

STATES OF JERSEY

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DRAFT CRIMINAL JUSTICE (INTERNATIONAL CO- OPERATION) (AMENDMENT) (JERSEY) LAW 200

**Lodged au Greffe on 24th September 2007
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (AMENDMENT) (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 Treasury and Resources has made the following statement –

In the view of the Minister for Treasury and Resources the provisions of the Draft Criminal Justice (International Co-operation) (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

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

REPORT

1. The draft Law amends the Criminal Justice (International Co-operation) (Jersey) Law 2001. The States Strategic Plan 2006-2011 includes in its strategic aims at paragraph 5.2 the continued enhancement of Jersey's international reputation as a co-operative and generally well-regulated jurisdiction. In pursuance of that aim, the draft Law aims to strengthen Jersey's legislative provisions in relation to mutual legal assistance. The draft Law seeks to do this in two ways.
2. The first is to make it an offence for a person to fail to provide evidence in accordance with a notice issued by the Attorney General under Article 5 of the Law. The Attorney General frequently receives requests for mutual legal assistance from other jurisdictions asking for assistance in obtaining evidence in Jersey, in connection with criminal proceedings that have been instituted, or a criminal investigation that is being carried on, in those jurisdictions. In order to give such assistance the Attorney General, if he thinks it fit to do so, may issue a notice in writing under the Law requiring a person (normally a financial services provider) to provide the evidence specified in the request. The existing provisions provide that the evidence received pursuant to such a request shall be received by the Court or Viscount. That evidence is then forwarded to the Law Officers' Department. The Law Officers' Department is then responsible for passing the evidence to the appropriate authority in the requesting jurisdiction.
3. The Attorney General has recently found that financial service providers are not complying with the terms of notices issued by him under the Law in a timely fashion. This is considered unsatisfactory. Jersey's ability to respond to requests for mutual legal assistance is paramount to Jersey's international reputation. Responding to such requests shows to the world that Jersey is committed to providing assistance to the international community in the global fight against crime. It is hoped that the introduction of a penalty for failing to respond, without reasonable excuse, to a notice issued by the Attorney General will ensure in the future that evidence requested is submitted to the Attorney General and done so within the time-limits set out in a notice. An equivalent provision is contained in Article 2 (12) of the Investigation of Fraud (Jersey) Law 1991, which creates an offence for failing to comply with a notice issued under that Law.
4. The amendments to Article 5 of the draft Law are principally to introduce this new offence and also to allow for documentary evidence to be sent directly to the Attorney General, instead of having to go through the intermediary of the Court or Viscount as is currently the case under the Law.
5. The new Articles 5A and 5B incorporate provisions that were previously in the Schedule to the Law. In order to introduce the offence for failing to comply with a notice issued by the Attorney General under the Law and to allow for documentary evidence to be sent directly to the Attorney General, it was necessary to move the provisions from the Schedule into the main body of the Law.
6. The second way the draft Law aims to strengthen Jersey's legislative provisions dealing with mutual legal assistance is by broadening Jersey's ability to provide assistance to other jurisdictions. Currently the provision of assistance to another jurisdiction to enable the enforcement of an overseas forfeiture order is conditional on that jurisdiction being listed, currently in the Criminal Justice (International Co-operation) (Jersey) Regulations 2001, as a designated country or territory to whom assistance can be given. The same is true in relation to the enforcement of external confiscation orders under the Proceeds of Crime (Jersey) Law 1999 and the Drug Trafficking Offences (Jersey) Law 1988 and the enforcement of external restraint or forfeiture orders under the Terrorism (Jersey) Law 2002.
7. Under the draft Law, the enforcement in Jersey of external forfeiture orders arising from criminal proceedings will no longer be conditional on countries or territories being designated. The amendments enable external forfeiture orders from any jurisdiction to be capable of being registered by the Royal Court. Article 6 of the Criminal Justice (International Co-operation) (Jersey) Regulations 2001 sets out the conditions of which the Royal Court must be satisfied before it may register an external forfeiture order. Those conditions are that the court is satisfied that: (a) at the time of registration the order is in force and is not subject to appeal; (b) where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable the person to defend them; and (c) enforcing the order in Jersey would not be contrary to the interests of justice.

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. Similar amendments are being made to the Proceeds of Crime (Jersey) Law 1999, Drug Trafficking Offences (Jersey) Law 1988 and the Terrorism (Jersey) Law 2002 and the Regulations which stem from those Laws.

8. The amendments brought about by the draft Law are also necessary to ensure that Jersey is assessed as being fully compliant with Recommendation 38 of the Financial Action Task Force on Money Laundering during the International Monetary Fund Assessment in 2008.
9. 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.
10. The creation of an offence for failing to respond to a notice issued by the Attorney General under the Law will help to ensure that responses to requests for mutual legal assistance can be given in a timely manner. 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.

11. **Financial/manpower statement**

This draft Law has no financial or manpower resource implications for the States.

12. **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 21st September 2007 the Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Treasury and Resources the provisions of the Draft Criminal Justice (International Co-operation) (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law would amend the Criminal Justice (International Co-operation) (Jersey) Law 2001 (the “Law”).

Article 1 is the interpretation provision.

Article 2 inserts into the Law new Articles 5, 5A and 5B, in substitution for the existing Article 5, which relates to requests by foreign persons or bodies for information relating to foreign criminal proceedings.

The existing provisions require that the evidence to be received in Jersey further to such a request shall be received by the court or the Viscount. In practice, most evidence is in a documentary form, and the court and the Viscount function as a post box for the Attorney General, even though the Article refers to “proceedings”.

The amendment to Article 5 and the insertion of Articles 5A and 5B will allow the Attorney General to nominate that, where an object (such as a document) is to be provided, it shall be provided directly to the Attorney General. Where evidence is to be given orally (including in relation to certain articles that are to be given as evidence), the Attorney General may nominate the court or the Viscount to receive it.

The new Articles 5A and 5B incorporate provisions that were previously in the Schedule, and also include a provision making it an offence for a person to fail to provide evidence in accordance with a notice given by the Attorney General under Article 5. A person who commits the offence is liable to a fine of level 4 on the standard scale (£5,000).

Article 3 amends Article 7 of the Law, which relates to forfeiture orders. A forfeiture order is an order for the forfeiture and destruction or disposal of property related to or used, or intended for use, in connection with a serious offence. Article 7 empowers the States to make Regulations for the enforcement in Jersey of a forfeiture order made by a court in a country or territory outside Jersey, but only in relation to orders made in countries or territories designated in the Regulations. This amendment widens the power to make Regulations, so as to enable Regulations to provide for the enforcement of forfeiture orders made anywhere outside Jersey.

Articles 4 and 5, respectively, amend Article 8 of and repeal the Schedule to the principal Law, consequentially upon the amendments made by Article 2 of this draft Law, specifically, to reflect the fact that matters previously placed in the Schedule to the Law have now been placed in the new Articles 5A and 5B.

Article 6 supplements the amendment made by Article 3 of this draft Law. It has the effect that existing Regulations made under Article 7 of the Law will remain in force until replaced by further Regulations made under the enabling power as amended by this draft Law.

Article 7 is the citation and commencement provision.



Jersey

DRAFT CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (AMENDMENT) (JERSEY) LAW 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 5 substituted</u>
<u>3</u>	<u>Article 7 amended</u>
<u>4</u>	<u>Article 8 amended</u>
<u>5</u>	<u>Schedule repealed</u>
<u>6</u>	<u>Saving for Regulations</u>
<u>7</u>	<u>Citation and commencement</u>



Jersey

DRAFT CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (AMENDMENT) (JERSEY) LAW 200

A LAW to amend the Criminal Justice (International Co-operation) (Jersey) Law 2001.

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 Criminal Justice (International Co-operation) (Jersey) Law 2001^[1].

2 Article 5 substituted

In the principal Law, for Article 5 there shall be substituted the following Articles–

“5 Evidence for, and assistance in, criminal proceedings in overseas court etc.

(1) This Article applies where –

- (a) the Attorney General receives a request for assistance in obtaining evidence in Jersey in connection with criminal proceedings which have been instituted, or a criminal investigation that is being carried on, in a country or territory outside Jersey;
- (b) the request is received from –
 - (i) a court or tribunal exercising criminal jurisdiction in that country or territory or a prosecuting authority in that country or territory, or
 - (ii) any other authority in that country or territory which appears to the Attorney General to have the function of making requests of the kind; and
- (c) the Attorney General is satisfied –
 - (i) that an offence under the law of the country or territory in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and
 - (ii) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there.

- (2) In a case where this Article applies, the Attorney General may issue a notice in writing to a person specifying any of, or any combination of, the following requirements –
 - (a) that the person is required to give to the Attorney General, by the date specified in the notice, documents, or other articles, which are specified in the notice and that may constitute evidence for the purposes of the request;
 - (b) that the person –
 - (i) is required to give, to a court or the Viscount (as specified in the notice) documents, or other articles, which are specified in the notice and that may constitute evidence for the purposes of the request, and
 - (ii) may be required by the court or the Viscount (as specified in the notice) to attend and to give evidence in proceedings before the court or the Viscount in relation to that evidence;
 - (c) that the person may be required by the court or the Viscount (as specified in the notice) to attend and to give evidence in proceedings before the court or the Viscount in relation to the request.
- (3) A person shall not, without reasonable excuse, fail to comply with a requirement of a notice given to the person under paragraph (2) that is a requirement of the kind specified in sub-paragraph (a) of that paragraph, in relation to evidence that the person may under Article 5A, be compelled to give in proceedings under this Article.
- (4) A person who contravenes paragraph (3) commits an offence and shall be liable to a fine of level 4 on the standard scale.
- (5) The court shall have the same powers for securing the attendance of –
 - (a) a person to whom a notice has been given under paragraph (2) specifying a requirement of the kind that is specified in sub-paragraph (b) or (c) of that paragraph; or
 - (b) any other witness,for the purpose of proceedings under this Article as it has for the purpose of other proceedings before the court.
- (6) The Viscount shall have the same powers for securing the attendance of –
 - (a) a person to whom a notice has been given under paragraph (2) specifying a requirement of the kind that is specified in sub-paragraph (b) or (c) of that paragraph; or
 - (b) any other witness,for the purposes of proceedings before the Viscount under this Article as the Royal Court has for the purposes of any proceedings before it.
- (7) The court or the Viscount, as the case may be, may in proceedings before it or him or her, take evidence on oath.
- (8) An order for costs shall not be made in proceedings before the Court or the Viscount.
- (9) For the avoidance of doubt it is declared that the Bankers' Books Evidence (Jersey) Law 1986^[2] applies to any proceedings before the court and the Viscount under this Article as it applies to other proceedings before the court.
- (10) The Bankers' Books Evidence (Jersey) Law 1986 applies to the giving to the Attorney General, in pursuance of a requirement of a kind that is referred to in sub-paragraph (a) of paragraph (2) and that is specified in a notice given under that paragraph, of any evidence to which that Law applies, as if the giving of the evidence to the Attorney General took place in proceedings before a court.

5A Giving of evidence in proceedings under Article 5

- (1) A person shall not be compelled to give in proceedings under Article 5 any evidence which the person could not be compelled to give –
 - (a) in criminal proceedings in Jersey; or
 - (b) subject to paragraph (2), in criminal proceedings in the country or territory from which the request under Article 5(1) has come.
- (2) Paragraph (1)(b) shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court, tribunal or other authority which made the request under Article 5(1).
- (3) If the claim made by a person is not conceded in accordance with paragraph (2)–
 - (a) the person may (subject to the other provisions of this Article) be required to give the evidence to which the claim relates; and
 - (b) the evidence shall not be transmitted to the court, tribunal or other authority which requested it if a court in the country or territory in question, on the matter being referred to it, upholds the claim.
- (4) In this Article, references to giving evidence include references to answering any question and to producing any document or other article and the references in paragraph (3) to the transmission of evidence given by a person shall be construed accordingly.
- (5) In this Article, references to giving evidence in proceedings under Article 5 shall include the giving of evidence to the Attorney General pursuant to a requirement that is specified in a notice given under Article 5(2) and that is of a kind that is specified in sub-paragraph (a) of Article 5(2).

5B Transmission of evidence received in proceedings under Article 5

- (1) The evidence received by the court or the Viscount, as the case may be, shall be provided to the Attorney General for transmission to the court, tribunal or other authority which made the request under Article 5(1).
- (2) If, in order to comply with the request, it is necessary for the evidence to be accompanied by any certificate, affidavit or other verifying document, the court or the Viscount, as the case may be, shall also provide for transmission by the Attorney General of any document of that nature as may be specified in the notice nominating the court or Viscount.
- (3) The Attorney General may transmit to the court, tribunal or other authority which made the request under Article 5(1) any evidence that is provided to him or her pursuant to a notice given to a person under that Article in relation to the request.
- (4) If the evidence consists of a document the original or a copy may be transmitted, and if it consists of any other article the article itself or a description, photograph or other representation of it may be transmitted, as may be necessary in order to comply with the request.”.

3 Article 7 amended

In Article 7(1)(a) of the principal Law, the words “designated for the purposes of this Article by the Regulations” shall be deleted.

4 Article 8 amended

In the principal Law, in Article 8, for paragraph (2) there shall be substituted the following paragraph-

“(2) Rules made for the purposes of Article 5 may, in particular, make provision with respect to the persons entitled to appear or take part in proceedings before a court or the Viscount under that Article and for excluding the public from any such proceedings.”.

5 Schedule repealed

The Schedule to the principal Law shall be repealed.

6 Saving for Regulations

Regulations made under Article 7 of 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 Article as amended by this Law.

7 Citation and commencement

- (1) This Law may be cited as the Criminal Justice (International Co-operation) (Amendment) (Jersey) Law 200-.
- (2) This Law shall come into force 7 days after it is registered.

[1]

chapter 08.300

[2]

chapter 08.040