

# STATES OF JERSEY



Jersey

## **DRAFT CRIMINAL JUSTICE (DEFERRED PROSECUTION AGREEMENTS) (JERSEY) LAW 202- (P.103/2022): AMENDMENT**

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**Lodged au Greffe on 23rd November 2022  
by the Minister for Home Affairs  
Earliest date for debate: 13th December 2022**

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**STATES GREFFE**



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**PAGE 29, ARTICLE 9 –**

In Article 9 –

- (a) in paragraph (6), for “provides information or documents to the independent monitor” substitute –  
| “provides a statement to the independent monitor pursuant to a requirement”;
- (b) in paragraph (7), for “information or documents” substitute –  
| “statement”.

MINISTER FOR HOME AFFAIRS

## REPORT

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### Summary

[P.103/2022 the Draft Criminal Justice \(Deferred Prosecution Agreements\) \(Jersey\) Law 202- \(gov.je\)](#) (the “**draft Law**”) was lodged on 31st October 2022. As noted at the beginning of the Report on P.103/2022, the purpose of the draft Law is to ensure, together with other recent legislative developments, that where corporate bodies and legal entities commit crimes there are a range of tools to ensure they are held to account and sanctioned. The proposals for deferred prosecution agreements (“**DPAs**”) in Jersey have been designed to supplement and not to displace regular prosecutions of natural persons for their own criminal conduct in the context of offending by an entity.

Following the lodging of the draft Law, a minor issue has been identified with the content of Article 9(6) and (7) of the draft Law, which it is appropriate to address with a short amendment. The purpose of this amendment is to ensure that the restriction on the use of information obtained while monitoring compliance with a DPA, that is intended to protect the right against self-incrimination, is appropriately limited to protecting statements made by a connected person to an independent monitor.

### Background

Article 9(4) of the draft Law requires a connected person in relation to an entity to provide an independent monitor with “*information or documents*” that the independent monitor (the “**IM**”) appointed under a DPA might require to monitor an entity’s compliance with the DPA. That information will be available to the Attorney General. Article 9(6) and (7) of the draft Law provide that “*information or documents*” provided to an IM by a connected person in response to a requirement under Article 9(4) may not be used in evidence against the connected person on a prosecution for an offence other than the offence under Article 9(5) (i.e. the offence of knowingly or recklessly providing false information or failing to provide information, to an IM). The purpose of Article 9(6) and (7) is to protect the right of a connected person against self-incrimination, as explained in the Human Rights Notes on the draft Law (page 11 and 12 of P.103/2022).

The issue with respect to Article 9(6) and (7) is that, after the draft Law was lodged, it was recognised that they are wider than is necessary to protect the right against self-incrimination. The right against self-incrimination protected by Article 6 of the ECHR is generally concerned with preventing a person from being required to condemn themselves ‘out of their own mouth’ by making a statement, whether orally or in writing, that may tend to incriminate the person. Article 9(6) and (7) are wider because these paragraphs apply to *all* information or documents received by an IM from a connected person and may be read as applying to pre-existing background documents and information that was not generated by the connected person in response to the request by the IM. As a result, the draft Law might restrict the admission of relevant information or documents that the connected person provides to the IM, where the information was generated for other purposes (e.g. accounting records) and might contain important evidence of criminal conduct by the connected person.

The amendment replaces references to “*information or documents*” in paragraphs (6) and (7) of Article 9 with references to a “*statement*” made by a connected person to an IM in response to a requirement under Article 9(4). *This ensures that the admission of a statement made by a connected person in response to a question from an IM cannot form part of the evidence against that person in subsequent criminal proceedings.*

*However, other relevant evidence provided by the connected person will be admissible against them.*

In this context, it is not necessary to define a “*statement*” as the natural meaning of that term will have the intended effect. Further, if any circumstances were to arise where the use of other information or documents obtained by an IM from a connected person could offend against the right not to incriminate oneself or be otherwise unfair, then the criminal courts in Jersey have other powers to exclude such evidence. [Article 76](#) of the Police Procedures and Criminal Evidence (Jersey) Law 2003 provides that a criminal court may exclude evidence from a trial if its admission would unfairly prejudice the proceedings. In this context, the draft Law with this amendment will therefore strike a better balance *between protecting the right against self-incrimination and ensuring that other relevant evidence of criminal conduct is admissible in criminal proceedings.*

### **Financial and manpower implications**

There are no financial and manpower implications for the States arising from the adoption of the amendment.