

STATES OF JERSEY



DRAFT DRUG TRAFFICKING OFFENCES (AMENDMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 24th September 2007
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT DRUG TRAFFICKING OFFENCES (AMENDMENT) (JERSEY) LAW 200-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Treasury and Resources has made the following statement –

In the view of the Minister for Treasury and Resources the provisions of the Draft Drug Trafficking Offences (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator T.A. Le Sueur**

REPORT

Introduction

1. In 2008 the Island's framework to counter money laundering and terrorist financing is to be the subject of a review by the International Monetary Fund. Jersey will be assessed against the international standards set by the Financial Action Task Force on Money Laundering ("FATF"). The amendments this draft Law proposes have been formulated to achieve a number of the criteria set out in the 40 Recommendations and 9 Special Recommendations of the FATF, against which Jersey will be assessed, and also to address inconsistencies in the current operation of the Proceeds of Crime (Jersey) Law 1999, ("POCL") the Drug Trafficking Offences (Jersey) Law, 1988 ("DTOL") and the Terrorism (Jersey) Law, 2002 ("TL").

Part 2

Failing to disclose a knowledge or suspicion of money laundering

2. Recommendation 13 of the FATF provides that –
"If a financial institution suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing, it should be required, directly by law or regulation, to report promptly its suspicions to the financial intelligence unit (FIU)."
3. The FATF Methodology for Assessing Compliance with the 40 Recommendations and 9 Special Recommendations, which is designed for use by assessors when preparing their reports and expands on the text of the Recommendations, states the following in reference to Recommendation 13:
"13.1 A financial institution should be required by law or regulation to report to the FIU (a suspicious transaction report – STR) when it suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity. At a minimum, the obligation to make a STR should apply to funds that are the proceeds of all offences that are required to be included as predicate offences under Recommendation 1. This requirement should be a direct mandatory obligation, and any indirect or implicit obligation to report suspicious transactions, whether by reason of possible prosecution for a ML offence or otherwise (so called "indirect reporting"), is not acceptable."*
4. Article 40 of the DTOL already requires a person who knows or suspects that another person is engaged in drug money laundering to report to a police officer that knowledge or suspicion, if based on information that comes to the person's attention in the course of his or her trade, profession, business or employment. A similar provision applicable to a person who comes across information in the course of their trade, profession, business or employment (but not if it comes to him or her in the course of the business of a financial institution) can be found at Article 20 of the TL. Article 23 of the TL sets out a difference offence, in similar terms to the offence being created here under Article 34D, which applies to a person working in a financial institution.
5. Article 3 of the draft Law amends the current offence in Article 40 so that it will no longer apply to a person who receives information in the course of the business of a financial institution. A new offence is created at Article 40 to apply to employees and employers of a financial institution. Article 40 essentially introduces a negligence test in respect of those working in the regulated industry so that the failure to disclose offence is committed where a person has reasonable grounds for knowing or suspecting that another person is engaged in money laundering, even if they did not actually know or suspect that was the case. This reflects the fact that persons who carry out activities in the regulated sector are expected to exercise a higher level of diligence in handling transactions, as opposed to those employed in other businesses. These changes reflect the current position in the TL and amendments being proposed to the POCL.

Restrictions on Disclosure

6. The amendments in the new Articles 40B-D inserted by the draft Law will have the effect of

introducing into the principal Law provisions similar to those in Article 29-31 of the Proceeds of Crime (Jersey) Law, 2002 (“POCL”). The same provisions are being introduced into the TL. The new provisions provide an express statutory basis for the disclosure of information by a police officer for particular purposes. Whilst information can be disclosed by the police under established common law principles on police disclosure, it was thought desirable to include express disclosure provisions in both the DTOL and TL, so as to ensure that the position on police disclosure under these Laws is both clear and identifiable, not only to the IMF assessors but also to members of the public for human rights purposes.

Financial Information and Account Monitoring Orders

7. Recommendation 28 of the FATF Recommendations is as follows,

“Recommendation 28

When conducting investigations of money laundering and underlying predicate offences, competent authorities should be able to obtain documents and information for use in those investigations, and in prosecutions and related actions. This should include powers to use compulsory measures for the production of records held by financial institutions and other persons, for the search of persons and premises, and for the seizure and obtaining of evidence.”

8. The FATF Methodology states the following –

“28.1 Competent authorities responsible for conducting investigations of ML, FT and other underlying predicate offences should have the powers to be able to:

- a) compel production of,*
- b) search persons or premises for, and*
- c) seize and obtain*

transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons. Such powers should be exercised through lawful process (for example, subpoenas, summonses, search and seizure warrants, or court orders) and be available for use in investigations and prosecutions of ML, FT, and other underlying predicate offences, or in related actions e.g. actions to freeze and confiscate the proceeds of crime.”

9. Article 32 and Schedule 6 of the TL provide that the Bailiff may, on an application made to him or her by an officer of the Force of at least the rank of chief inspector, order a financial institution to which the order applies to provide customer information to an officer of the force named in the order for the purposes of a terrorist investigation.
10. Under Article 33 and Schedule 7 of the TL, the Bailiff may, on an application made to him or her by an officer of the Force of at least the rank of chief inspector, make an account monitoring order for the purposes of a terrorist investigation.
11. Neither of these powers exist under the DTOL or POCL. It is considered that that this could receive adverse comment from the IMF, who may query why such powers are not available in relation to money laundering and drug money laundering. The amendments are therefore sought to bring the DTOL, POCL and TL in line so that account monitoring orders and customer information orders can be obtained under all three pieces of legislation. This amendment also reflects the position under the 2002 UK Proceeds of Crime Act which allows for customer information and account monitoring orders to be obtained in relation to money laundering investigations.

Part 3 – Miscellaneous and closing

Asset sharing arrangement

12. Article 9 amends the term “assets-sharing agreement” in Article 24 of the Law and replaces it with the term “asset sharing agreement”. This amendment is considered necessary to provide for the consistent use of same terms across the DTOL and POCL. The DTOL refers to “assets-sharing agreement” at present, whilst the POCL refers to “asset sharing arrangement”. These two terms carry different definitions in each of those Laws. Amendments to provide for asset sharing under the TL

have been taken forward in preparation for the IMF assessment. As those amendments were already being made, it was thought appropriate for a comprehensive and consistent meaning to be applied across the three Laws.

Enforcement of External Confiscation Orders

13. Recommendation 38 of the Financial Action Task requires countries to have appropriate laws and procedures in place to provide an effective and timely response to mutual legal assistance.
14. Currently the provision of assistance to another jurisdiction to enable the enforcement of an external confiscation order under the DTOL is dependant on that jurisdiction being listed, currently in the Drug Trafficking Offences (Designated Countries and Territories) (Jersey) Regulations 1997, as a designated country or territory to whom assistance can be given. The same is true in relation to the enforcement of an external confiscation order under the POCL, the enforcement of an external restraint or forfeiture order under the TL and the enforcement of an overseas forfeiture order under the Criminal Justice (International Co-operation) (Jersey) Law, 2001 (“CJICL”).
15. Under the amendments made by the draft Law, the enforcement in Jersey of external confiscation orders under the DTOL will no longer be conditional on countries or territories being designated. The amendments enable external confiscation orders from any jurisdiction to be capable of being registered by the Royal Court. Article 39(1) of the DTOL provides that the Royal Court may register an external confiscation order if –
 - (a) the Court is satisfied that at the time of registration the order is in force and is not subject to appeal;
 - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable the person to defend them; and
 - (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
16. Draft Regulations to replace those which already exist will soon be debated. The provisions contained in the Regulations will remain substantively the same. It is intended that the only changes to the Regulations which will be pursued are those necessary in order to remove any references currently made to designated countries or territories. Similar amendments are being made to the POCL, TL and CJICL.
17. Whilst the notion of providing assistance to only designated countries or territories is thought unlikely to receive adverse comment by the International Monetary Fund, the list of designated countries has not been kept up to date in recent years and it is thought highly likely that Jersey will be criticised for not giving “*effective*” mutual legal assistance because of this. Whilst compliance with FATF Recommendation 38 in this regard could possibly be achieved by updating the list of designated countries or territories, it is considered that the better solution would be to abandon the list of countries and offer assistance to jurisdictions on a case by case basis. Indeed this is the approach that has been adopted in regards to the UK legislation, on which the relevant Jersey legislation was originally based.

Financial/manpower implications

The creation of an offence for failing to disclose a knowledge or suspicion of drug money laundering may result in an increase in Suspicious Activity Reports (SARs) being transmitted to the Joint Financial Crimes Unit (“JFCU”).

Two additional members of staff, at an annual cost of £115,000, are required by the JFCU to deal with the consequences of implementing the Proceeds of Crime (Substitution of Schedule 2) (Jersey) Regulations 200. Those Regulations widen the number of institutions which will come under the remit of the Proceeds of Crime (Jersey) Law 1999 in the future. It is considered that these 2 additional posts will, for the time being, be sufficient to deal with any increase in the filing of SARs as a result of the introduction of the new offence of failing to disclose a knowledge or suspicion of drug money laundering into this Law. The position will be reviewed post-implementation and additional resources sought if required.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 20th September 2007 the Minister for Treasury and Resources made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Treasury and Resources the provisions of the Draft Drug Trafficking Offences (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

Part 1 – Interpretation

Article 1 defines the Drug Trafficking Offences (Jersey) Law 1988 as the “principal Law”.

Part 2 – Failure to disclose knowledge or suspicion of money laundering

Article 2 inserts definitions in the principal Law, for the purposes of the following amendments made by this Part.

Article 3 amends Article 40 of the principal Law so as to disapply the present offence of failure to disclose knowledge or suspicion of drug money laundering in a case where information is received in the course of carrying on of a financial services business.

Article 4 inserts Articles 40A to 40D in the principal Law.

Article 40A – Failure in a financial institution to report to police officer or nominated office

This Article creates a new offence of failure to disclose a knowledge or suspicion of money laundering, where the knowledge or information arises from information received in the course of carrying on of a financial services business. It differs from the offence in Article 40 of the principal Law in 3 ways –

- A person working in a financial services business may report either to a police officer or to a person nominated by the employer.
- A person working in a financial services business (whether as an employer or as an employee) will be criminally liable not only for failing to report activities that he or she actually knew or suspected to involve drug money laundering, but also those that he or she should have known about or suspected.
- However, an employee in a financial services business will not be guilty of an offence if he or she shows, firstly, that he or she does not in fact know or suspect that another person is engaged in drug money laundering and, secondly, that his or her employer was required by the Money Laundering (Jersey) Order 1999 to provide the employee with material training in the prevention and detection of money laundering, but did not do so.

Article 40B – Restrictions on disclosure

This Article restricts the onward disclosure of information about drug money laundering that is reported to a police officer under any of Articles 37, 38, 40 and 40A of the principal Law, whether the onward disclosure would be by the police officer or by a person to whom the officer discloses the information. Onward disclosure is only permitted in accordance with Article 40C or 40D.

Articles 37, 38, 40 and 40A relate to drug trafficking offences that may be committed by a person who does not report his or her knowledge or suspicions to a police officer.

Article 40C – Disclosure for purposes within Jersey

This Article allows the disclosure of information for the purposes of criminal investigations or proceedings in Jersey, or to the persons in Jersey described in paragraph (2).

Article 40D – Disclosure for purposes outside Jersey

This Article allows the disclosure of information for the purposes of criminal investigations or proceedings outside Jersey, where the Attorney General consents and disclosure is to a competent authority.

Article 5 amends Article 41 of the principal Law consequentially upon the amendment made by Article 2 of this draft Law.

Article 6 inserts Article 44A in the principal Law. Article 44A gives effect to Schedule 2.

Article 7 amends Article 47 of the principal Law consequentially upon the addition of Schedule 2.

Article 8 adds Schedule 2 to the principal Law.

Schedule 2 – Financial information and monitoring orders

This Schedule empowers the Bailiff, on the application of the an officer of the Force of at least the rank of chief inspector, to make orders for the provision of financial information, and the monitoring of accounts, for the purposes of investigations into drug money laundering.

Part 3 – Miscellaneous and closing

Article 9 amends Article 24 of the principal Law. That Article establishes the Drug Trafficking Confiscations Fund, into which the confiscated proceeds of drug trafficking are paid. The Fund is used, amongst other things, to fulfil Jersey’s international obligations under asset sharing agreements with other countries for the purposes of suppressing drug trafficking.

The present definition applies to agreements made by the Attorney General with the appropriate authority in any country or territory outside Jersey. The amendment will extend the definition to include all agreements and arrangements made by or on behalf of Jersey. It will also extend it to cover, where appropriate, agreements for sharing assets that may have been forfeited outside Jersey.

Article 10 substitutes Article 39 of the principal Law. Article 39 empowers the States, by Regulations, to provide for the registration, by the Royal Court, of confiscation orders made in certain other countries or territories, which are themselves to be designated in the Regulations.

A confiscation order is an order for the recovery of payments or other rewards received in connection with drug trafficking. An order that is registered in Jersey by the Royal Court can be enforced in Jersey. Article 39 also empowers the States, by Regulations, to make provision supplemental to the enforcement, in another jurisdiction, of a confiscation order made in Jersey.

The effect of substituting Article 39 is to remove the restriction confining registration of enforcement orders to such orders made in designated countries or territories. Instead, Regulations may provide for the registration of a confiscation order made anywhere. The following preconditions for registration will continue to apply –

- (a) the Court must be satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) the Court must be satisfied that, where the person against whom the order is made did not appear in the proceedings, the person received notice of the proceedings in sufficient time to enable him or her to defend them; and
- (c) the Court must be of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.

Article 11 saves in force Regulations made under Article 39 of the principal Law in its unamended form, until such time as further Regulations are made under that Article as amended.

Article 12 cites the short title of the Law and provides for it to come into force 7 days after it is registered.



Jersey

DRAFT DRUG TRAFFICKING OFFENCES (AMENDMENT) (JERSEY) LAW 200-

Arrangement

Article

PART 1

INTERPRETATION

1 Interpretation

PART 2

FAILURE TO DISCLOSE KNOWLEDGE OR SUSPICION OF MONEY LAUNDERING

2 Article 1 amended
3 Article 40 amended
4 Articles 40A to 40D inserted
5 Article 41 amended
6 Article 44A inserted
7 Article 47 amended
8 Schedule 2 added

PART 3

MISCELLANEOUS AND CLOSING

9 Article 24 amended
10 Article 39 substituted
11 Saving for Regulations
12 Citation and commencement



Jersey

DRAFT DRUG TRAFFICKING OFFENCES (AMENDMENT) (JERSEY) LAW 200-

A LAW to amend further the Drug Trafficking Offences (Jersey) Law 1988.

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

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

PART 1 INTERPRETATION

1 Interpretation

In this Law, “principal Law” means the Drug Trafficking Offences (Jersey) Law 1988^[1].

PART 2

FAILURE TO DISCLOSE KNOWLEDGE OR SUSPICION OF MONEY LAUNDERING

2 Article 1 amended

In Article 1(1) of the principal Law –

(a) after the definition “defendant” there shall be inserted the following definition –

“ ‘drug money laundering’ means doing any act which constitutes an offence under Article 30, 37 or 38 or in the case of an act done outside Jersey would constitute such an offence if done in Jersey; and for the purposes of this definition, having possession of any property shall be taken to be doing an act in relation to it;”;

(b) after the definition “external confiscation order” there shall be inserted the following definition –

“ ‘financial services business’ has the same meaning as it has in Article 1(1) of the Proceeds of Crime (Jersey) Law 1999^[2].”;

(c) in the definition “items subject to legal professional privilege”, after the words “a criminal offence” there shall be inserted the words “; and ‘legal professional privilege’ has a corresponding meaning”.

3 Article 40 amended

In Article 40 of the principal Law –

- (a) in paragraph (2), for the words “privileged circumstances” there shall be substituted the words “circumstances of legal professional privilege”;
- (b) for paragraphs (7), (8), (9) and 10) there shall be substituted the following paragraph –
 - “(7) This Article does not apply to information or other matter that comes to a person, as an employer or employee, in the course of the carrying on of a financial services business.”.

4 Articles 40A to 40D inserted

After Article 40 of the principal Law there shall be inserted the following Articles–

“40A Failure in a financial institution to report to police officer or nominated officer

- (1) A person commits an offence if each of the following 3 conditions is satisfied.
- (2) The first condition is that the person –
 - (a) knows or suspects; or
 - (b) has reasonable grounds for knowing or suspecting, that another person is engaged in drug money laundering.
- (3) The second condition is that the information or other matter –
 - (a) on which the person’s knowledge or suspicion is based; or
 - (b) that gives reasonable grounds for such knowledge or suspicion, comes to him or her in the course of the carrying on of a financial services business.
- (4) The third condition is that the person does not disclose the information or other matter to a police officer or to a nominated officer as soon as is practicable after it comes to him or her.
- (5) A person does not commit an offence under this Article if –
 - (a) the person has a reasonable excuse for not disclosing the information or other matter;
 - (b) the person is a professional legal adviser and the information or other matter comes to him or her in circumstances of legal professional privilege.
- (6) A person does not commit an offence under this Article by failing to disclose any information or other matter that has come to his or her attention, if –
 - (a) it comes to the person in the course of his or her employment in the financial services business;
 - (b) the person carrying on the financial services business was required by an Order made under Article 37 of the Proceeds of Crime (Jersey) Law 1999 to provide the employee with training, but had not done so;
 - (c) the training, if it had been given, would have been material; and
 - (d) the employee does not know or suspect that the other person concerned is engaged in drug money laundering.
- (7) In deciding whether a person has committed an offence under this Article the court must consider whether he or she has followed any relevant guidance which was at the time

concerned –

- (a) issued by the Commission; and
 - (b) published in a manner approved by the Commission as appropriate in its opinion to bring the guidance to the attention of persons likely to be affected by it.
- (8) A disclosure to a nominated officer is a disclosure which –
- (a) is made to a person nominated by the employer of the person making the disclosure to receive disclosures under this Article; and
 - (b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.
- (9) Where a person to whom paragraph (1) refers discloses to a police officer or a nominated officer –
- (a) the person's suspicion or belief that another person is engaged in money laundering; or
 - (b) any information or other matter on which that suspicion or belief is based,
- the disclosure shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.
- (10) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 5 years or to a fine or to both.

40B Restrictions on disclosure

- (1) Information that is disclosed to a police officer under Article 37, 38, 40 or 40A shall not be disclosed by that police officer, or by any person who obtains the information directly or indirectly from the police officer, unless its disclosure is permitted under Article 40C or 40D.
- (2) A person who contravenes paragraph (1) shall be guilty of an offence and liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 or the standard scale or to both.
- (3) In proceedings against a person for an offence under this Article, it shall be a defence to prove that the person took all reasonable steps and exercised due diligence to avoid committing the offence.
- (4) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

40C Disclosure for purposes within Jersey

- (1) Article 40B does not prohibit the disclosure of information to a person in Jersey for the purposes of the investigation of crime in Jersey or of criminal proceedings in Jersey.
- (2) Article 40B does not prohibit the disclosure of information, for other purposes in Jersey to –
 - (a) the Attorney General;
 - (b) the Jersey Financial Services Commission;
 - (c) a police officer; or
 - (d) any other person who is for the time being authorized in writing by the Attorney General to obtain that information.

40D Disclosure for purposes outside Jersey

- (1) Article 40B does not prohibit the disclosure of information if –
 - (a) the Attorney General has consented to the disclosure and has not withdrawn that consent; and
 - (b) the information is disclosed –
 - (i) for the purposes of the investigation of crime outside Jersey or of criminal proceedings outside Jersey, or
 - (ii) to an authority outside Jersey which is a competent authority for the purposes of Article 3(3) of the Investigation of Fraud (Jersey) Law 1991^[3].
- (2) The Attorney General may give consent –
 - (a) generally or specifically; and
 - (b) unconditionally or subject to such conditions as the Attorney General may stipulate.
- (3) Without prejudice to the generality of paragraph (2), the Attorney General's consent may be given in terms that permit the disclosure from time to time (as the occasion requires) of such a class of information as is specified in the consent to such a person or authority or class of persons or authorities as is so specified.
- (4) Without prejudice to the generality of paragraph (2), a condition–
 - (a) may be expressed generally or in respect of any specified information;
 - (b) may provide that information may only be disclosed in specified circumstances or for a specified purpose; or
 - (c) may provide that any person or authority to whom information is disclosed shall not disclose it to any other person or body without the prior consent of the Attorney General.”.

5 Article 41 amended

Article 41(7) of the principal Law shall be deleted.

6 Article 44A inserted

After Article 44 of the principal Law there shall be inserted the following Article–

“44A Financial information and monitoring

- (1) Part 1 of Schedule 2 shall have effect in respect of the obtaining of financial information.
- (2) Part 2 of Schedule 2 shall have effect in respect of account monitoring orders”.

7 Article 47 amended

In Article 47(1) of the principal Law, for the words “the Schedule” there shall be substituted the words “Schedule 1”.

8 Schedule 2 added

- (1) The Schedule to the principal Law shall be renumbered as Schedule 1.
- (2) After Schedule 1 to the principal Law (as so renumbered) there shall be added the following

“SCHEDULE 2

(Article 44A)

FINANCIAL INFORMATION AND MONITORING ORDERS

PART 1

(Article 44A(1))

ORDERS FOR PROVISION OF FINANCIAL INFORMATION

1 Order to provide customer information

- (1) Where an order is made under this Part of this Schedule in relation to an investigation into drug money laundering a police officer named in the order may require a financial services business to which the order applies to provide customer information for the purposes of the investigation.
- (2) An order under this Part of this Schedule may provide that it applies to –
 - (a) all financial services businesses;
 - (b) a particular description, or particular descriptions, of financial services businesses; or
 - (c) a particular financial services business or particular financial services businesses.
- (3) The information shall be provided –
 - (a) in such manner and within such time as the police officer may specify; and
 - (b) notwithstanding any restriction on the disclosure of information imposed by any statute or otherwise.
- (4) A financial services business that fails to comply with a requirement under this paragraph shall be guilty of an offence.
- (5) It is a defence for a financial services business that is charged with an offence under sub-paragraph (4) to prove –
 - (a) that the information required was not in the possession of the financial services business; or
 - (b) that it was not reasonably practicable for the financial services business to comply with the requirement.
- (6) A financial services business guilty of an offence under sub-paragraph (4) shall be liable to a fine not exceeding level 4 on the standard scale.
- (7) Where an individual is convicted of an offence under paragraph 1(4), the individual shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale or to both.

2 Who may apply for order

An order under this Part of this Schedule may be made on the application of a police officer of at least the rank of chief inspector.

3 Who may make order

An order under this Part of this Schedule may be made by the Bailiff.

4 Consent required for application

An application for an order under this Part of this Schedule may only be made with the consent of the Attorney General.

5 Criteria for making order

The Bailiff may only make an order under this Part of this Schedule if satisfied that –

- (a) the order is sought for the purposes of an investigation into drug money laundering;
- (b) there are reasonable grounds for suspecting that the person specified in the application for the order has committed a drug money laundering offence;
- (c) there are reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
- (d) there are reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained, and to the circumstances under which the person in possession of the information holds it.

6 Customer information

- (1) In this Part of this Schedule ‘customer information’ means (subject to sub-paragraph (3)) –
 - (a) information whether a business relationship exists or existed between a financial services business and a particular person (‘a customer’);
 - (b) a customer’s account number;
 - (c) a customer’s full name;
 - (d) a customer’s date of birth;
 - (e) a customer’s address or former address;
 - (f) the date on which a business relationship between a financial services business and a customer begins or ends;
 - (g) any evidence of a customer’s identity obtained by a financial services business in pursuance of or for the purposes of any legislation relating to drug money laundering; and
 - (h) the identity of a person sharing an account with a customer.
- (2) For the purposes of this Part of this Schedule there is a business relationship between a financial services business and a person if (and only if) –
 - (a) there is an arrangement between them designed to facilitate the carrying out of frequent or regular transactions between them; and
 - (b) the total amount of payments to be made in the course of the arrangement is neither known nor capable of being ascertained when the arrangement is made.
- (3) The States may by Regulations –
 - (a) provide for a class of information to be customer information, or to cease to be customer information, for the purposes of this Part of this Schedule; or
 - (b) extend the meaning of the expression ‘business relationship’ for the purposes of

this Part of this Schedule.

7 Self-incrimination

- (1) Customer information provided by a financial services business under this Part of this Schedule shall not be admissible in evidence in criminal proceedings against the financial services business or any of its employees.
- (2) Sub-paragraph (1) shall not apply in relation to proceedings for an offence under paragraph 1(4).

PART 2

(Article 44A(2))

ACCOUNT MONITORING ORDER

1 Account monitoring orders

- (1) The Bailiff may, on an application made to him or her by a police officer of at least the rank of chief inspector, make an account monitoring order against a financial services business if the Bailiff is satisfied that –
 - (a) the order is sought for the purposes of an investigation into drug money laundering;
 - (b) there are reasonable grounds for suspecting that the person specified in the application for the order has committed a drug money laundering offence;
 - (c) there are reasonable grounds for believing that account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought; and
 - (d) there are reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained, and to the circumstances under which the person in possession of the information holds it.
- (2) An application for an order under sub-paragraph (1) may only be made with the consent of the Attorney General.
- (3) The application for an account monitoring order must state that the order is sought against the financial services business specified in the application in relation to information which –
 - (a) relates to an account or accounts held at the financial services business by the person specified in the application (whether solely or jointly with another); and
 - (b) is of the description so specified.
- (4) The application for an account monitoring order may specify information relating to –
 - (a) all accounts held by the person specified in the application for the order at the financial services business so specified;
 - (b) a particular description, or particular descriptions, of accounts so held; or
 - (c) a particular account, or particular accounts, so held.
- (5) An account monitoring order is an order that the financial services business specified in the application for the order must –
 - (a) for the period specified in the order;

- (b) in the manner so specified;
- (c) at or by the time or times so specified; and
- (d) at the place or places so specified,

provide information of the description specified in the application to a police officer named in the order.

- (6) The period stated in an account monitoring order must not exceed the period of 90 days beginning with the day on which the order is made.

2 Applications

- (1) An application for an account monitoring order may be made *ex parte* to the Bailiff in chambers.
- (2) The description of information specified in an application for an account monitoring order may be varied by the police officer who applied for the order or another police officer of at least the rank of chief inspector.

3 Discharge or variation

- (1) An application to discharge or vary an account monitoring order may be made to the Bailiff by –
 - (a) the police officer who applied for the order or another police officer of at least the rank of chief inspector; or
 - (b) any person affected by the order.
- (2) The Bailiff may confirm, vary or discharge the order.

4 Effect of orders

- (1) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).
- (2) An account monitoring order has effect as if it were an order of the Court.

5 Statements

- (1) A statement made by a financial services business in response to an account monitoring order may not be used in evidence against it in criminal proceedings.
- (2) However, sub-paragraph (1) does not apply –
 - (a) in the case of proceedings for contempt of court;
 - (b) in the case of proceedings for or in respect of a confiscation order; or
 - (c) on a prosecution for an offence where, in giving evidence, the financial services business makes a statement inconsistent with the statement mentioned in sub-paragraph (1).
- (3) A statement may not be used by virtue of sub-paragraph (2)(c) against a financial services business unless –
 - (a) evidence relating to it is adduced; or
 - (b) a question relating to it is asked,by or on behalf of the financial services business in the proceedings arising out of the prosecution.”.

PART 3

MISCELLANEOUS AND CLOSING

9 Article 24 amended

In Article 24(8) of the principal Law, for the definition “assets-sharing agreement” there shall be substituted the following definition –

“ ‘asset sharing agreement’ means an agreement or arrangement made by or on behalf of Jersey with a country or territory outside Jersey for the sharing of the proceeds of drug trafficking that, as a result of mutual assistance, have been confiscated or forfeited either in Jersey or elsewhere;”.

10 Article 39 substituted

For Article 39 of the Drug Trafficking Offences (Jersey) Law 1988 there shall be substituted the following Article –

“39 Enforcement of confiscation orders and external confiscation orders

- (1) The States may by Regulations direct that, subject to such modifications as may be specified in the Regulations, this Law shall apply to –
 - (a) external confiscation orders; and
 - (b) proceedings which have been or are to be instituted in a country or territory outside Jersey and may result in an external confiscation order being made there.
- (2) The States may by Regulations –
 - (a) make such provision in connection with the taking of action in a country or territory outside Jersey with a view to satisfying a confiscation order as appears to the States to be necessary or expedient;
 - (b) without prejudice to the generality of sub-paragraph (a), direct that, in such circumstances as may be specified in the Regulations, proceeds which arise out of action taken in a country or territory outside Jersey with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.
- (3) Without prejudice to the generality of paragraphs (1) and (2), Regulations made under either of them may make –
 - (a) such provision as to the evidence or proof of any matter for the purposes of such Regulations or this Article; and
 - (b) such incidental, consequential and transitional provision, as appears to the States to be necessary or expedient.
- (4) In this Law –

‘external confiscation order’ means an order made by a court in a country or territory outside Jersey for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; and

‘modifications’ includes additions, alterations and omissions.
- (5) On an application made by or on behalf of the government of a country or territory outside Jersey, the Court may register an external confiscation order made there if –

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
 - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable him or her to defend them; and
 - (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
- (6) In paragraph (5)(a), ‘appeal’ includes –
- (a) any proceedings by way of discharging or setting aside a judgment; and
 - (b) an application for a new trial or a stay of execution.
- (7) The Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.”.

11 Saving for Regulations

Regulations made under Article 39 of the Drug Trafficking Offences (Jersey) Law 1988 which are in force immediately before this Law comes into force shall remain in force until revoked by further Regulations made under that Article as substituted by this Law.

12 Citation and commencement

This Law may be cited as the Drug Trafficking Offences (Amendment) (Jersey) Law 200- and shall come into force 7 days after it is registered.

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- [1] *chapter 08.580*
- [2] *chapter 08.780*
- [3] *chapter 08.640*