

STATES OF JERSEY



DRAFT PROCEEDS OF CRIME (AMENDMENT OF LAW) (NO. 2) (JERSEY) REGULATIONS 202- (P.45/2021) COMMENTS

**Presented to the States on 28th June 2021
by the Economic and International Affairs Scrutiny Panel**

STATES GREFFE

COMMENTS

Background

The Economic and International Affairs Scrutiny Panel is undertaking a review into the Regulations for the Licence Application, Production and Export of Medicinal Cannabis in Jersey. The Panel's review seeks to examine and benchmark the Regulations establishing the terms of licensing for the cultivation, import and export of medicinal cannabis and the comparison with other relevant jurisdictions and the merits to the Island of requiring applicants to obtain EU/Good Manufacturing Practice (GMP) certification. The review will also evaluate the full scope of the tax regime associated with the Medicinal Cannabis sector and examine any potential impact whether positive or negative on the international reputation of the Island. The Panel has engaged external advisers to assist with its review and will present its findings to the States Assembly in due course.

The Panel has, as a result of this work, become informed as to the need for associated revisions to the Draft Proceeds of Crime (Amendment of Law) (No.2) (Jersey) Regulations P.45/2021, which were lodged au Greffe on 17th May 2021 by the Minister for External Relations and Financial Services. The amendments made to the Proceeds of Crime (Jersey) Law by this particular amendment are designed to enhance the attractiveness of Jersey as a jurisdiction in which to carry out investment and management of cannabis related activities where the cultivation of cannabis is legal and have appropriate global financial regulatory standards.

The Panel issues these comments as it considers it may be helpful, given its acquired knowledge and ongoing work, to contribute to this matter, and in doing so re-assure Members and interested parties that the implementation of these amendments bears no impact on its ongoing review and its current Terms of Reference.

The Amendment

The Proceeds of Crime (Amendment of Law) (No. 2) (Jersey) Regulations 202- (the "draft Regulations") amend the definition of criminal conduct of Article 1(1) in the Proceeds of Crime (Jersey) Law 1999 (the "1999 Law"). The draft Regulations amend the definition of criminal conduct in the 1999 Law to provide that the production, supply, use, export or import of cannabis or any of its derivatives is no longer considered criminal conduct provided that:

1. it is lawful where and when it occurs, and
2. it occurs in a jurisdiction outside of Jersey that the Minister for External Relations and Financial Services may specify by order.

The draft Regulations are focussed on the position outside of Jersey because it is not necessary to clarify the status of the proceeds of the production and supply of cannabis or cannabis derivatives within Jersey. In Jersey those activities are undertaken lawfully pursuant to licences under the Misuse of Drugs (Jersey) Law 1978 and other legislation relating to the supply of medicines. It is already sufficiently clear that proceeds generated from appropriately licensed production and supply of cannabis and cannabis derivatives within Jersey are not generated from criminal conduct and thus cannot constitute proceeds of crime under the 1999 Law.

Due to the global nature of the financial services industry, local financial services businesses (FSBs) can now be exposed to proceeds generated outside of Jersey which

have a connection to lawful cannabis production in places like Canada and the United States. This connection can either be directly by processing proceeds from the production, supply, or sale of cannabis or indirectly by processing monies related to investments in cannabis companies or investment funds investing in such companies. The cannabis industry has evolved to be global in nature meaning that a single company may use products grown in multiple locations worldwide – and therefore be in receipt of proceeds which originate from more than one location.

Under the current provisions of the 1999 Law, any proceeds generated from the production, supply, use, export or import of cannabis or any of its derivatives outside of Jersey have the potential to be considered criminal property in Jersey and it may not always be clear when an asset is acquired that this is a risk. Where a local FSB considers that an investment may contain proceeds of cannabis production, this may lead it to file a Suspicious Activity Report (SAR) with the States of Jersey Police regarding these proceeds and to ask for permission to divest. As the legal position is unclear it may not be possible for the Joint Financial Crime Unit of the States of Jersey Police to give the respective FSB any directions. Therefore, a situation has arisen where the FSB might find itself unable to process the proceeds anymore or even to divest which might cause the proceeds to get “stuck” in Jersey, creating operational and legal issues for local FSBs. This is undesirable both for the FSB and more generally for the operation of the SAR system in Jersey.

The draft Regulations are proposed in order to clarify which investments should not be treated as proceeds of crime by local FSBs. It is intended to remedy this situation, reflecting international developments with regard to the legislative treatment of cannabis and cannabis derivatives and thus removing a hurdle for legitimate local financial services business.

The Panel also notes that should the legislation be adopted by the States Assembly, the Minister intends to make the Proceeds of Crime (Cannabis Exemption – List of Jurisdictions) (Jersey) Order 202-. The list of countries in that Order is based on the outcomes of mutual evaluation reports carried out by the Financial Action Task Force and their FATF style regional bodies, such as MONEYVAL, against the FATF Standards which are the international standards concerning money laundering, terrorist financing and financing of proliferation.

The Panel noted that the intention of this Order is to ensure Jersey only deals in proceeds where the origin of those proceeds is in a country which applies suitably equivalent money laundering controls to Jersey. The Panel noted that the intention of this Order is specifically to protect the reputation of Jersey and that Financial services businesses will need to check when dealing in Jersey with proceeds of cannabis production that the jurisdiction in which the cultivation took place is on the Minister’s list.

Panel Concerns

The Panel has been engaged in ongoing dialogue with the Minister for External Relations and Financial Services together with departmental officers and has received regular updated briefings on the amendments and changes in the financial services sector. Having reviewed the proposed amendments, the Panel is satisfied it falls within the financial services sector, in particular the Proceeds of Crime Law, and will not in any way impact on its ongoing review.

The Panel originally held some concerns over the possible impact of this proposition on its wider review and, for that reason, had previously anticipated that the amendment would not be debated until the Panel had completed its review and presented its report to the States Assembly. Whilst the timetable for presentation of such report has been delayed due to unforeseen circumstances, the Panel does not now consider this to be relevant to the timing of the debate on P.45; as stated above, the amendment is directed exclusively to the position outside Jersey and can be regarded as distinct from matters arising under the Panel's review.

Conclusion

The Panel is content the purpose of this amendment is to clarify which investments should not be treated as proceeds of crime by local FSB's. It is the Panel's understanding that this amendment, if approved, will ease the situation for legitimate local financial services businesses looking to invest in this sector. The Panel considers this amendment and its review as two separate issues and is satisfied the amendment will not impact on its ongoing review into the Regulations for the Licence Application, Production and Export of Medicinal Cannabis on Jersey.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments are submitted after the deadline set out in Standing Orders because it had been anticipated that this proposition would be debated at the 20th July 2021 sitting.