

STATES OF JERSEY

r

DRAFT TERRORISM (AMENDMENT No. 2) (JERSEY) LAW 200

**Lodged au Greffe on 24th September 2007
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT TERRORISM (AMENDMENT No. 2)(JERSEY) LAW 200

European Convention on Human Rights

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

In the view of the Minister for Home Affairs the provisions of the Draft Terrorism (Amendment No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

Introduction

1. In 2008 the Island's framework to counter money laundering and terrorist financing is to be the subject of a review by the International Monetary Fund. Jersey will be assessed against the international standards set by the Financial Action Task Force on Money Laundering ("FATF"). The amendments implemented by this draft Law have been formulated to implement a number of the criteria set out in the 40 Recommendations and 9 Special Recommendations of the FATF, against which Jersey will be assessed and also to address inconsistencies in the current operation of the Proceeds of Crime (Jersey) Law 1999, ("POCL") the Drug Trafficking Offences (Jersey) Law 1988 ("DTOL") and the Terrorism (Jersey) Law 2002 ("TL").

Article 23 Amendment

2. In line with the new provisions being proposed for introduction into the POCL and DTOL, Article 2 of the draft Law amends Article 23 of the TL so that a person working for a financial institution does not commit the offence of failing to disclose a knowledge or suspicion, or reasonable grounds for a knowledge or suspicion, of the commission of a terrorist offence under Articles 15-18 of the TL, if he or she does not in fact know or suspect that such a terrorist offence has been committed and has not been given material training by the employer in the prevention and detection of money laundering. Article 18 sets out the offence of money laundering under the TL. It is considered inappropriate for those who have not had adequate training to be expected to be able to identify transactions which may be indicative of money laundering.

Disclosure

3. The new Articles 24A-C of the draft Law will have the effect of introducing into the principal Law provisions similar to those in Articles 29-31 of the POCL. The same provisions are being introduced into the DTOL. The new provisions provide an express statutory basis for the disclosure of information by a police officer for particular purposes. Whilst information can be disclosed by a police officer under established common law principles on police disclosure, it was thought desirable to include express disclosure provisions in both the TL and DTOL, so as to ensure that the position on police disclosure under these Laws is both clear and identifiable, not only to the IMF assessors but also to members of the public for human rights purposes.

Asset Sharing

4. In Jersey's response to the IMF's 2003 Assessment it was stated, in relation to 'International Cooperation' –
 73. *The authorities emphasize that both the Proceeds of Crime (Jersey) Law 1999 (Article 24) and Drug Trafficking (Jersey) Law 1988 (Article 14A) already provide for the sharing of confiscated assets. As noted in the assessment, where there is no legislative provision for sharing confiscated assets (as under the TL) Jersey is able to reach, and in fact has reached, agreement with other jurisdictions on a case by case basis. Jersey has opened preliminary negotiations with Canada and the United States of America with regard to an asset sharing agreement.*
 74. *Notwithstanding this, consideration will be given to amending the TL to introduce provisions facilitating the sharing of assets."*
5. Due consideration has been given and the draft amendment to paragraph 1 of Schedule 3 provides for the proceeds of assets forfeited in relation to terrorist offences to be realised by the Viscount and paid into the POCL's Criminal Offences Confiscations Fund. Once in the Criminal Offences Confiscation Fund, the proceeds may be utilised for fulfilling Jersey's obligations in relation to asset sharing agreements.

Enforcement of External Confiscation Orders

6. Recommendation 38 of the Financial Action Task requires countries to have appropriate laws and procedures in place to provide an effective and timely response to mutual legal assistance.
7. Currently the provision of assistance to another jurisdiction to enable the enforcement of an external

- restraint or forfeiture order under the TL is conditional on that jurisdiction being listed, currently in the Terrorism (Enforcement of External Order) (Jersey) Regulations 2003, as a designated country or territory to whom assistance can be given. The same is true in relation to the enforcement of an external confiscation order under the POCL, the enforcement of an external confiscation order under the DTOL and the enforcement of an overseas forfeiture order under the Criminal Justice (International Co-operation) (Jersey) Law 2001 (“CJICL”).
8. Under the draft Law, the enforcement of an external restraint or forfeiture order under the Law will no longer be conditional on countries or territories being designated. The amendments enable external forfeiture or restraint orders from any jurisdiction to be capable of being registered by the Royal Court. Regulation 6 of the Terrorism (Enforcement of External Order) (Jersey) Regulations 2003 provides that the Royal Court may register an external forfeiture order if –
 - (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
 - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings in which the relevant order was made, that the person received notice of the proceedings in sufficient time to enable that person to defend them; and
 - (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
 9. Regulation 7 of the Regulations provides that the Royal Court may register an external restraint order if –
 - (a) it is satisfied that at the time of registration the order is in force; and
 - (b) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
 10. Regulation 7(2) provides that an external restraint order may only be registered where –
 - (a) proceedings have been instituted against a person in a designated country, the proceedings have not been concluded, and either an external forfeiture order has been made in the proceedings or it appears to the Royal Court that there are reasonable grounds for thinking that such an order may be made in those proceedings; or
 - (b) proceedings are to be instituted against a person in a designated country and there are reasonable grounds for thinking that an external forfeiture order may be made in those proceedings.
 11. Draft Regulations replacing those which already exist will soon be debated. The provisions contained in the Regulations will remain substantively the same. It is intended that the only changes to the Regulations which will be pursued are those necessary in order to remove any references currently made to designated countries or territories. No changes to the conditions under which the Royal Court may register such orders will be made. Similar amendments are being made to the POCL, DTOL and CJICL.
 12. Whilst the notion of providing assistance to only designated countries or territories is thought unlikely to receive adverse comment by the International Monetary Fund, the list of designated countries has not been kept up to date in recent years and it is thought highly likely that Jersey will be criticised for not giving “*effective*” mutual legal assistance because of this. Whilst compliance with FATF Recommendation 38 in this regard could possibly be achieved by updating the list of designated countries or territories, it is considered that the better solution would be to abandon the list of countries and offer assistance to jurisdictions on a case by case basis. Indeed this is the approach that has been adopted in regards to the UK legislation, on which the relevant Jersey legislation was originally based.

Financial/manpower implications

It is not possible to predict the resource implications of the proposed new Law with any accuracy, but a significant increase in resource requirements would seem unlikely. The situation will be monitored post implementation.

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 20th September 2007 the Minister for Home Affairs made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Home Affairs the provisions of the Draft Terrorism (Amendment No. 2) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law would amend the Terrorism (Jersey) Law 2002 (the “Law”).

Article 1 is the interpretation provision.

Article 2 amends Article 23 of the Law. Under that Article, a person who works (whether as an employer or employee) in a financial institution may be guilty of a criminal offence if, in the course of the business, he ought to know or suspect that another person has committed an offence involving terrorist property, but fails to report it. The amendment has the effect that an employee will not be guilty of the offence if he or she shows, firstly, that he or she does not in fact know or suspect that a terrorist offence has been committed and, secondly, that his or her employer was required by the Money Laundering (Jersey) Order 1999 to provide the employee with material training in the prevention and detection of money laundering, but failed to do so.

Article 3 makes a drafting change of no substantive effect in Article 24 of the principal Law.

Article 4 adds 3 Articles to the Law.

Article 24A – Restrictions on disclosure

This Article prohibits disclosure by a police or customs officer of information received under the Law, unless disclosure is permitted by Article 24B or 24C. The prohibition on disclosure also applies to a person to whom the officer transmits the information. It is an offence to contravene the prohibition.

Article 24B – Disclosure for purposes within Jersey

This Article permits the disclosure of information received under the Law where the disclosure is for the purposes of the investigation of crime, or of criminal proceedings, in Jersey, or to one of the persons mentioned in paragraph (2).

Article 24C – Disclosure for purposes outside Jersey

This Article permits the disclosure of information received under the Law, with the consent of the Attorney General, if the disclosure is for the purposes of investigation of crime, or of criminal proceedings, outside Jersey, or to a competent authority of another jurisdiction.

Article 5 amends paragraph 1 of Schedule 3 to the Law. The effect of the amendment is to provide that where court makes a forfeiture order in respect of terrorist property, the proceeds that are realised by the Viscount are to be paid into the Criminal Offences Confiscations Fund established by Article 24 of the Proceeds of Crime (Jersey) Law 1999. Those proceeds will then be available for use by the Minister for Treasury and Resources, after consultation with the Attorney General, in dealing with criminal conduct and discharging Jersey’s international obligations under asset-sharing agreements with other countries.

Article 6 amends paragraph 11 of Schedule 3 to the Law. That paragraph enables the States to make Regulation for the enforcement, in Jersey, of an order made in a country or territory, which must be designated in the Regulations, for the forfeiture of terrorist property or restraining dealings with terrorist property. The amendment removes the requirement to designate a country or territory in the Regulations, with the consequence that they may provide for the enforcement of such a forfeiture order, wherever made.

Article 7 enables the States, by Regulations, to extend the meaning of “business relationship” in paragraph 7(3) of Schedule 6 to the Law.

Article 8 is supplemental to Article 6. It has the effect that existing Regulations made under paragraph 11 c Schedule 3 to the Law shall remain in force until further Regulations have been made under paragraph 11 a amended by this Law.

Article 9 is the citation and commencement provision.



Jersey

DRAFT TERRORISM (AMENDMENT No. 2)(JERSEY) LAW 200

Arrangement

Article

- 1 [Interpretation](#)
- 2 [Article 23 amended](#)
- 3 [Article 24 amended](#)
- 4 [New Articles 24A, 24B and 24C inserted](#)
- 5 [Paragraph 1 of Schedule 3 amended](#)
- 6 [Paragraph 11 of Schedule 3 amended](#)
- 7 [Paragraph 7 of Schedule 6 amended](#)
- 8 [Saving for Regulations](#)
- 9 [Citation and commencement](#)



Jersey

DRAFT TERRORISM (AMENDMENT No. 2)(JERSEY) LAW 200

A LAW to amend further the Terrorism (Jersey) Law 2002.

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 –

1 Interpretation

In this Law, “principal Law” means the Terrorism (Jersey) Law 2002^[1].

2 Article 23 amended

(1) After Article 23(5) of the principal Law there shall be inserted the following paragraph–

“(5A) A person does not commit an offence under this Article by failing to disclose any information or other matter that has come to his or her attention, if –

- (a) it comes to the person in the course of his or her employment in the financial institution;
- (b) the financial institution was required by an Order made under Article 37 of the Proceeds of Crime (Jersey) Law 1999^[2] to provide the employee with training, but had not done so;
- (c) the training, if it had been given, would have been material; and
- (d) the employee does not know or suspect that the other person concerned had committed an offence under any of Articles 15 to 18”.

(2) In Article 23(7) of the principal Law –

- (a) in sub-paragraph (a), for the words “the alleged offender’s employer” there shall be substituted the words “the employer of the person making the disclosure”;
- (b) in sub-paragraph (b), for the words “the alleged offender’s” there shall be substituted the word “the discloser’s”.

3 Article 24 amended

In Article 24(2) of the principal Law, the words “(‘the discloser’)” shall be deleted.

4 New Articles 24A, 24B and 24C inserted

After Article 24 of the principal Law there shall be inserted the following Articles–

“24A Restrictions on disclosure

- (1) Information which is disclosed to an officer of the Force or customs officer under Article 20, 21, 22, 23 or 24 shall not be disclosed by that officer, or by any person who obtains the information directly or indirectly from the officer, unless its disclosure is permitted under Article 24B or 24C.
- (2) A person who contravenes paragraph (1) shall be guilty of an offence and liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 or the standard scale, or both.
- (3) It is a defence for a person charged with an offence under this Article to prove that the person took all reasonable steps and exercised due diligence to avoid committing the offence.

24B Disclosure for purposes within Jersey

- (1) Article 24A does not prohibit the disclosure of information to a person in Jersey for the purposes of the investigation of crime in Jersey or of criminal proceedings in Jersey.
- (2) Article 24A does not prohibit the disclosure of information, for other purposes in Jersey to –
 - (a) the Attorney General;
 - (b) the Jersey Financial Services Commission;
 - (c) an officer of the Force or customs officer; or
 - (d) any other person who is for the time being authorized in writing by the Attorney General to obtain that information.

24C Disclosure for purposes outside Jersey

- (1) Article 24A does not prohibit the disclosure of information if –
 - (a) the Attorney General has consented to the disclosure and has not withdrawn that consent; and
 - (b) the information is disclosed –
 - (i) for the purposes of the investigation of crime outside Jersey or of criminal proceedings outside Jersey, or
 - (ii) to an authority outside Jersey which is a competent authority for the purposes of Article 3(3) of the Investigation of Fraud (Jersey) Law 1991^[3].
- (2) The Attorney General may give consent –
 - (a) generally or specifically; and
 - (b) unconditionally or subject to such conditions as the Attorney General may stipulate.
- (3) Without prejudice to the generality of paragraph (2), the Attorney General's consent may be given in terms which permit the disclosure from time to time (as the occasion requires) of such a class of information as is specified in the consent to such a person or authority or class of persons or authorities as is so specified.

- (4) Without prejudice to the generality of paragraph (2), a condition –
 - (a) may be expressed generally or in respect of any specified information;
 - (b) may provide that information may only be disclosed in specified circumstances or for a specified purpose; or
 - (c) may provide that any person or authority to whom information is disclosed shall not disclose it to any other person or body without the prior consent of the Attorney General.”.

5 Paragraph 1 of Schedule 3 amended

For paragraph 1(3) of Schedule 3 to the principal Law there shall be substituted the following sub paragraph –

- “(3) The balance of any sums in the hands of the Viscount by virtue of an order made under sub-paragraph (1) shall, after making payment (where appropriate) under sub-paragraph (1)(d), be paid into the Criminal Offences Confiscations Fund established by Article 24 of the Proceeds of Crime (Jersey) Law 1999^[4].”.

6 Paragraph 11 of Schedule 3 amended

In paragraph 11 of Schedule 3 to the principal Law –

- (a) in sub-paragraph (2)(a), for the words “a country or territory which is for the time being designated by the Regulations for the purposes of this paragraph” there shall be substituted the words “a country or territory outside Jersey”;
- (b) for sub-paragraph (3)(b) there shall be substituted the following clause–
 - “(b) provision, made in a country or territory outside Jersey, prohibiting dealing with property –
 - (i) which is subject to an external forfeiture order, or
 - (ii) in respect of which such an order could be made in proceedings which have been or are to be instituted in that country or territory (‘an external restraint order’).”;
- (c) in sub-paragraph (5), for the words “a designated country or territory” there shall be substituted the words “a country or territory outside Jersey”.

7 Paragraph 7 of Schedule 6 amended

For paragraph 7(3) of Schedule 6 to the principal Law there shall be substituted the following sub paragraph –

- “(3) The States may by Regulations –
 - (a) provide for a class of information to be customer information, or to cease to be customer information, for the purposes of this Schedule; or
 - (b) extend the meaning of the expression ‘business relationship’ for the purposes of this Schedule.”.

8 Saving for Regulations

Regulations made under paragraph 11 of Schedule 3 to the principal Law which are in force immediately before this Law comes into force shall remain in force until revoked by further Regulations made under that paragraph as amended by this Law.

9 Citation and commencement

This Law may be cited as the Terrorism (Amendment No. 2) (Jersey) Law 200 and shall come into force 7 days after it is registered.

-
- [1] *chapter 17.860*
- [2] *chapter 08.780*
- [3] *chapter 08.640*
- [4] *chapter 08.780*