

**DRAFT CRIMINAL JUSTICE (INTERNATIONAL  
CO-OPERATION) (JERSEY) LAW 200-**

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**Lodged au Greffe on 13th February 2001  
by the Finance and Economics Committee**

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**STATES OF JERSEY**

**STATES GREFFE**

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## **Explanatory Note**

The intention of this Law is to repeal the Drug Offences (International Co-operation) (Jersey) Law 1996, which provides for co-operation with other jurisdictions in respect of drug related offences, and to replace it with provisions that provide for such co-operation in respect of all offences.

*Article 1* provides for the interpretation of certain terms used in the Law.

*Article 2* provides for the Attorney General to arrange for the service of certain documents received from other jurisdictions.

*Article 3* provides for certain documents originating in the Island to be served outside the Island in accordance with arrangements made by the Attorney General.

*Article 4* provides for the issue of a letter of request seeking assistance from outside the Island in obtaining evidence for use in criminal proceedings in the Island.

*Article 5* provides for the situation where the Attorney General receives from outside the Island a letter of request seeking evidence for use in criminal proceedings outside the Island.

The Attorney General may request a court or the Viscount to obtain the evidence.

*Article 6* provides for the issue of a search warrant to obtain evidence requested by another jurisdiction in respect of a serious offence in that jurisdiction. A serious offence is one where the maximum penalty, were the offence to be committed on the Island, would be not less than one year's imprisonment.

*Article 7* give the States the power to make Regulations to provide for the enforcement in the Island of external forfeiture orders made by other jurisdictions.

*Article 8* provides for Rules of Court to be made for the purposes of the Law.

*Article 9* repeals the Drug Offences (International Co-operation) (Jersey) Law 1996.

*Article 10* provides the short title to the Law and provides for its commencement.

*Schedule* sets out the powers a court or the Viscount has to secure evidence requested by another jurisdiction, and the procedure to be followed.

**CRIMINAL JUSTICE (INTERNATIONAL CO-OPERATION) (JERSEY) LAW 200-**

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**A LAW** to enable Jersey to co-operate with other countries in criminal investigations and proceedings; to repeal the Drug Offences (International Co-operation) (Jersey) Law 1996; and for related purposes, sanctioned by Order of Her Majesty in Council of the

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(Registered on the \_\_\_\_\_ day of \_\_\_\_\_ 200-)

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**STATES OF JERSEY**

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The \_\_\_\_\_ day of \_\_\_\_\_ 200-

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

**ARTICLE 1**

**Interpretation**

(1) In this Law -

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

“evidence” includes documents and other articles;

“items subject to legal professional privilege” has the meaning assigned to that expression by the Drug Trafficking Offences (Jersey) Law 1988;<sup>[1]</sup>

“letter of request” means a letter of request issued under Article 4(1) or (2);

“police officer” has the meaning assigned to that expression by the Police Force (Jersey) Law 1974;<sup>[2]</sup>

“premises” includes any place and, in particular, includes-

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installations; and
- (c) any tent or moveable structure;

“serious offence” means an offence for which the maximum sentence in the Island is not less than one year’s imprisonment.

(2) A reference in this Law to a Part, Article or Schedule by number only and without further identification is a reference to the Part, Article or Schedule of that number in this Law.

(3) A reference in an Article or other division of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article or other division of this Law.

(4) Unless the context otherwise requires, a reference in this Law to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

## ARTICLE 2

### **Service of overseas process in the Island**

(1) This Article has effect where the Attorney General receives from the government of, or other authority in, a country or territory outside the Island -

- (a) a summons or other process requiring a person to appear as a defendant or to attend as a witness in criminal proceedings in that country or territory; or
- (b) a document issued by a court exercising criminal jurisdiction in that country or territory and recording a decision of the court made in the exercise of that jurisdiction,

together with a request for it to be served on a person in the Island.

(2) The Attorney General may cause the process or document to be served by post or, if the request is for personal service, instruct the Viscount to cause it to be personally served.

(3) Service by virtue of this Article of any such process as is mentioned in paragraph (1)(a) shall not impose an obligation under the law of the Island to comply with it.

(4) Such a process served by virtue of this Article shall be accompanied by a notice -

- (a) stating the effect of paragraph (3);
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the country or territory where it was issued; and
- (c) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him as a witness in criminal proceedings in the Island.

(5) If the Viscount is instructed under this Article to cause a process or document to be served, he shall, after it has been served, forthwith inform the Attorney General when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if the Viscount has been unable to cause the process or document to be served he shall forthwith inform the Attorney General of that fact and of the reason.

## ARTICLE 3

### **Service of Island process overseas**

(1) Process of the following descriptions, that is to say -

- (a) a summons requiring a person charged with an offence to appear before a court in the Island;
- (b) a summons or order requiring a person to attend before a court in the Island for the purpose of giving evidence in criminal proceedings,

may be issued or made notwithstanding that the person in question is outside the Island and may be served outside the Island in accordance with arrangements made by the Attorney General.

(2) Service of process outside the Island by virtue of this Article shall not impose an obligation under the law of the Island to comply with it and accordingly failure to do so shall not constitute contempt of court or be a ground for issuing a warrant to secure the attendance of the person in question.

(3) Paragraph (2) is without prejudice to the service of any process (with the usual consequences for non-compliance) on the person in question if subsequently effected in the Island.

## ARTICLE 4

### **Overseas evidence for use in the Island**

- (1) If it appears to the Attorney General -
  - (a) that an offence has been committed or that there are reasonable grounds for suspecting that an offence has been committed; and
  - (b) that proceedings in respect of that offence have been instituted or that the offence is being investigated,

he may issue a letter of request, requesting assistance in obtaining outside the Island such evidence as is specified in the letter for use in the proceedings or investigation.

(2) If an application is made by the person charged in proceedings for an offence, the Bailiff may issue a letter of request, requesting assistance in obtaining outside the Island such evidence as is specified in the letter for use in the proceedings.

(3) A letter of request shall be sent to either -

- (a) a court or tribunal specified in the letter and exercising jurisdiction in the place where the evidence is to be obtained; or
- (b) any authority recognised by the government of the country or territory in question as the appropriate authority for receiving requests for assistance of the kind to which this Article applies.

(4) Except with the consent of the court, tribunal or authority that supplied the evidence, evidence obtained by virtue of a letter of request shall not be used for any purpose other than that specified in that letter.

(5) If the court, tribunal or authority that supplied a document or other article pursuant to a letter of request so requests the document or other article shall be returned to that court, tribunal or authority when it is no longer required for the purpose stated in the letter of request or for any other purpose for which consent has been obtained in accordance with paragraph (4).

(6) Evidence obtained by virtue of a letter of request shall, without being sworn to by a witness, be admissible in evidence and in exercising any discretion to exclude evidence otherwise admissible in relation to a statement contained in evidence taken pursuant to a letter of request the court before which it is sought to introduce that evidence shall have regard -

- (a) to whether it was possible to challenge the statement by questioning the person who made it; and
- (b) if proceedings have been instituted, to whether local law allowed the parties to the proceedings to be legally represented when the evidence was taken.

## ARTICLE 5

### **Evidence for, and assistance in, criminal proceedings in overseas court**

- (1) This Article applies where the Attorney General receives -
  - (a) from a court or tribunal exercising criminal jurisdiction in a country or territory outside the Island or a prosecuting authority in such a country or territory; or
  - (b) from any other authority in such a country or territory which appears to him to have the function of making requests of the kind to which this Article applies,

a request for assistance in obtaining evidence in the Island in connection with criminal proceedings which have been instituted, or a criminal investigation that is being carried on, in that country or territory and the Attorney General is satisfied -

- (c) that an offence under the law of the country or territory in question has been committed or that there are

reasonable grounds for suspecting that such an offence has been committed; and

- (d) that proceedings in respect of that offence have been instituted in that country or territory or that an investigation into that offence is being carried on there.
- (2) Where this Article applies the Attorney General may, if he thinks fit, issue a notice in writing -
  - (a) specifying the evidence to be obtained in response to the request; and
  - (b) nominating a court or the Viscount to receive that evidence.
- (3) The Schedule to this Law shall have effect with regard to proceedings before a nominated court or the Viscount in pursuance of a notice under paragraph (2).

## ARTICLE 6

### **Additional co-operation powers**

- (1) Subject to paragraph (2), if on an application by the Attorney General the Bailiff is satisfied that -
  - (a) criminal proceedings have been instituted against a person in a country or territory outside the Island, or that a person has been arrested in the course of a criminal investigation carried on there, or that there are reasonable grounds for suspecting that criminal proceeding will be instituted against a person in a country or territory outside the Island, or that a person will be arrested in the course of a criminal investigation being carried on there;
  - (b) the conduct constituting the offence which is the subject of the proceedings or investigation would constitute a serious offence if it had occurred in the Island; and
  - (c) there are reasonable grounds for suspecting that there is on premises in the Island evidence relating to the offence, other than items subject to legal professional privilege,

he may issue a warrant authorizing a police officer to enter, if need be by force, and search those premises and to seize any such evidence found there.

(2) The power of search conferred by paragraph (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned.

- (3) An application for a warrant under paragraph (1) shall not be made except in response to a request received -
  - (a) from a court or tribunal exercising criminal jurisdiction in the overseas country or territory in question or a prosecuting authority in that country or territory; or
  - (b) from any other authority in that country or territory which appears to the Attorney General to have the function of making requests for the purposes of this Article,

and any evidence seized by a police officer by virtue of this Article shall be furnished by him to the Attorney General for transmission to that court, tribunal or authority.

(4) If, in order to comply with the request, it is necessary for any such evidence to be accompanied by a certificate, affidavit or other verifying document, the police officer shall also furnish for transmission such document of that nature as is specified by the Attorney General.

(5) If the evidence consists of a document the original or a copy shall be transmitted, and if it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

## ARTICLE 7

### **Enforcement of overseas forfeiture orders**

- (1) The States may by Regulations provide for the enforcement in the Island of an order that -
- (a) is made by a court in a country or territory outside the Island designated for the purposes of this Article by the Regulations; and
  - (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence that would constitute a serious offence if the conduct constituting the offence had occurred in the Island has been committed or that was used or intended for use in connection with the commission of such an offence.

(2) Without prejudice to the generality of paragraph (1) Regulations under this Article may include a provision which, for the purpose of facilitating the enforcement of any order that may be made, has effect at times before there is an order to be enforced.

(3) Without prejudice to the generality of paragraph (1), Regulations under this Article may provide for the registration by a court in the Island of an order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.

(4) Regulations under this Article may include such supplementary or incidental provisions as appear to the States to be necessary or expedient and may apply for the purposes of the Regulations (with such modifications as appear to the States to be appropriate) any provision relating to confiscation or forfeiture orders under any other enactment.

- (5) Regulations under this Article may make different provision for different cases.

## ARTICLE 8

### **Rules of Court**

(1) Provision may be made by Rules of Court for any purpose for which it appears to be necessary or expedient that provision should be made in connection with the provisions of this Law.

(2) Rules made for the purposes of the Schedule to this Law may, in particular, make provision with respect to the persons entitled to appear or take part in proceedings before a court or the Viscount to which that Schedule applies and for excluding the public from any such proceedings.

(3) The power to make Rules of Court under Article 11 of the Royal Court (Jersey) Law 1948<sup>[3]</sup> shall include a power to make Rules for the purposes of this Article.

## ARTICLE 9

### **Repeal**

The Drug Offences (International Co-operation) (Jersey) Law 1996<sup>[4]</sup> is repealed.

## ARTICLE 10

### **Short title and commencement**

This Law may be cited as the Criminal Justice (International Co-operation) (Jersey) Law 200-, and shall come into force on such day as the States may by Act appoint and different days may be appointed for different purposes or different provisions of this Law.

## *SCHEDULE*

### (Article 5(3))

#### EVIDENCE FOR USE OVERSEAS: PROCEEDINGS BEFORE NOMINATED COURT OR VISCOUNT

##### **Securing attendance of witnesses**

1.-(1) The court shall have the same powers for securing the attendance of a witness for the purpose of the proceedings as it has for the purpose of other proceedings before the court.

(2) The Viscount shall have the same powers for securing the attendance of a witness for the purposes of proceedings before him as the Royal Court has for the purposes of any proceedings before it.

##### **Power to administer oaths**

2. The court or the Viscount, as the case may be, may in the proceedings take evidence on oath.

##### **Privilege of witnesses**

3.-(1) A person shall not be compelled to give in the proceedings any evidence which he could not be compelled to give -

(a) in criminal proceedings in the Island;

(b) subject to sub-paragraph (2), in criminal proceedings in the country or territory from which the request has come.

(2) Sub-paragraph (1)(b) does not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court, tribunal or authority which made the request.

(3) Where such a claim made by any person is not conceded as aforesaid he may (subject to the other provisions of this paragraph) be required to give the evidence to which the claim relates but the evidence shall not be transmitted to the court, tribunal or authority which requested it if a court in the country or territory in question, on the matter being referred to it, upholds the claim.

(4) Without prejudice to sub-paragraph (1), a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of the British Islands, or any of them; and a certificate by or on behalf of the Lieutenant Governor to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(5) Without prejudice to sub-paragraph (1), a person shall not be compelled under this Schedule to give any evidence in his capacity as an officer or servant of the Crown.

(6) In this paragraph references to giving evidence include references to answering any question and to producing any document or other article and the references in sub-paragraph (3) to the transmission of evidence given by a person shall be construed accordingly.

##### **Transmission of evidence**

4.-(1) The evidence received by the court or the Viscount, as the case may be, shall be furnished to the Attorney General for transmission to the court, tribunal or authority which made the request.

(2) If, in order to comply with the request, it is necessary for the evidence to be accompanied by any certificate, affidavit or other verifying document, the court or the Viscount, as the case may be, shall also furnish for transmission such document of that nature as may be specified in the notice nominating the court.

(3) If the evidence consists of a document the original or a copy shall be transmitted, and if it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.



## **Bankers' Books Evidence (Jersey) Law 1986 applies**

5. For the avoidance of doubt it is hereby declared that the Bankers' Books Evidence (Jersey) Law 1986<sup>[5]</sup> applies to the proceedings (before the court and the Viscount) as it applies to other proceedings before the court.

### **No order for cost**

6. An order for costs shall not be made in the proceedings.

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[1] Volume 1988-1989, page 262.

[2] Volume 1973-1974, page 375.

[3] Tome VII, page 510 and Volume 1996-1997, page 147.

[4] Volume 1996-1997, page 319.

[5] Volume 1986-1987, page 51 and Volume 1990-1991, page 541.