

STATES OF JERSEY

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DRAFT TERRORISM (AMENDMENT No. 3)(JERSEY) LAW 200

**Lodged au Greffe on 29th July 2008
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT TERRORISM (AMENDMENT No. 3)(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. 3) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

The Island's framework to counter money laundering and the financing of terrorism will be subject to review by the International Monetary Fund ("IMF") in October 2008.

A set of changes to the Terrorism (Jersey) Law 2002 ("TL"), as well as the Proceeds of Crime (Jersey) Law 1999 ("POCL") and the Drug Trafficking Offences (Jersey) Law 1988 ("DTOL"), have already been passed by the States of Jersey and are now in force. The most important changes introduced in this 'first wave' of amendments were the introduction of standardised obligations to report knowledge or suspicion of money laundering and terrorist financing across all 3 Laws and extended powers to investigate suspected money laundering and terrorist financing.

These amendments form the 'second wave' of amendments and fall into three discrete areas:

1. Amending the definition of police officer

Currently, Article 23 of the TL provides that certain offences will not be committed by a financial institution which knows or suspects another is engaged in a terrorist financing offence, provided that knowledge or suspicion is disclosed to an officer of the States of Jersey Police Force or a Customs Officer. Financial institutions make such disclosures in a set format, known as a suspicious activity report.

Jersey was last assessed by the IMF in 2003. The IMF requested Jersey to require such disclosures to be submitted to the Joint Financial Crimes Unit ("JFCU"), which has practical responsibility for the receipt, analysis and dissemination of suspicious activity reports from financial institutions.

It is not possible for the Law to be amended to require that disclosures are made directly to "*the JFCU*" because the JFCU has no separate statutory identity. In order to get around this issue the approach used in the Money Laundering (Jersey) Order, 2008 ("MLO") has been adopted. The MLO already establishes the concept of designated police and customs officers (to be designated by the Chief of Police and the Agent of the Impôts) as a means of specifying the staff of the JFCU (see Article 6 of the MLO).

The amendments set out in Articles 2–5 would mean that in the case of a disclosure by a financial institution, the disclosure would have to be made to a designated officer who will be an officer in the JFCU. In the case of a disclosure by anyone else, under Article 20, the current position under the Law would remain and a disclosure could continue to be made to any States of Jersey Police or Customs Officer.

2. Definition of business relationship

The definition of "*business relationship*" in Schedule 6, paragraph 7(2) of the TL would be amended by Article to mirror the definition that is now used in Article 1(1) of the MLO. The same amendment is proposed to Schedule 3, paragraph 6(2) of the POCL and Schedule 2, paragraph 6(2) of the DTOL.

3. Accounts held "with" a financial institution

Article 7 would amend paragraph 1(3)(a) and 1(4)(a) of Schedule 7 of the TL. Those paragraphs currently refer to "*accounts held at*" a financial institution and the changes would amend that wording to "*accounts held with*" a financial institution. A "*financial institution*" is defined by Article 1(1) of the TL to mean any person carrying on any business described in Schedule 2 to the POCL. Because the definition of a financial institution relates to a "*person*" it is considered that the references should be to accounts held "*with*" that person rather than "*at*" that person.

Financial and 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 25th July 2008 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. 3) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law amends the Terrorism (Jersey) Law 2002 (the “principal Law”).

Article 1 defines the principal Law.

Article 2 amends the Interpretation Article of the principal Law by inserting new definitions of “designated police officer” and “designated customs officer”.

Articles 3 and 4 amend Articles 23 and 24 respectively of the principal Law to restrict the persons to whom financial institutions must report suspicion of offences related to terrorism and money laundering to a designated police officer or designated customs officer. The existing provision allows disclosure to be made to any police officer or customs officer.

Article 5 gives the Chief Officer of the States of Jersey Police Force and the Agent of the Impôts power to designate one or more officers for the purposes of Articles 23 and 24.

Article 6 amends the definition of “business relationship” in Schedule 6 to the principal Law to reflect the definition in the Money Laundering (Jersey) Order 2008.

Article 7 amends Schedule 7 to the principal Law so that it is clear that references to accounts are to accounts held with, rather than at, a financial institution. “Financial institution” is defined in the principal Law to mean a person carrying on a business described in Schedule 2 to the Proceeds of Crime (Jersey) Law 1999.

Article 8 provides for the title of the draft Law and that it shall come into force 7 days after registration.



Jersey

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Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Amendment of Article 1</u>
<u>3</u>	<u>Amendment of Article 23</u>
<u>4</u>	<u>Amendment of Article 24</u>
<u>5</u>	<u>Insertion of Article 24D</u>
<u>6</u>	<u>Amendment of Schedule 6</u>
<u>7</u>	<u>Amendment of Schedule 7</u>
<u>8</u>	<u>Citation and commencement</u>



Jersey

DRAFT TERRORISM (AMENDMENT No. 3)(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 Article “principal Law” means the Terrorism (Jersey) Law 2002^[1].

2 Amendment of Article 1

In Article 1(1) of the principal Law the following definitions shall be inserted in the appropriate places–

“ ‘designated police officer’ means a police officer who is designated under Article 24D (1) or, if no one is for the time being designated, the Chief Officer of the Force;”;

“ ‘designated customs officer’ means an officer of the Impôts who is designated under Article 24D(2) or, if no one is for the time being designated, the Agent of the Impôts;”.

3 Amendment of Article 23

In Article 23(4) of the principal Law for the words “an officer of the Force, a customs officer” there shall be substituted the words “a designated police officer, designated customs officer”.

4 Amendment of Article 24

In Article 24(4) of the principal Law for the words “an officer of the Force or a customs officer” there shall be substituted the words “a designated police officer, designated customs officer”.

5 Insertion of Article 24D

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

“24D Designated police and customs officers

- (1) The Chief Officer of the Force may by public notice designate one or more police officers (whether by reference to the name of the officer or officers or post), being members of that Force, for the purposes of Articles 23 and 24.
- (2) The Agent of the Impôts may by public notice designate one or more officers of the Impôts for the purposes of Articles 23 and 24.

6 Amendment of Schedule 6

For paragraph 7(2) of Schedule 6 to the principal Law there shall be substituted the following paragraph-

- “(2) For the purposes of this Schedule ‘business relationship’ means a business, professional or commercial relationship between a financial institution and a customer where that relationship is expected by the first person, at the time when contact is established, to have an element of duration.”.

7 Amendment of Schedule 7

In Schedule 7 of the principal Law –

- (a) in paragraph 1(3)(a) for the word “at” there shall be substituted the word “with”;
- (b) for paragraph 1(4)(a) there shall be substituted the following clause–
 - “(a) all accounts that the person specified in the application for the order holds with the financial institution so specified;”.

8 Citation and commencement

- (1) This Law may be cited as the Terrorism (Amendment No. 3) (Jersey) Law 200.
- (2) This Law shall come into force 7 days after it is registered.

