapter 17.245.54*
 - 9 *chapter 15.240*