

STATES OF JERSEY



Jersey

DRAFT CRIMINAL JUSTICE (DEFERRED PROSECUTION AGREEMENTS) (JERSEY) LAW 202-

**Lodged au Greffe on 31st October 2022
by the Minister for Home Affairs
Earliest date for debate: 13th December 2022**

STATES GREFFE



Jersey

DRAFT CRIMINAL JUSTICE (DEFERRED PROSECUTION AGREEMENTS) (JERSEY) LAW 202-

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 Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202- are compatible with the Convention Rights.

Signed: **Deputy H.M. Miles of St. Brelade**
Minister for Home Affairs

Dated: 27th October 2022

REPORT

1 The challenges of attributing criminal liability to legal entities

- 1.1 Where corporate bodies and legal entities commit crimes, it is important that they are held to account and sanctioned like natural persons, otherwise there are a number of negative consequences, from the incentive to commit crimes in a corporate setting to undermining the legitimacy of sanctions against natural persons. However, prosecuting legal entities for certain offences, especially economic crimes, poses several challenges for prosecutors.¹
- 1.2 Currently, a criminal act can only be attributed to a legal person where a natural person committing the offence can be said to represent the “*directing mind and will*” of the legal person (the ‘Identification Doctrine’). This Doctrine is a significant challenge for prosecutors in Jersey and elsewhere in the British Isles. The Law Commission of England and Wales, considers the Doctrine to be an inappropriate and ineffective method of establishing criminal liability of corporations², citing the following reasons:
- i. it ignores the reality of complex, modern corporate decision-making which is often the product of corporate policies and procedures rather than individual decisions, and
 - ii. it discriminates against small businesses compared to large, multinational businesses which exhibit a lot more diffuse and devolved decision-making processes.
- 1.3 These two reasons have a direct negative impact on the potential prosecution likelihood because the more complex a corporate structure, the less likely a prosecution is going to be successful. This fact then creates a positive incentive to create more complex corporate structures in order to avoid potential prosecutions. Furthermore, it also reduces the deterrent of a criminal prosecution and its associated “costs” which might in turn make the committing of offences more attractive from an economic perspective. Where large or complex corporate structures are better to avoid the negative consequences of criminal conduct compared to less complex corporate structures or natural persons, it undermines the overall legitimacy of law enforcement efforts with all the associated negative consequences for society at large.³
- 1.4 Furthermore, it is not entirely clear *who* constitutes the directing mind and will of a company or other entity from a legal perspective. While there is consensus that the board of directors *collectively* can constitute the directing mind and will of a company, there is no consensus whether individual directors of the board would meet that requirement. Going beyond the board of directors to managing directors, the views are even more diverse. This problem is exacerbated by the case of *Serious Fraud Office v Barclays*,⁴ where the English High Court deemed that neither the Chief Executive Officer nor the Group Chief Financial Officer, although both members of the board, would be considered the directing mind and will of Barclays as far as the allegations of the case were concerned. And

¹ For certain non-economic crimes, for example health and safety offences, it might be easier to prosecute corporates based on strict-liability provisions.

² See: <https://www.lawcom.gov.uk/project/corporate-criminal-liability/>

³ See: [Brand and Price \(2000\), Home Office Research Study 217: The economic and social costs of crime](#)

⁴ [2018] EWHC 3055 (QB), [2020] 1 Cr App R 28.

therefore, no criminal liability could be attributed to Barclays which meant that Barclays ultimately could not be convicted.

- 1.5 These issues arising from the Identification Doctrine, or directing mind and will (DMW) requirement, have been summarised as follows:

“One of its prime ironies is that the DMW requirement propounds a theory of corporate liability which works best in cases where it is needed least and works least in cases where it is needed most. The directors and managers of small companies who are most likely to satisfy the DMW requirement are also likely to be directly involved in carrying out of the company's affairs and thus criminally liable in their own right; vicarious and corporate liability are largely superfluous for deterrent purposes. In large companies, on the other hand, there is far less likelihood of personal involvement by senior management in day-to-day activities. As a result, the possibility of personal criminal liability is not much of a deterrent while the DMW requirement frustrates efforts to impose corporate liability.”⁵

- 1.6 Addressing the issues which arise from the Identification Doctrine would significantly enhance the effectiveness of prosecuting and sanctioning of defendant legal entities because it better reflects the fact that, for example, preventative measures within companies, for example regarding fraud or money laundering, are usually not drafted, implemented and monitored by one single or few individuals but that responsibilities for these measures are rather diffuse through their delegation to various boards, committees and sub-committees across the organisation or even across several entities as a part of group structures.

2 Securing a more effective sanctioning of corporate bodies through deferred prosecution agreements

- 2.1 To address some of the issues which arise from the Identification Doctrine and its impact on the criminal liability of legal entities, legislators in the UK have created deferred prosecution agreements (DPAs) which were introduced with the enactment of Schedule 17 of the Crime and Courts Act in 2013. DPAs create an alternative mechanism to dispose of criminal conduct by legal entities, subject to certain conditions being met, and have been used in the UK for cases of fraud, bribery, and other economic crime.
- 2.2 The issues arising from the application of the Identification Doctrine, impeding the attribution of criminal liability to legal entities, are not limited to the UK or Jersey, and it is noted that Guernsey has recently committed itself to far reaching criminal justice reforms including the introduction of DPAs⁶.
- 2.3 DPAs are agreements reached under judicial supervision between the prosecutor and a corporate defendant relating to an economic crime. The DPA allows a prosecution to be suspended for a defined period and potentially discontinued, provided that the defendant entity meets certain conditions under an agreement between the prosecutor and the entity. These conditions may include sanctions like disgorgement of profits, payment of a financial penalty, payment of compensation and commitments to assist with potential future prosecution of individuals, as well as remedial actions. However, if the conditions are not met, the prosecution might be resumed. By disposing of the criminal conduct through

⁵ See: Gobert, “Corporate Criminal Liability: four models of fault” (1994) 14 *Legal Studies* 393, (paraphrased).

⁶ Proposition P.2022/73: [Amendments to the Criminal Justice Framework - States of Guernsey \(gov.gg\)](https://www.guernsey.gov.gg/legislation/amendments-to-the-criminal-justice-framework)

a DPA, prosecutors are not required to meet the requirements of the Identification Doctrine.

3 Considerations from a MONEYVAL perspective

- 3.1 DPAs are not only an important tool as part of the overall criminal justice system, but as a law enforcement measure against financial crime, they are also relevant from a MONEYVAL perspective. Jersey is a leading and well-regulated International Finance Centre (IFC), and the Government of Jersey has a long-standing commitment to combat financial crime and illicit finance whilst protecting the integrity of the international financial system from misuse. At the core of these efforts are Jersey's anti-money laundering (AML) and countering the financing of terrorism (CFT) regulations.
- 3.2 The Financial Action Task Force (FATF) is the global money laundering (ML) and terrorist financing (TF) watchdog. The inter-governmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society.
- 3.3 Jersey's compliance with the FATF Standards will be assessed in 2023/2024 by MONEYVAL, the FATF-style regional body at the Council of Europe. The preparation and delivery of the strongest possible result for the Island, of what will be a critical evaluation for Jersey's international reputation, has recently been highlighted as a priority within the Ministerial Plans.
- 3.4 Immediate Outcome 7 (IO7) of the FATF Methodology links criminal justice and law enforcement measures with the effectiveness assessment under the FATF Methodology. In order to demonstrate effectiveness under IO7, jurisdictions are required to demonstrate that money laundering offences and activities are investigated, and offenders are prosecuted and subject to effective, proportionate, and dissuasive sanctions. For the avoidance of doubt, *sanctions* with regards to corporate offenders means in this context fines and penalties, not Targeted Financial Sanctions.
- 3.5 IO7 outlines a number of Core Issues which need to be considered when determining whether the Outcome is achieved, and of particular relevance are Core Issues 7.2, 7.4 and 7.5:
 - To what extent are the types of ML activity being investigated and prosecuted consistent with the country's threats and risk profile and national AML/CFT policies?
 - To what extent are the sanctions applied against natural or legal persons convicted of ML offences effective, proportionate, and dissuasive?
 - To what extent do countries apply other criminal justice measures in cases where a ML investigation has been pursued but where it is not possible, for justifiable reasons, to secure a ML conviction?
- 3.6 The points to particularly highlight are, firstly, the requirement to demonstrate prosecutions which are consistent with Jersey's money laundering risk profile and, secondly, to apply effective and dissuasive sanctions against legal persons, not just natural persons.
- 3.7 With regards to prosecutions being consistent with Jersey's risk profile, we need to remind ourselves that Jersey's 2020 National Risk Assessment of Money Laundering found that, because of the services Jersey provides as an IFC, it is more exposed to the "*layering*" stage of the money laundering process, where local legal persons and service providers might be used to layer the proceeds of

crime. Therefore, in order to meet the test of prosecuting in consistency with the risk profile, these legal entities need to be held to account as well, and then subjected to effective, proportionate, and dissuasive sanctions.

- 3.8 However, as outlined above, prosecuting legal entities for certain offences, especially economic crimes, is challenging due to the Identification Doctrine. As outlined in more detail below, the approach that is being taken to the establishment of a DPA regime in Jersey means they provide an opportunity to improve the outcome of IO7 as part of the upcoming MONEYVAL assessment.
- 3.9 The importance of demonstrating effectiveness under IO7 must not be underestimated. The Cayman Islands were added to the FATF's list of jurisdictions under increased monitoring, the so called "grey" list, in February 2021, partly because of a lack of effectiveness under IO7. Consequently, the Cayman Islands were then added by the EU to its list of high-risk third-country jurisdictions⁷ "*which have strategic deficiencies in their AML/CFT regimes and pose significant threats to the financial system of the European Union*". On 21 October 2022, the FATF decided that the Cayman Islands need to remain on its grey list⁸ due to continuing deficits with regards to the imposition of effective, proportionate, and dissuasive sanctions, as required under IO7.

4 The Draft Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-

- 4.1 To address the aforementioned issues, the Draft Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202- (the "Draft Law") has been lodged. Should the Draft Law be adopted, this would create an effective and efficient DPA regime as an additional criminal justice measure and enable Jersey to secure effective, proportionate, and dissuasive sanctions against legal entities where it otherwise might not be possible to do so.
- 4.2 The Draft Law makes provisions for the initiation and disposal of certain criminal prosecutions by way of a DPA. A DPA is a statutory agreement pursuant to which the legal entity agrees to comply with the requirements imposed on it by the DPA and the Attorney General (AG) agrees not to seek leave of the Royal Court to progress proceedings in relation to the specified offences at any time while the DPA is in effect. A DPA can only be offered with regards to the offences specified in Schedule 1 of the Draft Law, but the Assembly can amend Schedule 1 by way of Regulations at any time in the future.
- 4.3 Furthermore, the AG will only be able to offer a DPA if certain other criteria are met. In particular, but not limited to, a requirement that the legal entity must first submit a self-report regarding the commission of the offence including the provision of evidence that is reasonably capable of demonstrating that the entity committed the offence. It is anticipated that in order to obtain a DPA, the entity will need to make the self-report *before* it is under investigation for the offence or offences in question, with this matter being covered in AG's guidance. DPAs will therefore provide an opportunity for entities to 'come clean' about criminal conduct to mitigate the risk of prosecution in circumstances where it might not otherwise be clear whether or when the offending would be detected. A DPA is not intended to be a means for legal entities to avoid prosecution for criminal conduct which is already the subject of an investigation or prosecution.

⁷ See: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R0229>

⁸ See: <https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-october-2022.html>

- 4.4 The entire DPA process is subject to supervision and approval by the Royal Court. The DPA needs to be in the interest of justice and the terms of the DPA need to be fair, reasonable, and proportionate. Compliance with the terms of the DPA by the legal entity will be monitored by an Independent Monitor, who will be nominated for appointment by the AG and approved by the Court in the DPA. The Independent Monitor will be paid for by the entity and provide reports on the entity's compliance with the conditions on the DPA to the AG.
- 4.5 Where a legal entity complies with the terms of the DPA, i.e., where the DPA remains in force until its expiry date then, after the expiry of the DPA, the Attorney General must discontinue the proceedings in relation to the offence. However, the Draft Law also provides the option to vary the terms of a DPA under certain circumstances. Where the legal entity is deemed by the Royal Court, upon application by the AG, to be in breach of the terms of the DPA, the non-compliance might be remedied or the DPA might be terminated, and a regular prosecution may then proceed in relation to the criminal conduct.
- 4.6 The requirements that a DPA may impose on a legal entity under the Draft Law might include, but are not limited to, a financial penalty, victim compensation, charitable donations, disgorgement of profits and remedial actions in form of compliance programmes to prevent reoffending in the future. The legal entity might also be required to cover any reasonable costs of the AG in relation to the DPA proceedings, therefore ensuring that DPA proceedings do not create any additional costs for the taxpayer.
- 4.7 Furthermore, any financial penalty paid under the provisions of the Draft Law must be paid into the Criminal Offences Confiscations Fund established by Article 24 of the [Proceeds of Crime \(Jersey\) Law 1999](#) and might be used to prevent or suppress criminal conduct or deal with the consequences of criminal conduct, thereby enhancing the Island's defences against criminal conduct going forward and its negative consequences.
- 4.8 It is important to note that the Draft Law also ensures that due legal process is being followed. In addition to the role of the Royal Court in supervising the DPA process, there are rights of appeal to the Court of Appeal for legal entities and connected persons against relevant determinations under the Draft Law. Moreover, the Draft Law also requires the AG to publish guidance which outlines the entire DPA process and its requirements to the public.
- 4.9 The Draft Law has been developed with input from the Law Officers' Department as its main stakeholders. Consultation has also taken place with the relevant Sub-Committee of the Jersey Law Society and practitioners. The Bailiff and Deputy Bailiff were also consulted in view of the new processes introduced and the role of the Royal Court in the DPA process. These responses have been supportive, and some provisions of the Draft Law have been developed further in light of the consultation responses received.
- 4.10 The adoption of the Draft Law would enable the creation of an effective additional criminal justice measure. It would help to address a fundamental issue with sanctioning legal entities whilst completing another important building block in the Island's preparation for the upcoming MONEYVAL assessment which will be critical for Jersey's international reputation and, ultimately, its prosperity. Therefore, I recommend the Draft Law for adoption by the States Assembly.

Financial and manpower implications

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

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT**Human Rights Notes on the Draft Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-**

These Notes have been prepared in respect of the draft Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202- (the “draft Law”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

These Notes will firstly explain the relevant ECHR rights and principles that are engaged by the draft Law. It will then explain how the provisions of the draft Law ensure that they are compatible with the ECHR.

Summary of the draft Law

As explained in the Minister’s Report on the draft Law and the Legislative Drafter’s Explanatory Note, if passed, the draft Law will enable the disposal of certain criminal offences by way of a deferred prosecution agreement (“DPA”).

In summary, a DPA is an agreement made between the Attorney General (the “AG”) and a legal entity in relation to a specified criminal offence. The entity triggers the process by submitting a self-report to the AG in relation to the criminal offence. If, having considered the self-report, the AG determines to deal with the criminal offence by way of a DPA, then proceedings for the criminal offence are initiated, and are then immediately suspended for the period while the AG and the entity negotiate the terms of the DPA, and while the DPA is in force. The entity’s compliance with the DPA is monitored by an independent monitor (the “IM”) appointed by the Court. Provided that the entity complies with the terms of the DPA then, once the DPA expires, the AG will discontinue the proceedings for the criminal offence. But if negotiations for the DPA fail and a DPA is not entered into, or if the DPA is terminated by the Court on the ground that the entity has breached its terms, the AG may then apply to the Court to progress the prosecution.

The draft Law engages the rights in Articles 6 and 10 of the ECHR but, as explained in detail in the advice below, any potential interference with these rights can be justified.

Article 6 of the ECHR right to a fair trial

Article 6 of the ECHR guarantees the right to a fair trial. In so far as it is relevant, Article 6 provides that:

- “1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

The caselaw of the European Court of Human Rights (the “ECtHR”) confirms that the protection of this right in relation to criminal proceedings should be practical and effective. As a result, additional implied rights have been found to arise from Article 6 ECHR.

Right not to incriminate oneself

The right to remain silent and not to incriminate oneself has been found to arise from the “fair trial” requirement in Article 6(1) of the ECHR. This right prevents the prosecution from obtaining evidence by defying the will of the accused not to testify against himself. The application of this right is not confined to the direct admission of wrongdoing, but any statement which may later be deployed in criminal proceedings in support of the prosecution case. The right to silence overlaps with the presumption of innocence under Article 6(2) ECHR.

The ECtHR’s approach to the right to silence is that it is a qualified right. The ECtHR will usually look at whether the essence of the right was infringed in the circumstances of a particular case having regard to the nature and degree of compulsion used, the public interest in the investigation and punishment of the offence and any relevant safeguards.

Article 4 of the draft Law requires the entity to provide a self-report if it wishes to enter a DPA in relation to a specified offence. Pursuant to Article 4(1) the entity must submit evidence which is reasonably capable of demonstrating that the entity has committed that specified offence as part of the self-report.

While the submission of a self-report is essential if an entity wishes to enter a DPA, it is important to recognise that there is no compulsion for an entity or a connected person to seek a DPA. The entity and its connected persons are given the opportunity by the draft Law to seek to mitigate the risk of a future criminal prosecution, but if they decide not to take that opportunity then the entity retains the benefit of its right against self-incrimination in relation to a subsequent prosecution.

If a prosecution proceeds in circumstances where a self-report has been made by an entity, whether that is because the AG or the Court did not consider that a DPA was in the interests of justice, or because a DPA is terminated following a breach of its terms, then Article 15 of the draft Law addresses the use of material provided by the entity in subsequent proceedings against it.

In summary, pursuant to Article 15(1) and (2), where a DPA has been approved by the Court, but is then terminated, then any statement of facts contained in the DPA would be admissible in subsequent proceedings against the entity for the specified offences as if it were an admission of those facts by the entity made in accordance with Part 2 (formal admissions) of the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998. This reflects that the DPA approved by the Court pursuant to Article 7(2)(a) of the draft Law will usually be a public document which the AG is required to publish pursuant to Article 7(8), subject to any contrary order of the court made under Article 13 of the draft Law.

Pursuant to Article 15(3) and (4), where the Attorney General and the entity have entered into negotiations for a DPA but the DPA has not been approved by the Court under Article 7(2)(a), for whatever reason, then the material prepared solely for the purposes of a self-report or for the purposes of the negotiation of a DPA, will not usually be admissible in subsequent criminal proceedings, except to the limited extent described in Article 15(4) (e.g. on a prosecution for the provision of inaccurate, misleading or incomplete information). This reflects that prior to the approval of a DPA by a court,

consideration of a self-report and the negotiation of a DPA should take place in private so as to avoid potentially prejudicing any subsequent criminal trial.

In addition to the above, where a connected person in relation to an entity is required to provide information or documents to an independent monitor pursuant to Article 9(4) of the draft Law, then Article 9(7) provides that the information or documents provided may not be used in evidence against the connected person on a prosecution for an offence other than an offence in Article 9(5) of failing to comply or providing false or misleading information.

In combination these provisions ensure that the essence of the right against self-incrimination is protected, both for the defendant entities that may enter a DPA and for connected persons who might be required to assist an independent monitor by providing information that might tend to incriminate them.

Reporting restrictions and Articles 6 and 10 of the ECHR

Article 6(1) of the ECHR provides the right to a public hearing with the decision pronounced publicly. However, 6(1) ECHR also makes it clear that the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

The purpose of these requirements of Article 6(1) is to protect criminal defendants from the secret administration of justice and to ensure greater visibility of justice, maintaining the confidence of the society in the criminal justice system. These requirements enable the press to exercise its function of public watchdog, which is also guaranteed by Article 10 of the ECHR, which provides –

- “(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

Article 10(2) ECHR provides that an interference with the corresponding ECHR right is permitted where it is in the interests of, amongst other things, the prevention of disorder or crime and the protection of the rights and freedoms of others. In principle, an interference with a person’s Article 10(1) ECHR rights would be justified so long as the interference is in accordance with law and is no more than what is necessary in a democratic society (i.e. it is proportionate).

The rights accorded by Article 6(1) and 10 of the ECHR are qualified, though their exclusion must be strictly required by the circumstances of the case. It has been held that reporting restrictions on part or all of proceedings may be compatible with Article 6(1) and 10 ECHR where those are necessary to ensure the defendant receives a fair trial.

There are restrictions set out in Article 6(8) of the draft Law on the hearing of any application under paragraph (4) of that Article so that the application must be heard in private and reasons for decisions must be given in private. Further, pursuant to Paragraphs 3(7), (8) and (9) of Schedule 2 to the draft Law, the restrictions found in Article 61 of the Criminal Procedure (Jersey) Law 2018 (the “2018 Law”) on reporting in respect of preparatory hearings and pre-trial rulings are extended to cover DPA proceedings prior to the approval of a DPA pursuant to Article 7(2)(a) of the draft Law. Those provisions allow the Bailiff or the Court of Appeal to order the lifting of such restrictions whether in whole or in part. Article 62 creates an offence if a person contravenes Article 61, which would also apply where the contravention relates to DPA proceedings.

These provisions are aimed at ensuring that a fair trial can take place by limiting the extent to which the media can report on DPA proceedings, which might have the potential to prejudice the fairness of a criminal trial. The restrictions will not apply to proceedings for the approval of a DPA by the Court pursuant to Article 7(2)(a), reflecting that the AG will be required to publish an agreed DPA pursuant to Article 7(8) of the draft Law to ensure that there is sufficient transparency about the use of DPAs.

It is important to note that the Royal Court is given the ability in Article 13 of the draft Law to order that the publication of information by the AG under Article 7(8) be postponed, for such period as the Court considers necessary or indefinitely, if it appears to the Court that postponement is necessary to avoid a substantial risk of prejudice to the administration of justice in any legal proceedings; or for some other substantial reason. This reflects that, among other things, where charges against natural persons have been brought or are contemplated in relation to the conduct covered by a DPA, then it is possible that any publication of the DPA may pose a risk of prejudice to the administration of justice in such linked proceedings. In this case, the court may order that publication be postponed if necessary to avoid such risks.

The requirement to hold proceedings in private and the extensions made to reporting restrictions are no more than necessary to balance the rights of a defendant to receive a fair trial under Article 6(1) of the ECHR and the rights to open justice, and rights of journalists to report on proceedings under Article 10 of the ECHR. These restrictions are, in each case, compatible with the ECHR being in accordance with the law and proportionate to a legitimate aim.

EXPLANATORY NOTE

This Law, if passed, would enable the disposal of certain criminal offences by way of deferred prosecution agreements (“DPA”).

In summary, a DPA is an agreement made between the Attorney General (the “AG”) and a corporate entity in relation to a specified criminal offence. The corporate entity triggers the process by submitting a self-report to the AG in relation to the criminal offence. If, having considered the self-report, the AG determines to deal with the criminal offence by way of a DPA, then proceedings for the criminal offence are initiated, and are then immediately suspended for the period while the AG and the entity negotiate the terms of the DPA, and while the DPA is in force. The entity’s compliance with the DPA is monitored by an independent monitor (the “IM”) appointed by the Court. Provided that the entity complies with the terms of the DPA then, once the DPA expires, the AG will discontinue the proceedings for the criminal offence. But if negotiations for the DPA fail and a DPA is not entered into, or if the DPA is terminated by the Court on the ground that the entity has breached its terms, the AG may then apply to the Court to progress the prosecution.

Article 1 is the interpretation provision. Amongst other terms, it defines the entities that are within scope of this Law, namely: companies, foundations, incorporated limited partnerships, limited liability companies, limited liability partnerships, separate limited partnerships, and any other body or person that has legal personality (apart from an individual or a corporation sole).

It defines “specified offences” (the criminal offences which can be disposed of by way of a DPA), namely: the offences listed in *Schedule 1*. *Article 1(3)* provides that the States may by Regulations amend the list of specified offences in *Schedule 1*.

And it defines “DPA proceedings” as encompassing both –

- (a) the proceedings under this Law for the approval of, and monitoring of compliance with, the DPA; and
- (b) the prosecution of the specified offence.

Article 2 provides that a DPA is an agreement made between the AG and an entity against which the AG has initiated proceedings for a specified offence. It provides that, under a DPA, the entity agrees to comply with the requirements imposed on it by the DPA, and the AG agrees not to apply to the Court to progress the prosecution while the DPA is in force.

Article 3 prescribes the content of a DPA. It must: have a fixed expiry date, name the appointed IM, contain a statement of facts relating to the specified offence, impose requirements on the entity and time limits within which the entity must comply, set out the consequences of failing to comply, specify the times or intervals at which the IM is to report to the Court, and the remuneration the IM is to receive. The requirements which may be imposed on the entity include, for example, to pay a financial penalty, to compensate victims of the specified offence, to implement a compliance programme, and to pay the reasonable costs of the AG in relation to the proceedings and the fees of the IM.

Article 4 provides that, if an entity wishes to enter into a DPA in relation to a specified offence, it must provide a self-report to the AG. This is the only route by which the DPA process can be entered into, and a self-report cannot be submitted if the AG has already initiated proceedings for the prosecution of the criminal offence. A self-report must

include evidence which is reasonably capable of demonstrating that the entity committed the specified offence.

Article 5 requires the AG to consider the self-report and to determine whether the evidence submitted by the entity is reasonably capable of demonstrating that the entity committed the specified offence. But this requirement does not apply where the AG is satisfied at the outset that it would not be in the interests of justice to enter into a DPA with the entity. If the AG considers the self-report and determines that the evidence submitted by the entity is reasonably capable of demonstrating that the entity committed the specified offence, and if the AG is then considering prosecuting the entity for the offence, the AG must decide whether it would be in the interests of justice to dispose of the matter by entering into a DPA with the entity instead. *Article 5* further provides that the entity must pay the AG's costs of considering the self-report, and that those costs are not refundable, regardless of the outcome of the DPA process.

Article 6 provides that, where the AG decides that it is in the interests of justice to dispose of the matter by entering into a DPA with the entity then, once the AG and the entity have commenced negotiations for the DPA, the AG must initiate DPA proceedings in the Royal Court under the Criminal Procedure (Jersey) Law 2018 ("the Criminal Procedure Law"). As soon as DPA proceedings have been initiated, the AG must give notice under the Criminal Procedure Law (as amended by this Law) that he wishes the prosecution of the offence to be suspended to enable the AG and the entity to enter into a DPA.

It further provides that, once the DPA proceedings have been suspended, the AG must apply to the Court for a declaration that –

- (a) entering into the DPA is likely to be in the interests of justice; and
- (b) the proposed terms of the DPA are fair, reasonable, and proportionate.

The AG must nominate a person to be the IM in relation to the DPA, and that person must be identified in the proposed DPA before the Court. The hearing of the AG's application is held in private.

Article 7 provides that, if the Court makes a declaration under *Article 6*, then once the AG and the entity have agreed the final terms of the DPA, the AG must then apply to the Court for approval of the DPA. The AG must apply for a declaration that –

- (a) the DPA is in the interests of justice; and
- (b) the terms of the DPA are fair, reasonable, and proportionate.

If the Court makes that declaration, it must at the same time appoint the IM, and the DPA comes into force when the declaration is made. The hearing of the AG's application must be held in private, but if the Court makes the declaration it must do so and give its reasons in open Court. Once the DPA is approved the AG must publish the DPA and the Court's declaration, unless the Court makes an order under *Article 13* postponing publication.

It further provides that the IM holds office until the DPA expires or is terminated by the Court. However, the AG may apply to the Court for the termination of the IM's appointment and for the appointment of another IM in its stead, where the IM has failed to carry out its duties.

Article 8 sets out the functions of the IM, namely to monitor the entity's compliance with the DPA, to provide reports on compliance to the Court and the AG, and to report to the AG if it appears to the IM that the entity (or a person connected with the entity) has provided inaccurate, misleading, or incomplete information to the Court, the AG or the IM during the DPA process, or has committed an offence. It also enables the IM to

apply to the Court for an order authorising it to obtain or inspect records of the entity in order to carry out its functions.

Article 9 places duties on the entity to provide the IM with any information, documents and assistance the IM requests, and to proactively provide any other information which may assist the IM in carrying out its functions. It also places duties on persons connected with the entity to provide the IM with any information, documents and assistance the IM requests, including by attending on the IM, and to notify the IM of any change in certain information provided under this Article. An entity or connected person that fails to comply with these duties without reasonable excuse, or that knowingly or recklessly provides information that is false or misleading, commits an offence and is liable to an unlimited fine (in the case of an entity) and to imprisonment for up to 12 months, an unlimited fine, or both (in the case of a connected person). Where an entity commits an offence under this Article with the consent or connivance of a connected person, that person commits an offence and is liable to an unlimited fine.

It further provides that, where a connected person provides information under this Article, it cannot be used in evidence against them in the prosecution of an offence (other than an offence under this Article).

Article 10 provides that the AG may apply to the Court if the AG has reasonable grounds to suspect that the entity has breached the terms of the DPA. If the Court decides, on the balance of probabilities, that the entity has breached its terms, the Court may –

- (a) invite the AG and the entity to agree proposals to remedy the failure; or
- (b) terminate the DPA.

The hearing of the AG's application is held in private.

Article 11 provides for the AG and the entity to agree to vary the terms of the DPA where the Court has invited them to do so under *Article 10*, or if variation is necessary to avoid the entity breaching the terms of the DPA in circumstances that were not and could not have reasonably been foreseen when the DPA was agreed. Once such an agreement has been reached, the AG must apply to the Court for a declaration that –

- (a) the variation is in the interests of justice; and
- (b) the terms of the DPA as varied are fair, reasonable, and proportionate.

If the Court makes that declaration, the DPA has effect as varied. The hearing of the AG's application is held in private.

Article 12 provides for the discontinuance of the DPA proceedings on the expiry of the DPA. It requires the AG to give notice to the Royal Court under the Criminal Procedure Law that the AG wishes the proceedings for the specified offence to be discontinued.

Article 13 provides that the Court may make an order postponing publication of the approved DPA under *Article 7*, where the Court considers it necessary to do so to avoid a substantial risk of prejudice to the administration of justice in any legal proceedings. It also provides that the Court may, either of its own motion or on the application of the AG or the entity, order publication in the public interest of information in relation to: an application under *Article 10*, an application under *Article 11*, or the discontinuance of DPA proceedings under *Article 12*.

Article 14 requires the AG to issue and publish guidance in relation to the application of this Law.

Article 15 provides that where a DPA was approved by the Court, but proceedings for the specified offence are subsequently progressed, the statement of facts contained in the DPA is treated as an admission of fact by the entity under the Criminal Justice (Evidence and Procedure) (Jersey) Law 1998. It also limits the material produced during

the course of DPA proceedings which may be used in evidence against the entity in other proceedings.

Article 16 provides that any financial penalty paid by an entity under this Law must be paid into the Criminal Offences Confiscations Fund.

Article 17 provides that the AG, and any person acting as an officer, employee or agent of the AG, is not liable in damages or for consequential loss for any act done in the discharge, or purported discharge, of the functions of the AG under this Law. But that provision does not prevent an award of damages made in respect of an act which is done in bad faith, or is unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000. It also provides that the AG is not liable in costs for any DPA proceedings under this Law, except if the DPA proceedings were commenced, or (having been lawfully commenced) were continued, in bad faith.

Article 18 introduces *Schedule 2* which makes consequential amendments to Jersey legislation. It also enables the States by Regulations to make any other consequential amendments as appear to the States to be necessary or expedient.

Schedule 2 makes amendments to the Court of Appeal (Jersey) Law 1961 to provide for rights of appeal against decisions of the Royal Court in proceedings under this Law for the approval of, and monitoring of compliance with, a DPA.

It makes amendments to the Proceeds of Crime (Jersey) Law 1999, so that proceedings in relation to a specified offence are taken to be commenced when they are initiated (rather than when the summons is served), and enabling money received under a DPA to be paid into the Criminal Offences Confiscations Fund.

It also makes a number of amendments to the Criminal Procedure Law. In particular:

- amendments to Article 1 provide that proceedings under this Law for the approval of, and monitoring of compliance with, a DPA are “criminal proceedings” for the purposes of the Criminal Procedure Law;
- amendments to Article 14 provide for the commencement of DPA proceedings in the Royal Court, and for the immediate suspension of the proceedings in relation to the specified offence to enable the DPA to be entered into;
- amendments to Articles 52, 61, and 62 provide that restrictions on the reporting of preparatory hearings and rulings in those provisions also apply to hearings in proceedings under this Law for the approval of, and monitoring of compliance with, a DPA;
- the insertion of new Article 81A enables the AG, with the leave of the Court, to progress previously suspended proceedings in relation to a specified offence.

Article 19 contains transitional provisions. It provides that conduct by an entity which constitutes a specified offence, but which occurred before this Law comes into force (or in the case of a specified offence which is added to *Schedule 1* at a later date, conduct which occurred before that addition has effect) may be the subject of a DPA. It also provides that conduct by an entity which took place before this Law comes into force and, at the time it took place constituted an offence under an enactment or under the customary law of Jersey which is not a specified offence, may be the subject of a DPA if the conduct would constitute a specified offence if it took place once this Law is in force.

Article 20 contains the citation provision and provides for the Law to come into force 7 days after it is registered.



Jersey

DRAFT CRIMINAL JUSTICE (DEFERRED PROSECUTION AGREEMENTS) (JERSEY) LAW 202-

Contents

Article

PART 1		21
<hr/>		
	PRELIMINARY	21
1	Interpretation.....	21
2	Characteristics of a DPA.....	23
3	Content of a DPA.....	23
PART 2		24
<hr/>		
	COURT APPROVAL OF A DPA	24
4	Submission of a self-report.....	24
5	Consideration of a self-report.....	24
6	Initiation of DPA proceedings and first application to the Court.....	25
7	Final hearing, Court approval of the DPA and appointment of the independent monitor.....	25
PART 3		27
<hr/>		
	MONITORING COMPLIANCE WITH A DPA	27
8	Functions of the independent monitor.....	27
9	Duties on entities and connected persons.....	29
10	Breach of a DPA.....	30
11	Variation of a DPA.....	30
12	Discontinuance of DPA proceedings on expiry of a DPA.....	31
13	Publication of information by the Attorney General.....	31
PART 4		32
<hr/>		
	MISCELLANEOUS PROVISIONS	32
14	Attorney General's Guidance.....	32
15	Use of material in criminal proceedings.....	33
16	Money paid in relation to a DPA.....	34
17	Limitation of liability of Attorney General.....	34

18	Consequential amendments	35
19	Transitional provisions	35
20	Citation and commencement	35
SCHEDULE 1		36
SPECIFIED OFFENCES		36
SCHEDULE 2		38
CONSEQUENTIAL AMENDMENTS		38
1	Court of Appeal (Jersey) Law 1961	38
2	Proceeds of Crime (Jersey) Law 1999	39
3	Criminal Procedure (Jersey) Law 2018.....	39



Jersey

DRAFT CRIMINAL JUSTICE (DEFERRED PROSECUTION AGREEMENTS) (JERSEY) LAW 202-

A LAW to make provision for the disposal of certain criminal offences by way of deferred prosecution agreements.

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of His Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>
<i>Coming into force</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law –

PART 1

PRELIMINARY

1 Interpretation

- (1) In this Law –
- “Court” in relation to a cause or matter means –
- (a) the Bailiff; or
 - (b) if the Bailiff directs, the Inferior Number of the Royal Court;
- “Criminal Procedure Law” means the [Criminal Procedure \(Jersey\) Law 2018](#);
- “DPA” has the meaning given in Article 2(1);
- “DPA proceedings” means proceedings for the prosecution of a specified offence and for the approval of, and monitoring of compliance with, a DPA as set out in this Law;
- “entity” means –
- (a) a company, as defined in the [Companies \(Jersey\) Law 1991](#);
 - (b) a foundation, as defined in the [Foundations \(Jersey\) Law 2009](#);

- (c) an incorporated limited partnership, as defined in the [Incorporated Limited Partnerships \(Jersey\) Law 2011](#);
- (d) a limited liability company, as defined in the [Limited Liability Companies \(Jersey\) Law 2018](#);
- (e) a limited liability partnership, as defined in the [Limited Liability Partnerships \(Jersey\) Law 2017](#);
- (f) a separate limited partnership, as defined in the [Separate Limited Partnerships \(Jersey\) Law 2011](#);
- (g) any other body or person that has legal personality but is not an individual or a corporation sole, whether established in Jersey or elsewhere;

“expiry date”, in relation to a DPA, has the meaning given in Article 3(1)(a);

“independent monitor” has the meaning given in Article 6(5);

“self-report” has the meaning given in Article 4(2);

“specified offence” means an offence specified in Schedule 1, and includes an alleged specified offence.

- (2) In this Law, a “connected person” in relation to an entity means –
 - (a) in the case of a company, a director, manager, secretary, or other similar officer of the company;
 - (b) in the case of a foundation, a member of the council, the guardian, a founder, or a person appointed under the regulations of the foundation;
 - (c) in the case of an incorporated limited partnership –
 - (i) a general partner, or
 - (ii) a limited partner who is participating in the management of the partnership;
 - (d) in the case of a limited liability company, a manager of the company;
 - (e) in the case of a limited liability partnership, a partner of the partnership;
 - (f) in the case of a separate limited partnership –
 - (i) a general partner, or
 - (ii) a limited partner who is participating in the management of the partnership;
 - (g) in the case of any other body or person that has legal personality but is not an individual or a corporation sole –
 - (i) a director, manager, secretary, or other similar officer of the entity, or
 - (ii) if the affairs of the entity are managed by its members, a member who is acting in connection with the member’s functions of management;
 - (h) in any case, a person appointed as a reporting officer of the entity within the meaning given by Article 1(1) of the [Money Laundering \(Jersey\) Order 2008](#).
- (3) The States may by Regulations amend Schedule 1.

2 Characteristics of a DPA

- (1) A deferred prosecution agreement (a “DPA”) is an agreement between –
 - (a) the Attorney General; and
 - (b) an entity against which the Attorney General has initiated DPA proceedings in accordance with Article 6 in relation to a specified offence.
- (2) Under a DPA –
 - (a) the entity agrees to comply with the requirements imposed on it by the DPA; and
 - (b) the Attorney General agrees not to seek leave of the Court, under Article 81A(1) of the Criminal Procedure Law, to progress proceedings in relation to the specified offence at any time while the DPA is in force.
- (3) The law of contract does not apply to any question concerning the formation, variation, or termination of a DPA.

3 Content of a DPA

- (1) A DPA must include the following terms –
 - (a) the date on which the DPA ceases to have effect (the “expiry date”) if not terminated by the Court under Article 10(3)(b);
 - (b) a statement of facts relating to the specified offence which may include admissions made by the entity in relation to the specified offence;
 - (c) requirements imposed on the entity;
 - (d) time limits within which the entity must comply with those requirements;
 - (e) a statement setting out the consequences of a failure by the entity to comply with any of its terms;
 - (f) the times or intervals at which the independent monitor is to report under Article 8(1)(b);
 - (g) the remuneration that the parties have agreed that the independent monitor is entitled to receive.
- (2) A DPA must specify the independent monitor in relation to the DPA.
- (3) The requirements that a DPA may impose on the entity include requirements –
 - (a) to pay a financial penalty;
 - (b) to compensate victims of the specified offence;
 - (c) to donate money to a charity or other third party;
 - (d) to disgorge any profits made by the entity from the specified offence;
 - (e) to implement a compliance programme or make changes to an existing compliance programme relating to either or both of the following –
 - (i) the entity’s policies,
 - (ii) the training of the entity’s employees;

- (f) to pay any reasonable costs of the Attorney General in relation to the DPA proceedings;
 - (g) to pay the remuneration of the independent monitor.
- (4) A DPA may include such other terms as may be agreed between the Attorney General and the entity.

PART 2

COURT APPROVAL OF A DPA

4 Submission of a self-report

- (1) Where an entity wishes to enter into a DPA in relation to a specified offence it must –
 - (a) submit to the Attorney General evidence which is reasonably capable of demonstrating that the entity has committed that specified offence; and
 - (b) request that the Attorney General determines whether to enter into a DPA with the entity in relation to that specified offence.
- (2) The submission of evidence and a request in accordance with paragraph (1) is referred to in this Law as a “self-report”.
- (3) An entity may not submit more than one self-report in relation to the same specified offence.

5 Consideration of a self-report

- (1) Where an entity submits a self-report, the Attorney General must determine whether the evidence submitted is reasonably capable of demonstrating that the specified offence has been committed by the entity.
- (2) Paragraph (1) does not apply where the Attorney General is satisfied that it is not in the interests of justice to enter into a DPA with the entity in relation to the specified offence.
- (3) An entity that submits a self-report must meet the costs incurred by the Attorney General in carrying out a determination under paragraph (1).
- (4) Paragraph (5) applies where –
 - (a) the Attorney General has determined that the evidence submitted is reasonably capable of demonstrating that the specified offence has been committed by the entity;
 - (b) the entity has met the costs referred to in paragraph (3); and
 - (c) the Attorney General is considering prosecuting the entity in respect of the specified offence.
- (5) Where this paragraph applies, the Attorney General must determine whether it is in the interests of justice to enter into a DPA with the entity in relation to the specified offence.

- (6) A payment in relation to costs made under this Article is not refundable, regardless of the outcome of any negotiations with a view to entering into a DPA, or any DPA proceedings, in relation to the specified offence.

6 Initiation of DPA proceedings and first application to the Court

- (1) This Article applies where –
 - (a) the Attorney General has determined under Article 5(5) that it is in the interests of justice to enter into a DPA with the entity; and
 - (b) the Attorney General and the entity have commenced negotiations with a view to entering into the DPA.
- (2) The Attorney General must initiate DPA proceedings against the entity under Article 14(1A) of the Criminal Procedure Law.
- (3) Where the provision creating the specified offence requires the consent of the Attorney General before criminal proceedings may be initiated, no DPA proceedings may be initiated in relation to that specified offence except by or with the consent of the Attorney General.
- (4) Once DPA proceedings have been initiated, and the Attorney General has given the notice required by Article 14(1A)(b) of the Criminal Procedure Law and lodged and served the indictment as required by Article 43(8) of that Law, the Attorney General must apply to the Court for a declaration that –
 - (a) entering into a DPA with the entity is likely to be in the interests of justice; and
 - (b) the proposed terms of the DPA are fair, reasonable, and proportionate.
- (5) The Attorney General must nominate a person to carry out the functions described in Article 8 in relation to the DPA (an “independent monitor”), and the proposed DPA must include the name of the proposed independent monitor.
- (6) The Court must give reasons for its decision whether or not to make a declaration under paragraph (4).
- (7) The Attorney General may make a further application under paragraph (4) if the Court declined to make a declaration on the previous application.
- (8) A hearing at which an application under paragraph (4) is determined must be held in private, any declaration under paragraph (4) must be made in private, and any reasons under paragraph (6) must be given in private.

7 Final hearing, Court approval of the DPA and appointment of the independent monitor

- (1) This Article applies where –
 - (a) the Court has made a declaration under Article 6(4); and
 - (b) the Attorney General and the entity have agreed the terms of the DPA.
- (2) The Attorney General must apply to the Court –
 - (a) for a declaration that –

- (i) the DPA is in the interests of justice, and
 - (ii) the terms of the DPA are fair, reasonable, and proportionate; and
 - (b) for the appointment of the independent monitor nominated by the Attorney General.
- (3) If the Court decides to make a declaration under paragraph (2)(a) it must, when making the declaration, make the appointment of the independent monitor under paragraph (2)(b).
 - (4) The Court must give reasons for its decision whether or not to make a declaration under paragraph (2)(a).
 - (5) An application under paragraph (2) may be determined, and a declaration under paragraph (2)(a) may be made, without a hearing.
 - (6) Any hearing at which an application under paragraph (2) is determined may be held in private, but if the Court decides to make a declaration under paragraph (2)(a), it must do so, and must give its reasons, in open court.
 - (7) The DPA comes into force when it is approved by the Court making a declaration under paragraph (2)(a).
 - (8) On approval of the DPA by the Court, the Attorney General must publish, in such manner as the Attorney General thinks fit –
 - (a) the DPA;
 - (b) the declaration of the Court made under Article 6(4) and the reasons given by the Court under Article 6(6);
 - (c) in a case where the Court initially declined to make a declaration under Article 6(4), the reasons given by the Court under Article 6(6) for that decision; and
 - (d) the declaration of the Court made under paragraph (2)(a) and the reasons given by the Court under paragraph (4).
 - (9) Paragraph (8) does not require the Attorney General to publish information if the Attorney General is prevented from doing so by an enactment, or by an order of the Court under Article 13(1).
 - (10) An independent monitor appointed under this Article –
 - (a) is entitled to receive remuneration as agreed between the parties to the DPA; and
 - (b) unless paragraph (13) applies, ceases to hold office –
 - (i) on the expiry of the DPA (whether that occurs on the expiry date or as provided for in any of paragraphs (5) to (7) of Article 12), or
 - (ii) on the termination of the DPA by the Court under Article 10(3)(b).
 - (11) The Attorney General may make an application to the Court if the Attorney General has reasonable grounds –
 - (a) to suspect that the independent monitor has failed without reasonable excuse to carry out any of the functions described in Article 8; or
 - (b) to believe that it is necessary in all the circumstances of the case to terminate the appointment of the independent monitor.

- (12) Paragraph (13) applies if, on an application under paragraph (11), the Court is satisfied that –
- (a) the independent monitor has failed without reasonable excuse to carry out any of the functions described in Article 8; or
 - (b) it is necessary in all the circumstances of the case to terminate the appointment of the independent monitor.
- (13) Where this paragraph applies, the Court may make an order –
- (a) terminating the appointment of the independent monitor (“the outgoing independent monitor”) and appointing another independent monitor nominated by the Attorney General (“the incoming independent monitor”);
 - (b) making such other provision as the Court thinks just in all the circumstances of the case including, but not limited to –
 - (i) requiring the outgoing independent monitor to deliver, to the Attorney General or the incoming independent monitor or both of them, information and documents received or obtained in the course of carrying out the functions described in Article 8,
 - (ii) requiring the outgoing independent monitor to disgorge itself of any fees received by virtue of its appointment,
 - (iii) requiring that any such fees are repaid to the entity, or paid into the Criminal Offences Confiscations Fund established by Article 24 of the [Proceeds of Crime \(Jersey\) Law 1999](#).

PART 3

MONITORING COMPLIANCE WITH A DPA

8 Functions of the independent monitor

- (1) The independent monitor in relation to a DPA must –
- (a) monitor the entity’s compliance with the terms of the DPA;
 - (b) report to the Court and the Attorney General on the entity’s compliance with the terms of the DPA; and
 - (c) report to the Attorney General if it appears to the independent monitor that, in the submission of the self-report, in negotiations with a view to entering into the DPA, or at any time while the DPA is in force, the entity or a connected person in relation to the entity has –
 - (i) provided inaccurate, misleading, or incomplete information to the Court, the Attorney General, or the independent monitor,
 - (ii) committed an offence under this Law, or
 - (iii) committed a criminal offence.
- (2) A report referred to in paragraph (1)(b) must be made at such times or at such intervals as are specified in the DPA and must, in particular –

- (a) specify any breach of the terms of the DPA by the entity during the period covered by the report; and
 - (b) notify the Court and the Attorney General if, in the opinion of the independent monitor, the entity is likely to fail to comply with any term of the DPA.
- (3) Where the independent monitor submits a report referred to in paragraph (1)(c), the independent monitor must provide the Attorney General with all evidence in the possession or control of the independent monitor relating to the substance of the report.
- (4) Paragraph (5) applies if, on an application to the Court by the Attorney General, the Court is satisfied that there is reasonable cause to believe that –
 - (a) the entity, or a connected person in relation to the entity, has –
 - (i) breached any term of the DPA, or any order made by the Court in relation to the DPA, or
 - (ii) done any act which could be the substance of a report under paragraph (1)(c); and
 - (b) evidence of the breach or act is to be found in any records of, or under the control of, the entity or the connected person (as the case may be).
- (5) Where this paragraph applies, the Court may make an order –
 - (a) authorising the independent monitor to inspect the records mentioned in paragraph (4)(b) for the purpose of investigating and obtaining evidence of the breach or act; or
 - (b) requiring a person named in the order to produce and make available those records to the independent monitor at a time and a place specified in the order.
- (6) A hearing at which an application under paragraph (4) is determined must be held in private, any order under paragraph (5) must be made in private.
- (7) Paragraph (8) applies to a person who was the independent monitor in relation to a DPA immediately before the expiry or termination of the DPA (“former independent monitor”).
- (8) Where it appears to the former independent monitor that the entity, or a connected person in relation to the entity, has done any act which could be the substance of a report under paragraph (1)(c), the former independent monitor must report to the Attorney General and the report must comply with the requirements of paragraph (3).
- (9) Except as required under any enactment, the terms of the DPA, or an order of a court, the independent monitor must not disclose any information or documents received or obtained in the course of carrying out the functions described in this Article, other than –
 - (a) to the Attorney General;
 - (b) to another person where the disclosure is reasonably necessary to enable the independent monitor to carry out those functions.

9 Duties on entities and connected persons

- (1) An entity that has entered into a DPA must –
 - (a) on request, provide the independent monitor with any information or documents that the independent monitor may require in order to carry out the functions described in Article 8;
 - (b) provide any assistance to the independent monitor in the carrying out of those functions as the independent monitor may reasonably request;
 - (c) provide the independent monitor with all other information and documents which may assist the independent monitor in carrying out those functions, and any further assistance that the entity is reasonably able to give.
- (2) An entity commits an offence and is liable to a fine if it –
 - (a) fails, without reasonable excuse, to comply with an obligation imposed by paragraph (1); or
 - (b) knowingly or recklessly provides information that is false or misleading in purported compliance with an obligation imposed by paragraph (1).
- (3) If an offence mentioned in paragraph (2) is proved to have been committed with the consent or connivance of a connected person in relation to the entity, the connected person is also guilty of the offence, and liable in the same manner as the entity to a fine.
- (4) A connected person in relation to the entity must –
 - (a) on request, provide the independent monitor with any information or documents that the independent monitor may require in order to carry out the functions described in Article 8;
 - (b) provide any assistance to the independent monitor in the carrying out of those functions as the independent monitor may reasonably request, including by attending on the independent monitor at reasonable times and at reasonable notice when requested to do so; and
 - (c) notify the independent monitor in writing of any change, of which they are aware, in the information provided under this Article that may affect –
 - (i) the carrying out of those functions,
 - (ii) the entity's ability to comply with its obligations under the DPA.
- (5) A connected person in relation to an entity commits an offence and is liable to imprisonment for a term not exceeding 12 months and to a fine if the connected person –
 - (a) fails, without reasonable excuse, to comply with an obligation imposed by paragraph (4);
 - (b) knowingly or recklessly provides information that is false or misleading in purported compliance with an obligation imposed by paragraph (4).
- (6) Paragraph (7) applies where a connected person provides information or documents to the independent monitor under paragraph (4).

- (7) Where this paragraph applies, the information or documents provided may not be used in evidence against the connected person on a prosecution for any offence other than an offence under paragraph (5).

10 Breach of a DPA

- (1) The Attorney General may make an application to the Court if, at any time while a DPA is in force, the Attorney General has reasonable grounds to suspect that the entity has failed to comply with the terms of the DPA.
- (2) On an application under paragraph (1) the Court must decide on the balance of probabilities whether the entity has failed to comply with the terms of the DPA.
- (3) If the Court finds that the entity has failed to comply with the terms of the DPA, it may –
 - (a) invite the Attorney General and the entity to agree proposals to remedy the entity's failure to comply; or
 - (b) terminate the DPA.
- (4) The Court must give reasons for its decisions under paragraphs (2) and (3).
- (5) A hearing at which an application under paragraph (1) is determined must be held in private, any decision under paragraph (2) or (3) must be made in private, and any reasons under paragraph (4) must be given in private.

11 Variation of a DPA

- (1) At any time while a DPA is in force, the Attorney General and the entity may agree to vary its terms if –
 - (a) the Court has invited the parties to vary the DPA under Article 10(3)(a); or
 - (b) variation of the DPA is necessary to avoid a failure by the entity to comply with its terms in circumstances that were not, and could not reasonably have been, foreseen by the Attorney General or the entity at the time that the DPA was agreed.
- (2) When the Attorney General and the entity have agreed to vary the terms of a DPA, the Attorney General must apply to the Court for a declaration that –
 - (a) the variation is in the interests of justice; and
 - (b) the terms of the DPA as varied are fair, reasonable, and proportionate.
- (3) A variation of a DPA takes effect when it is approved by the Court making a declaration under paragraph (2).
- (4) The Court must give reasons for its decision whether or not to make a declaration under paragraph (2).
- (5) A hearing at which an application under paragraph (2) is determined must be held in private, any decision under paragraph (2) must be made in private, and any reasons under paragraph (4) must be given in private.

12 Discontinuance of DPA proceedings on expiry of a DPA

- (1) If a DPA remains in force until its expiry date then, after the expiry of the DPA, the Attorney General must discontinue the proceedings in relation to the offence by giving notice to the Court under Article 81A(2) of the Criminal Procedure Law.
- (2) Where DPA proceedings are discontinued, fresh criminal proceedings may not be instituted against the entity in relation to the offence specified in the indictment unless paragraph (3) applies.
- (3) This paragraph applies where, after the DPA has expired, the Attorney General finds that during the course of the negotiations for the DPA the entity –
 - (a) provided inaccurate, misleading, or incomplete information to the Attorney General; and
 - (b) knew or ought to have known that the information was inaccurate, misleading, or incomplete.
- (4) A DPA is not to be treated as expiring on its expiry date for the purposes of paragraphs (1) and (3) and Article 7(10)(b) in the circumstances described in paragraph (5), (6) or (7).
- (5) Where, on the expiry date specified in the DPA, an application made under Article 10(1) has not yet been decided by the Court –
 - (a) if the Court decides that the entity has not failed to comply with the terms of the DPA, or that the entity has failed to comply but does not take action under Article 10(3), the DPA is treated as expiring when the application is decided;
 - (b) if the Court terminates the DPA under Article 10(3)(b), the DPA is treated as not having remained in force until its expiry date;
 - (c) if the Court invites the parties under Article 10(3)(a) to agree proposals to remedy the entity's failure to comply, the DPA is treated as expiring when the parties have reached an agreement and the entity has complied with it.
- (6) Where, on the expiry date specified in the DPA, the Court has invited the parties under Article 10(3)(a) to agree proposals to remedy the entity's failure to comply but the parties have not yet reached an agreement, the DPA is treated as expiring when the parties have reached an agreement and the entity has complied with it.
- (7) Where, on the expiry date specified in the DPA, the parties have agreed proposals to remedy the entity's failure to comply following an invitation of the Court under Article 10(3)(a) but the entity has not yet complied with the agreement, the DPA is treated as expiring when the entity complies with the agreement.

13 Publication of information by the Attorney General

- (1) The Court may order that the publication of information by the Attorney General under Article 7(8) be postponed, for such period as the Court considers necessary or indefinitely, if it appears to the Court that postponement is necessary –

- (a) for avoiding a substantial risk of prejudice to the administration of justice in any legal proceedings; or
 - (b) for some other substantial reason.
- (2) The Court may order, on the application of the Attorney General or the entity, or of its own motion, that any of the following be published by the Attorney General, if it appears to the Court that publication is in the public interest –
- (a) in relation to an application under Article 10(1) –
 - (i) a decision of the Court under Article 10(2) or (3) and any reasons for that decision given under Article 10(4),
 - (ii) where the DPA is terminated by the Court under Article 10(3)(b), that fact;
 - (b) where the Attorney General believes that the entity failed to comply with the terms of the DPA but decided not to make an application under Article 10(1), details relating to that decision including the Attorney General’s reasons –
 - (i) for believing that the entity has failed to comply with the DPA, and
 - (ii) for deciding not to make the application;
 - (c) in relation to an application under Article 11 –
 - (i) a decision of the Court under Article 11(2) and any reasons for that decision given under Article 11(4),
 - (ii) where the Court approved the variation of the DPA, the DPA as varied;
 - (d) where DPA proceedings are discontinued under Article 12(1) –
 - (i) that fact, and
 - (ii) details of the entity’s compliance with the DPA.
- (3) A hearing at which an application under paragraph (2) is determined must be held in private, and any decision under paragraph (2) must be made in private.

PART 4

MISCELLANEOUS PROVISIONS

14 Attorney General’s Guidance

- (1) The Attorney General must issue guidance (the “Attorney General’s Guidance”) in relation to the application of this Law which may, in particular, include guidance on –
- (a) the process of submitting a self-report;
 - (b) the principles to be applied in determining, for the purposes of Article 5, whether evidence submitted is reasonably capable of demonstrating that a specified offence has been committed;

- (c) the principles to be applied in determining the amount of costs to be met by an entity under Article 5(3);
 - (d) the principles to be applied in determining, for the purposes of Article 5(2) and (5), whether it is in the interests of justice to enter into a DPA with an entity;
 - (e) the process of negotiating and agreeing a DPA;
 - (f) the content of a DPA including the requirements that a DPA may impose on an entity, and the amount of any financial penalty or costs which may be imposed;
 - (g) the use by the Attorney General of information obtained in the course of negotiations for a DPA;
 - (h) the appointment and role of the independent monitor, and the persons who are eligible to be nominated as an independent monitor;
 - (i) the circumstances in which it may be reasonably necessary for the independent monitor to disclose information or documents as described in Article 8(9)(b);
 - (j) the steps that may be taken by the Attorney General in relation to a suspected breach of a DPA;
 - (k) the termination of a DPA under Article 10(3)(b) and steps that may be taken by the Attorney General following termination; and
 - (l) the variation of a DPA under Article 11.
- (2) The Attorney General may at any time vary, or withdraw and replace, the Attorney General's Guidance.
- (3) The Attorney General must publish the Attorney General's Guidance, and any variation or replacement, in such manner as the Attorney General thinks fit.

15 Use of material in criminal proceedings

- (1) Paragraph (2) applies where a DPA has been approved by the Court under Article 7(2)(a).
- (2) Where this paragraph applies, in any criminal proceedings brought against the entity for the specified offence, any statement of facts contained in the DPA is to be treated as an admission by the entity under Part 2 (formal admissions) of the [Criminal Justice \(Evidence and Procedure\) \(Jersey\) Law 1998](#).
- (3) Paragraph (4) applies where the Attorney General and the entity have entered into negotiations for a DPA but the DPA has not been approved by the Court under Article 7(2)(a).
- (4) Where this paragraph applies, material described in paragraph (5) may only be used in evidence against the entity –
- (a) on a prosecution for an offence consisting of the provision of inaccurate, misleading, or incomplete information; or
 - (b) on a prosecution for some other offence where –
 - (i) in giving evidence the entity makes a statement inconsistent with the material, and

- (ii) evidence relating to the material is adduced, or a question relating to it is asked, by or on behalf of the entity in the proceedings arising out of the prosecution.
- (5) The material mentioned in paragraph (4) is –
 - (a) material that shows that the entity entered into negotiations for a DPA, including in particular –
 - (i) any draft of the DPA,
 - (ii) any draft of any statement of facts intended to be contained in the DPA,
 - (iii) any statement indicating that the entity entered into those negotiations;
 - (b) material that was created solely for the purpose of preparing the self-report, the DPA, or any statement of facts.
- (6) Except as provided for in paragraphs (1) to (5), where proceedings in relation to a specified offence are progressed under Article 81A(1) of the Criminal Procedure Law, any enactment or principle of customary law relating to criminal procedure and evidence applies to those proceedings as it would apply if the suspension under Article 14(1B) of the Criminal Procedure Law had not occurred.

16 Money paid in relation to a DPA

Where an entity is required to pay a financial penalty under this Law, any payment made by, or on behalf of, the entity must be paid into the Criminal Offences Confiscations Fund established by Article 24 of the [Proceeds of Crime \(Jersey\) Law 1999](#), in accordance with any term specified in the DPA or an order of the Court.

17 Limitation of liability of Attorney General

- (1) Paragraph (2) applies to –
 - (a) the Attorney General; and
 - (b) any person who is acting as an officer, employee or agent of the Attorney General.
- (2) A person to whom this paragraph applies is not liable in damages or for consequential loss for any act done in the discharge, or purported discharge, of the functions of the Attorney General under this Law.
- (3) Paragraph (2) does not apply so as to prevent an award of damages made in respect of an act –
 - (a) if it is shown that the act was done in bad faith; or
 - (b) on the ground that the act was unlawful as a result of Article 7(1) of the [Human Rights \(Jersey\) Law 2000](#).
- (4) The Attorney General is not liable in costs for any DPA proceedings under Parts 2 and 3 of this Law, except where it is shown that the DPA proceedings were commenced, or (having been lawfully commenced) were continued, in bad faith.

18 Consequential amendments

- (1) Schedule 2 contains consequential amendments.
- (2) The States may by Regulations make such amendments to any enactment as appear to the States to be necessary or expedient –
 - (a) for the general purposes, or any particular purpose, of this Law; or
 - (b) in consequence of any provision made by or under this Law.

19 Transitional provisions

- (1) Conduct constituting a specified offence that occurred before the relevant date may be taken into account for the purposes of this Law.
- (2) In paragraph (1) “the relevant date” means –
 - (a) in the case of a specified offence that is specified in Schedule 1 on the day this Law comes into force, that day; and
 - (b) in the case of a specified offence that is subsequently added to Schedule 1, the day on which the Regulations or other enactment adding that specified offence come into force.
- (3) Where conduct that occurred before this Law comes into force –
 - (a) constituted an offence under an enactment or under the customary law of Jersey at the time of that conduct (an “old offence”); and
 - (b) would constitute a specified offence if it occurred on or after the day this Law comes into force,this Law applies as if the specified offence included the old offence.

20 Citation and commencement

This Law may be cited as the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202- and comes into force 7 days after it is registered.

SCHEDULE 1

(Article 1(1))

SPECIFIED OFFENCES

1. The customary law offences of –
 - (a) embezzlement;
 - (b) false accounting;
 - (c) forgery;
 - (d) fraud;
 - (e) fraudulent conversion;
 - (f) larceny.
2. An offence under Article 2 (fraudulent inducement to invest money) of the [Investors \(Prevention of Fraud\) \(Jersey\) Law 1967](#).
3. An offence under any of the following provisions of the [Companies \(Jersey\) Law 1991](#) –
 - (a) Article 33 (criminal liability in relation to prospectuses);
 - (b) Article 61A (solvency statement);
 - (c) Article 127G (offences relating to merger);
 - (d) Article 127W (statements of solvency in respect of continuance);
 - (e) Article 127Y (offences relating to continuance).
4. An offence under any of the following provisions of the [Financial Services \(Jersey\) Law 1998](#) –
 - (a) Article 7 (prohibition of carrying on unauthorised financial service business);
 - (b) Article 39G (insider dealing);
 - (c) Article 39L (market manipulation and misleading information).
5. An offence under Article 23(1) (penalty for intermeddling) of the [Probate \(Jersey\) Law 1998](#).
6. An offence under any of the following provisions of the [Proceeds of Crime \(Jersey\) Law 1999](#) –
 - (a) Article 30 (offences of dealing with criminal property);
 - (b) Article 31 (concealment etc. of criminal property);
 - (c) Article 35A (failure to prevent money laundering);
 - (d) Article 37(4) (procedures to prevent and detect money laundering).
7. An offence under either of the following provisions of the [Corruption \(Jersey\) Law 2006](#) –
 - (a) Article 5 (corruption concerning public body);
 - (b) Article 6 (corrupt transactions with agents).

8. An offence of aiding, abetting, counselling, procuring, conspiring, attempting, or inciting, whether under customary law, Article 1 of the [Criminal Offences \(Jersey\) Law 2009](#), or any other statutory provision, in relation to the commission of an offence mentioned in any of paragraphs 1 to 7.

SCHEDULE 2

(Article 18(1))

CONSEQUENTIAL AMENDMENTS

1 [Court of Appeal \(Jersey\) Law 1961](#)

- (1) This paragraph amends the [Court of Appeal \(Jersey\) Law 1961](#).
- (2) After Article 25 (right of appeal in cases where there has not been a conviction on indictment) there is inserted –

“25A Right of appeal against determinations under the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-

- (1) An entity, and a connected person in relation to an entity, may appeal under this Part to the Court of Appeal, with leave of the Court of Appeal, against a determination of the Royal Court made under any of the provisions in paragraph (2).
 - (2) The provisions in this paragraph are Articles 7(2)(a) and (b), and 10(2) and (3) of the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-.
 - (3) Unless the Court of Appeal so orders, the lodging of an appeal under paragraph (1) does not operate to stay the effect of a decision or requirement pending the determination of the appeal.”.
- (3) After Article 28 (power to order retrial) there is inserted –

“28A Powers of Court in relation to appeals against determinations under the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-

- On hearing an appeal under Article 25A(1) the Court of Appeal may –
- (a) confirm, reverse or vary the decision or requirement against which the appeal is brought; and
 - (b) make any order as to the costs of the appeal as it thinks fit.”.
- (4) In Article 44(1) (interpretation and application of Part 3), after the definition “confiscation order” there is inserted –
- ““connected person” has the meaning given in Article 1(2) of the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-;
- “entity” has the meaning given in Article 1(1) of the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-;”.
- (5) After Article 46 (reference to Court of Appeal for review of sentence) there is inserted –

“46AA Appeal by Attorney General against determinations under the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-

- (1) The Attorney General may appeal under this Part to the Court of Appeal against a determination of the Royal Court made under any of the provisions in paragraph (2).
- (2) The provisions in this paragraph are Articles 6(4), 7(2)(a) and (b) and (13), 10(2) and (3), and 11(2) of the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-.
- (3) Articles 25A(3) and 28A apply to an appeal under paragraph (1) as they apply to an appeal under Article 25A(1).”

2 Proceeds of Crime (Jersey) Law 1999

- (1) This paragraph amends the Proceeds of Crime (Jersey) Law 1999.
- (2) In Article 1(3) (interpretation), after sub-paragraph (b) there is inserted –
 “(ba) when proceedings are initiated in respect of the offence under Article 14(1A) of the Criminal Procedure (Jersey) Law 2018; or”.
- (3) In Article 24 (Criminal Offences Confiscations Fund) –
 - (a) for paragraph (2) there is substituted –
 “(2) All amounts –
 - (a) recovered under or in satisfaction of a confiscation order or instrumentalities forfeiture order;
 - (b) received under an asset sharing agreement; or
 - (c) received under a deferred prosecution agreement,must be included in the monies which are paid into the Fund.”;
 - (b) after paragraph (8) there is inserted –
 “(9) In paragraph (2)(c), “deferred prosecution agreement” has the meaning given in Article 2(1) of the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-.”.

3 Criminal Procedure (Jersey) Law 2018

- (1) This paragraph amends the Criminal Procedure (Jersey) Law 2018.
- (2) In Article 1(1) (interpretation and application) –
 - (a) in the definition “criminal proceedings” at the end there is inserted “, and relevant DPA proceedings”;
 - (b) after the definition “defendant” there is inserted –
 ““Deferred Prosecution Agreements Law” means the Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 202-;”;
 - (c) after the definition “publication” there is inserted –
 ““relevant DPA proceedings” means proceedings under Parts 2 and 3 of the Deferred Prosecution Agreements Law;”.

- (3) In Article 4(2)(a) (duties of the participants in criminal proceedings), after “this Law,” there is inserted “the Deferred Prosecution Agreements Law.”
- (4) In Article 14 (Attorney General’s power to initiate proceedings directly in the Royal Court) –
- (a) after paragraph (1) there is inserted –
- “(1A) Where Article 6(2) of the Deferred Prosecution Agreements Law applies, the Attorney General must –
- (a) directly initiate proceedings in the Royal Court in respect of a person who is to be indicted, and Article 43 applies for the purposes of initiating proceedings; and
- (b) as soon as proceedings have been initiated, give notice that the Attorney General wishes the proceedings in relation to the offence specified in the indictment to be suspended to enable the Attorney General and the defendant to enter into a deferred prosecution agreement in relation to the offence.
- (1B) Where a notice is given under paragraph (1A)(b) –
- (a) proceedings in respect of the offence are suspended with immediate effect; and
- (b) the court must record that the proceedings are suspended.”;
- (b) in paragraph (2) for “Paragraph (1) applies” there is substituted “Paragraphs (1) and (2) apply”;
- (c) after paragraph (3) there is inserted –
- “(3A) Where the Attorney General has been granted leave of the court under Article 81A(1) to progress proceedings, the Attorney General must summons the person referred to in paragraph (1A) to appear before the Royal Court at the time, and on the date notified in the summons, to answer the indictment referred to in Article 43.”;
- (d) after paragraph (7) there is inserted –
- “(8) In paragraph (1A)(b), “deferred prosecution agreement” has the meaning given in Article 2(1) of the Deferred Prosecution Agreements Law.
- (9) Criminal Procedure Rules may make provision as to the form, content and service of a notice given under paragraph (1A)(b).”
- (5) In Article 43 (notice of proceedings and lodging of indictment) –
- (a) for paragraph (3) there is substituted –
- “(3) The Attorney General must, in relation to a defendant –
- (a) who has been sent by the Magistrate’s Court to the Royal Court for sentencing or trial, as the case may be;
- (b) in respect of whom the Attorney General has decided to initiate criminal proceedings in the Royal Court under Article 14(1); or
- (c) in respect of whom the Attorney General has initiated criminal proceedings in the Royal Court under Article 14(1A),
- prepare an indictment in the prescribed form, sign and lodge it with the Judicial Greffier and serve a copy of it upon the defendant.”;

- (b) after paragraph (7) there is inserted –
- “(8) Where paragraph (3)(c) applies, the indictment must be lodged and served as soon as is reasonably practicable.”.
- (6) In Article 44(1) (failure to attend first appearance), for “Article 14(3)” there is substituted “Article 14(3) or (3A)”.
- (7) In Article 52 (application of Part 8), at the end there is inserted “, and Articles 61(1) and (2) and 62 also apply in relation to relevant DPA proceedings”.
- (8) In Article 61 (restrictions on reporting preparatory hearings or rulings) –
- (a) at the end of the heading there is inserted “, or relevant DPA proceedings”;
- (b) in paragraph (2), before sub-paragraph (a) there is inserted –
- “(aa) an application in relevant DPA proceedings, other than –
- (i) a hearing at which the Royal Court made an order under Article 7(2)(a) of the Deferred Prosecution Agreements Law in relation to which publication under Article 7(8) of that Law has occurred, or
- (ii) a hearing which takes place after such publication has occurred;”.
- (9) In Article 62 (offences in connection with reporting preparatory hearings or rulings), at the end of the heading there is inserted “, or relevant DPA proceedings”.
- (10) In Article 80 (discontinuance of proceedings), for paragraph (6B) there is substituted –
- “(6B) The court must record that the proceedings are discontinued.”.
- (11) After Article 81 (continuation of previous proceedings) there is inserted –

“81A Continuation or discontinuance of previously suspended proceedings

- (1) The Attorney General may, at any time, with leave of the court progress proceedings that have been suspended under Article 14(1B).
- (2) Where Article 12(1) of the Deferred Prosecution Agreements Law applies, the Attorney General must give notice that the Attorney General wishes the proceedings in relation to the offence specified in the indictment to be discontinued on the ground that the deferred prosecution entered into in relation to the offence has expired.
- (3) Where a notice is given under paragraph (2) –
- (a) proceedings in respect of the offence are discontinued with immediate effect; and
- (b) the court must record that the proceedings are discontinued.”.
- (12) Before Article 82 (duty of prosecution to disclose unused material) there is inserted –

“81B Application of Articles 82 to 85

The respective duties of the prosecution and the defendant under Articles 82 to 85 do not apply, to the extent that they have not already been discharged, during any period when proceedings are halted or suspended.”.

- (13) In Article 98 (issue of witness summons on application to the court) –
- (a) at the beginning of paragraph (5) there is inserted “Subject to paragraph (5A),”;
 - (b) after paragraph (5) there is inserted –
“(5A) Where the proceedings were initiated under Article 14(1A), a party who wants the court to issue a witness summons must apply as soon as practicable after the Attorney General has been granted leave of the court under Article 81A(1) to progress the proceedings.”.
- (14) In Article 107 (intimidation, etc. of witnesses, jurors and others) –
- (a) in paragraph (9) –
 - (i) in the definition “investigation into an offence”, at the end there is inserted “, and includes any consideration of an offence by the Attorney General under Part 2 of the Deferred Prosecution Agreements Law”,
 - (ii) in the definition “relevant period” –
 - (A) in sub-paragraph (a), after “criminal proceedings” there is inserted “other than proceedings mentioned in sub-paragraph (aa)”,
 - (B) after sub-paragraph (a) there is inserted –
“(aa) in relation to a witness or juror in any proceedings initiated in accordance with Article 14(1A), means the period –
 - (i) beginning with the date on which the self-report in relation to the offence specified in the indictment is submitted to the Attorney General under Article 4 of the Deferred Prosecution Agreements Law, and
 - (ii) ending with the first anniversary of the conclusion of the trial;”,
 - (C) in sub-paragraph (c), at the end there is inserted “or sub-paragraph (aa) (as the case may be)”;
 - (b) in paragraph (10), after sub-paragraph (b) there is inserted –
““self-report” has the meaning given in Article 4(2) of the Deferred Prosecution Agreements Law.”.
- (15) In Article 112 (Criminal Procedure Rules), after paragraph (3)(a) there is inserted –
“(aa) the Deferred Prosecution Agreements Law;”.