

STATES OF JERSEY



DRAFT PROCEEDS OF CRIME AND TERRORISM (TIPPING OFF – EXCEPTIONS) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 3rd June 2014
by the Chief Minister**

STATES GREFFE



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REPORT

These Regulations would be made under provisions to be inserted into the Misuse of Drugs (Jersey) Law 1978 (the “1978 Law”) (new Article 19B), the Proceeds of Crime (Jersey) Law 1999 (the “1999 Law”) (new Article 35), and the Terrorism (Jersey) Law 2002 (the “2002 Law”) (new Article 35) by the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014 (the “2014 Law”). The 2014 Law was adopted by the States Assembly earlier this year, but is yet to come into force. Those provisions remove the limitation which restricts ‘tipping off’ offences to matters likely to prejudice an investigation or proposed investigation, in line with International Monetary Fund (“I.M.F.”) recommendations to do so (at paragraphs 546 and 3.7.2 of the Assessment Report of Jersey by the I.M.F. in 2009). The Assessment Report notes that “The assessors have considered whether the likelihood of prejudice to an investigation would necessarily be as broad a prohibition [on tipping-off] as that required by Recommendation 14 [of the Financial Action Task Force Recommendations], and have concluded that the Jersey prohibition is not sufficiently broad. For example, it would seem possible for an individual to conclude, possibly even in good faith, that a disclosure would not be likely to prejudice an investigation, and prosecution in such a case could be problematic.”

As the 2014 Law will, when it comes into force, remove the provisions stating that it is acceptable to disclose so long as it is not likely to prejudice an investigation or proposed investigation, these Regulations provide for certain circumstances where it will not be a “tipping off” offence to make a disclosure under the 1978 Law, the 1999 Law and the 2002 Law as those Laws are to be amended by the 2014 Law. An Appointed Day Act for the 2014 Law is to be lodged shortly, for debate at the same States Sitting as these draft Regulations. The intention is that removal of the reference to matters likely to prejudice an investigation or proposed investigation should not prevent disclosure in certain circumstances, where it is done in good faith and for the purpose of preventing or detecting money laundering.

The Regulations allow –

- (a) disclosure to be made where it is required by the law of Jersey or another jurisdiction;
- (b) a person to disclose to their money laundering reporting officer (M.L.R.O.) (whether or not they share an employer with their M.L.R.O.);

- (c) physical copies of suspicious activity reports to be shared only in certain circumstances (to an M.L.R.O., where required by law or within Jersey to a fellow employee);
- (d) disclosure to be made where permitted by the Joint Financial Crimes Unit of the States of Jersey Police (Regulation 2).

The Regulations provide for disclosures to be made to a fellow employee, but protect the identity of the person who makes a disclosure if that disclosure is passed on other than to a fellow employee (Regulation 3).

The Regulations provide for disclosures to be made within a financial group, but protect the identity of the employee who makes a disclosure if that disclosure is passed on further (Regulation 4).

The Regulations provide for disclosures to be made where a relevant person (as defined in the Money Laundering (Jersey) Order 2008) shares a customer with, or is involved in the same transaction as, another relevant person. Again, provisions are in place to restrict information about the relevant person and its employees being passed on by the person receiving the disclosure (Regulation 5).

The Regulations permit disclosures to supervisory bodies such as the Police and the Jersey Financial Services Commission (Regulation 6).

The Regulations permit an M.L.R.O. who is not an employee of the organisation in respect of which he or she acts as M.L.R.O. to disclose to employees of that organisation for which he or she acts as M.L.R.O. They also permit the M.L.R.O. to disclose with his or her own organisation for the purposes of carrying out their functions as M.L.R.O. (Regulation 7).

The Regulations permit information to be disclosed to professional legal advisers and accountants in certain circumstances, in order to enable them to carry out their functions (Regulation 8).

Consultation

There has been significant inter-agency consultation between the Chief Minister's Department, the Law Officers' Department, the Jersey Financial Services Commission and the Jersey Financial Crimes Unit. In addition to this, a consultation exercise with the financial services industry was carried out by Jersey Finance Limited, who sent the draft Regulations and a consultation document to over 300 anti-money laundering and compliance specialists. That consultation had over 50 responses, and a number of the comments made during consultation have been adopted in these draft Regulations being put forward to the States Assembly.

Financial and manpower implications

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

Explanatory Note

These draft Regulations would be chiefly made under provisions to be inserted (by the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014) into the Misuse of Drugs (Jersey) Law 1978, the Proceeds of Crime (Jersey) Law 1999, and the Terrorism (Jersey) Law 2002. Those new provisions would analogously prohibit disclosures (other than for the purposes of legal advice or legal proceedings) of information relating to, respectively, drug trafficking, money laundering or terrorist investigations, and of the fact that a disclosure of suspicious activity with regard to money laundering or terrorism has already been made.

Regulation 2 would state that a disclosure otherwise amounting to the commission of an offence under any of the new provisions shall not be an offence (in short, shall be a “protected disclosure”) if it is required to be made by law or is made to an MLRO or otherwise falls within one of the cases specified in *Regulations 3 to 7*, and is made in good faith to prevent money laundering, or if it is made under Jersey or foreign law, or with the permission of the Joint Financial Crimes Unit. The effect of those Regulations would prevent the criminalization of certain persons making such disclosures within their own organization (*Regulation 3*), within the same financial group (*Regulation 4*), or regarding shared customers (*Regulation 5*), as well as of persons making such disclosures to the police and other supervisory or enforcement bodies (*Regulation 6*). *Regulation 7* confers protection on certain further disclosures by MLROs of disclosures made to them.

Regulation 2(3) would also restrict the onwards disclosure of suspicious activity reports (or copies of such reports) made internally.

Regulation 8 would further amend (under power conferred by Article 51 of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014) certain of the new provisions to be inserted by that Law to extend protection from liability for tipping-off offences to disclosures made in specified circumstances to legal advisers and accountants.

Regulation 9 would provide for the citation of these Regulations, and bring them into force immediately after the commencement of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014.



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Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 19B(2) of the Misuse of Drugs (Jersey) Law 1978¹, Articles 35(5) and 42A of the Proceeds of Crime (Jersey) Law 1999², Article 35(5) of the Terrorism (Jersey) Law 2002, and Article 51(2)(b) of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014, have made the following Regulations –

1 Interpretation

(1) In these Regulations –

“1978 Law” means the Misuse of Drugs (Jersey) Law 1978;

“1999 Law” means the Proceeds of Crime (Jersey) Law 1999;

“2002 Law” means the Terrorism (Jersey) Law 2002³;

“D”, in relation to a disclosure in any specified case, means the person making the disclosure;

“document” includes a copy of a document and an electronic communication;

“JFCU” means the Joint Financial Crimes Unit of the States of Jersey Police Force;

“MLRO” means –

(a) a reporting officer; or

(b) a designated person,

as each is defined by Article 1(1) of the Money Laundering (Jersey) Order 2008⁴;

“protected disclosure” means a disclosure which, by virtue of Regulation 2, does not amount to the commission of an offence;

“R”, in relation to a disclosure in any specified case, means the person to whom the disclosure is made;

“relevant person” has the meaning given by Article 1(1) of the Money Laundering (Jersey) Order 2008⁵;

“suspicious activity report” means a report in writing made pursuant to any of Articles 32(1), 34A(3) or 34D(9) of the 1999 Law or 18(2), 18(3), 19(3) or 21(4) of the 2002 Law.

- (2) Article 10 of the Interpretation (Jersey) Law 1954⁶ applies in relation to these Regulations so that a word or expression used in these Regulations which also occurs in the 1978 Law, the 1999 Law or the 2002 Law shall be construed as having the same meaning in these Regulations as it is given by the Law in which it occurs.
- (3) Reference in these Regulations –
 - (a) to an employee of a person includes –
 - (i) where the person is a body corporate, reference to an officer or a person who is a general partner of that body,
 - (ii) where that person is a partnership or limited liability partnership, a person who is a partner in that partnership, and
 - (iii) where that person is a limited partnership or separate limited partnership, a person who is a general partner in that partnership;
 - (b) to one person being in the same financial group as another person shall be construed in accordance with Article 16A(2) of the Money Laundering (Jersey) Order 2008.
- (4) R includes an employee of R in any of the following provisions, namely –
 - (a) Regulation 4;
 - (b) paragraphs (2) (in the first place where R is mentioned) and (4) of Regulation 5; and
 - (c) paragraphs (1)(b) and (c) and (2) of Regulation 6.

2 Protected disclosures: general

- (1) Subject to paragraphs (2) and (3), a disclosure which would amount to the commission of an offence under any the following provisions, namely Article 19B(1) of the 1978 Law, Article 35(2)(a) and (4)(a) of the 1999 Law or Article 35(2)(a) and (4)(a) of the 2002 Law (as the case may be), shall not amount to the commission of such an offence –
 - (a) if it is made in good faith for the purpose of preventing or detecting money laundering, and –
 - (i) it falls within any of the cases specified in Regulations 3 to 7, or
 - (ii) it is otherwise made to a person who is D’s MLRO;
 - (b) if and to the extent that it is required to be made by any enactment or by the law of another jurisdiction; nor
 - (c) if and to the extent that the JFCU has given, to the person making the disclosure, permission in writing for the disclosure to be made.

- (2) A disclosure is not a protected disclosure if it is or involves any disclosure, other than one permitted by paragraph (1)(a)(ii) or (1)(b) of this Regulation or Regulation 3, of a suspicious activity report or a document which is a copy of such a report.
- (3) A disclosure to which either of Articles 4 or 5 would otherwise apply is not a protected disclosure if, being made by a person other than the original reporter, it reveals the original reporter's identity.
- (4) In paragraph (3), "original reporter" refers to an individual who has duly made a disclosure falling within any of the following provisions, namely –
 - (a) Articles 32(1) or (5), 34A(3), or 34D(9) of the 1999 Law; or
 - (b) Articles 18(2) or (3), 19(3) or (10), or 21(4) of the 2002 Law.

3 Internal disclosures

- (1) Subject to paragraph (2), a disclosure made by an employee of a person ("D") to another employee of the same person ("R") is a protected disclosure.
- (2) A disclosure of the kind described in paragraph (1) which is or involves a suspicious activity report, or a document which is a copy of such a report, is protected only if it is made to a person within Jersey.
- (3) Where a further disclosure is made by R in accordance with these Regulations of a disclosure which is protected by virtue of paragraph (1), that further disclosure is also protected if and to the extent that it does not disclose D's identity.
- (4) In paragraph (3), a "further disclosure" refers to a disclosure made otherwise than between employees of the same person.

4 Disclosures within a financial group

- (1) A disclosure made by a person who is –
 - (a) carrying on a financial services business or otherwise carrying on a trade, profession, business or employment ("D1"); or
 - (b) an employee of such a person ("D2"),is a protected disclosure if and to the extent that it is made to another person ("R") within the same financial group as D1 or with whom D1 shares common ownership, management or compliance control.
- (2) Where a further disclosure is made by R in accordance with these Regulations of a disclosure which is protected by virtue of paragraph (1), that further disclosure is protected if and to the extent that it does not disclose the identity of D2.

5 Disclosures between relevant persons

- (1) A disclosure made by a person who is –
 - (a) a relevant person ("D1"); or

-
- (b) an employee of such a person (“D2”),
is a protected disclosure if it is made in accordance with the requirements in paragraph (2).
 - (2) The requirements mentioned in paragraph (1) are that the disclosure is made to another relevant person (“R”), and –
 - (a) relates to a person who is a customer of both D1 and R; or
 - (b) relates to a transaction, or the provision of a service, involving both D1 and R.
 - (3) For the purposes of paragraph (2) “customer”, in relation to D1, includes a former customer.
 - (4) Where a further disclosure is made by R in accordance with these Regulations of a disclosure which is protected by virtue of paragraph (1), that further disclosure is also protected if and to the extent that it does not disclose –
 - (a) the identity of D1 and (as the case may be) D2; and
 - (b) if applicable, the identity of D1’s MLRO.

6 Disclosures to supervisory etc. bodies

- (1) A disclosure is a protected disclosure if it is made by any person (“D”) to any of the following (“R”) –
 - (a) an officer of the Impôts, a police officer or any member of the JFCU;
 - (b) the Jersey Financial Services Commission; or
 - (c) a supervisory body other than the Jersey Financial Services Commission and designated as such by an order made under Article 6 of the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008⁷.
- (2) Where a further disclosure is made by R in accordance with these Regulations of a disclosure which is protected by virtue of paragraph (1), that further disclosure is also protected if and to the extent that it does not disclose D’s identity.
- (3) In paragraph (2), a “further disclosure” refers to a disclosure made to a person other than any of those listed in paragraph (1)(a) to (c).

7 Disclosures by MLROs

A further disclosure by R, being an MLRO, of a disclosure which is protected by virtue of these Regulations is a protected disclosure if and to the extent that it is made –

- (a) to any employee of D’s employer other than D; or
- (b) to any employee of R’s employer other than R, for the purpose of carrying out R’s functions in the capacity of MLRO.

8 Disclosures to professional advisers

- (1) In Article 19B of the 1978 Law, for paragraph (3) there shall be substituted the following paragraph –

“(3) Paragraph (1) does not make it an offence –

- (a) for a professional legal adviser to disclose information or any other matter –
 - (i) to a client or a client’s representative in connection with giving legal advice to the client, or
 - (ii) to any person for the purpose of actual or contemplated legal proceedings;
- (b) for a person who is the client of a professional legal adviser to disclose information or any other matter to that adviser, for either of the purposes mentioned in sub-paragraph (a)(i) or (ii);
- (c) for a person who is the client of an accountant to disclose information or any other matter to that accountant, for the purpose of enabling him or her to provide any of the services mentioned in paragraph 2(1) of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999⁸,

except where the information or other matter is disclosed with a view to furthering a criminal purpose.

- (2) In Article 35(6) of the 1999 Law, for the word “and” at the end of sub-paragraph (a) and sub-paragraph (b), there shall be substituted the following sub-paragraphs –

- “(b) is made by a person who is the client of a professional legal adviser to that adviser, for either of the purposes mentioned in sub-paragraph (a)(i) or (ii); or
- (c) is made by a person who is the client of an accountant to that accountant for the purpose of enabling him or her to provide any of the services listed in paragraph 2(1) of Part B of Schedule 2,

and is not made with a view to furthering a criminal purpose.”.

- (3) In Article 35(6) of the 2002 Law, for the word “and” at the end of sub-paragraph (a) and sub-paragraph (b), there shall be substituted the following sub-paragraphs –

- “(b) is made by a person who is the client of a professional legal adviser to that adviser, for either of the purposes mentioned in sub-paragraph (a)(i) or (ii); or
- (c) is made by a person who is the client of an accountant to that accountant for the purpose of enabling him or her to provide any of the services listed in paragraph 2(1) of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999⁹,

and is not made with a view to furthering a criminal purpose.”.

9 Citation and commencement

These Regulations may be cited as the Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations 201-, and shall come into force immediately following the commencement of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014¹⁰.

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- 1 *chapter 08.680*
 - 2 *chapter 08.780*
 - 3 *chapter 17.860*
 - 4 *chapter 08.780.30*
 - 5 *chapter 08.780.30*
 - 6 *chapter 15.360*
 - 7 *chapter 08.785*
 - 8 *chapter 08.780*
 - 9 *chapter 08.780*
 - 10 *L.7/2014*