

STATES OF JERSEY



DRAFT PROCEEDS OF CRIME (AMENDMENT – FINANCIAL INTELLIGENCE) (JERSEY) LAW 201-

Lodged au Greffe on 21st October 2014
by the Chief Minister

STATES GREFFE



Jersey

DRAFT PROCEEDS OF CRIME (AMENDMENT – FINANCIAL INTELLIGENCE) (JERSEY) LAW 201-

European Convention on Human Rights

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

In the view of the Chief Minister, the provisions of the Draft Proceeds of Crime (Amendment – Financial Intelligence) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 20th October 2014

REPORT

Overview

In 2009, the International Monetary Fund (the “**IMF**”) published a report on Jersey’s compliance with the 40+9 Recommendations of the Financial Action task Force (the “**FATF**”) on anti-money laundering and countering the financing of terrorism.

The island is currently preparing for its next Mutual Evaluation which is now scheduled for January 2015 and is due to be carried out by MONEYVAL, a body of the Council of Europe. In preparation for the Mutual Evaluation there has been a variety of legislation lodged au Greffe over the previous months and years. The Draft Proceeds of Crime (Amendment – Financial Intelligence) (Jersey) Law 201- (the “**draft Law**”) is another example of legislation preparing for the Mutual Evaluation.

The draft Law makes amendments to the Proceeds of Crime (Jersey) Law 1999 by introducing an enabling power to make Regulations for the specific purpose of establishing a financial intelligence unit (“**FIU**”) in legislation. A FIU already exists in Jersey in the format of the Joint Financial Crime Unit. The purpose of this amendment is to allow for Regulations to be drafted and lodged au Greffe setting out the existence of the FIU in legislation and providing for powers and functions of the FIU.

This purpose behind the draft Regulations to be lodged in the near future is to facilitate the island’s continued compliance with the evolving recommendations of the Financial Action Task Force (“**FATF**”) on anti-money laundering and countering the financing of terrorism.

Financial and manpower implications

There are no financial or manpower implications arising as a result of 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.

Human Rights Note on the Draft Proceeds of Crime (Amendment – Financial Intelligence) (Jersey) Law 201-

1. This Note has been prepared in respect of the Draft Proceeds of Crime (Amendment- Financial Intelligence) (Jersey) Law 201- (“**the draft Law**”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

Article 8 ECHR

2. Article 8 of the ECHR provides that –
 - “1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
 2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*”
3. The draft Law will empower the States to make Regulations prescribing a financial intelligence unit (“**FIU**”) to carry out functions of gathering, analysing and transmitting financial information.
4. The enabling power, i.e. new Article 41B of the Proceeds of Crime (Jersey) Law 1999 (“**the 1999 Law**”), will provide that such Regulations may include, *inter alia* –
 - (i) the conferral of powers on the FIU to require the provision of information from such persons as may be specified in the Regulations and in such manner and at such times as the FIU may reasonably determine;
 - (ii) more precise specification of the nature of information which may be sought by the FIU;
 - (iii) more precise specification of the persons to whom the financial information may be transmitted; and
 - (iv) the creation of offences and penalties for a failure to comply with a requirement of the Regulations.
5. Article 8(1) of the ECHR is therefore likely to be engaged by the draft Law as this will, ultimately under the subordinate legislation, allow the FIU to require financial information relating to individuals. This will therefore, when exercised, constitute a limitation on a person’s right to respect for his or her private life.

6. However, Article 8 is a qualified right, and its second paragraph sets out the manner in which the rights enshrined in the first paragraph may lawfully be limited.
7. Article 8(2) permits interference with the right to respect for private life if the interference is –
 - (i) in accordance with the law;
 - (ii) in the interests of one or more of the legitimate aims set out in that paragraph; and
 - (v) necessary in a democratic society i.e. the means deployed are a proportionate way in which to achieve the legitimate aim(s).
8. The first facet of the test that the interference is in accordance with the law means that it must be sufficiently “precise” and “accessible” so an individual can foresee with a reasonable degree of certainty the consequences of his actions or the circumstances in which and the conditions on which, the authorities may take certain steps. This requirement will be satisfied because the enabling power provides that the Regulations made under new Article 41B to sufficiently define the scope of the FIU’s powers and the circumstances in which information can be required and transmitted. Therefore, any interference with a person’s Article 8 rights will be accessible and clearly prescribed in statute, and so it shall satisfy the first facet of the test.
9. As to the requirement for a legitimate aim, it is clear that providing for an FIU and its powers in statute is justified by several of the aims in Article 8(2), such as national security, public safety, the economic wellbeing of the country, the prevention of disorder or crime and the protection of the rights and freedoms of others. This is further supported by the fact that the proposal will comply with the recommendations of the Financial Action Task Force.
10. The final part of the test is that any interference with a person’s Article 8 rights must be necessary in a democratic society, that is to say it should be proportionate.
11. Whilst Article 8 contains no explicit procedural requirements, the decision making process involved in measures of interference must be fair such as to ensure due respect of the interests safeguarded by Article 8. As mentioned above, new Article 41B enables the Regulations to specify precisely the nature of the information which may be sought, who it may be transmitted to and the precise functions of the FIU. Further safeguards are to be contained in the Regulations such as requirements for a request for financial information to be in writing, reasonable and specific, a request to allow a reasonable time in which the information is to be provided, and a defence for a person’s failure to comply with a request. Such safeguards will satisfy the requirement for the interference with Article 8 ECHR to be proportionate.
12. **The draft Law is therefore, based on the reasoning above, compatible with Article 8 ECHR.**
13. No other provisions of the ECHR are engaged by the draft Law.

Explanatory Note

This short draft Law would further amend the Proceeds of Crime (Jersey) Law 1999 (the “1999 Law”) to introduce a power to make Regulations for the specific purpose of establishing a financial intelligence unit.

By Article 42A(1) of the 1999 Law, the power of the States to make any Regulations under that Law may be exercised only in a manner not inconsistent with that Law.

The precise powers and functions of a financial intelligence unit would be further defined by the Regulations, but its primary purpose would be the gathering, analysis and transmission of intelligence from persons on whom reporting requirements are currently imposed by the Money Laundering (Jersey) Order 2008, in order to improve Jersey’s ability to counter money laundering and the financing of terrorism.

Article 1 would insert into the 1999 Law a new Article 41B containing the enabling power. (It would also make a minor amendment to Schedule 3 to the 1999 Law consequential upon amendments made previously by the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014.)

Article 2 would provide for the citation of this draft Law, which by virtue of Article 1(6) of the Interpretation (Jersey) Law 1954 would come into force on the day it is registered.



Jersey

DRAFT PROCEEDS OF CRIME (AMENDMENT – FINANCIAL INTELLIGENCE) (JERSEY) LAW 201-

A LAW to amend further the Proceeds of Crime (Jersey) Law 1999

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

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

1 Amendment of the Proceeds of Crime (Jersey) Law 1999

- (1) The Proceeds of Crime (Jersey) Law 1999¹ shall be amended in accordance with the following provisions of this Article.
- (2) After Article 41A, there shall be inserted the following Article –

“41B Financial intelligence gathering etc.

- (1) The States may by Regulations prescribe that there shall be a body (a ‘financial intelligence unit’) to carry out functions of gathering, analysing and transmitting financial information, in accordance with and as further provided by such Regulations.
- (2) Without derogation from the generality of Article 42A or of paragraph (1) of this Article, Regulations made for the purpose mentioned in that paragraph may, in particular –
 - (a) designate an existing body, or establish a new body, to be a financial intelligence unit;
 - (b) specify more precisely the functions of the financial intelligence unit;
 - (c) make provision as to its operation and resources and as to the appointment and employment of its officers;
 - (d) confer powers on the financial intelligence unit to require the provision of financial information from such persons as may be specified in the Regulations and in such manner and at

-
- such times as the financial information unit may reasonably determine;
- (e) specify more precisely the nature of the financial information which may be so sought;
 - (f) specify more precisely the persons to whom the financial information may be transmitted; and
 - (g) create offences for failure to comply with a requirement of the Regulations and impose penalties for such offences.
- (3) The power to make consequential provision conferred by Article 42A(2) may be exercised, in Regulations made for the purpose mentioned in paragraph (1), so as to further amend this Law or any other enactment.”.
- (3) In Part 1 of Schedule 3, in paragraph 1(7) the words “by virtue of Article 42” shall be deleted.

2 Citation

This Law may be cited as the Proceeds of Crime (Amendment – Financial Intelligence) (Jersey) Law 201-.

¹ *chapter 08.780*