

STATES OF JERSEY



DRAFT MONEY LAUNDERING AND WEAPONS DEVELOPMENT (DIRECTIONS) (AMENDMENT) (JERSEY) LAW 201-

Lodged au Greffe on 17th April 2012
by the Chief Minister

STATES GREFFE



Jersey

DRAFT MONEY LAUNDERING AND WEAPONS DEVELOPMENT (DIRECTIONS) (AMENDMENT) (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 Money Laundering and Weapons Development (Directions) (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Senator I.J. Gorst**

Report

The Money Laundering and Weapons Development (Directions) (Jersey) Law 2012 (the “2012 Law”) was adopted by the States of Jersey on 1st November 2011. It was registered by the Royal Court on 6th January 2012 and came into force on 13th January 2012.

The 2012 Law provides for the giving of directions in response to threats to the interests of Jersey relating to money laundering, terrorist financing or weapons development and for incidental purposes.

Article 10 of the 2012 Law enables any person aggrieved by a decision of the Chief Minister under that Law to apply to the Royal Court to have the decision set aside on the ground that it is unreasonable having regard to all the circumstances of the case. A decision of the Chief Minister that may be subject to an application under Article 10 of the 2012 Law may have been based wholly or partly on closed source material, disclosed to the Chief Minister by Her Majesty’s Treasury. Closed source material is intelligence that is withheld from an applicant on public interest grounds.

It is proposed that Article 10 is replaced with a new Article requiring that any application made to the Royal Court pursuant to that provision will be determined by applying the principles applicable in judicial review proceedings. The amendment would enable an applicant to rely on the usual substantive grounds for judicial review, rather than being limited to relying on the ground that the decision was unreasonable.

The proposed amendment would provide the Royal Court with the same powers of determination as those of the English High Court when it reviews equivalent decisions made under the Counter-Terrorism Act 2008 of the United Kingdom.

The proposed amendment would also bring Article 10 of the 2012 Law into line with Article 29 of the Terrorist Asset-Freezing (Jersey) Law 2011 (the “2011 Law”), which governs applications for the review of decisions of the Chief Minister made in pursuance of the 2011 Law, which may have been based wholly or partly on closed source material.

Proceedings brought under Article 29 of the 2011 Law are governed by Rules 16A/4-17 of the Royal Court Rules 2004, which provide for special counsel proceedings where closed source material is relied on by the Chief Minister. It was intended that proceedings brought under Article 10 of the 2012 Law would be governed by the same Rules. The proposed amendment is necessary before an amendment can be made to the Royal Court Rules 2004 to provide that proceedings brought under Article 10 of the 2012 Law are also to be governed by Rules 16A/4-17.

Financial and manpower implications

There are no financial or manpower implications attached to implementing this Draft Law.

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 13th April 2012 the Chief Minister made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Chief Minister the provisions of the Draft Money Laundering and Weapons Development (Directions) (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This Law amends the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012 (“Law”) in relation to an application to set aside a decision of the Chief Minister relating to the giving of a direction or the grant of a licence under the Law. Directions may be given under the Law when certain conditions relating to the risk of money laundering or weapons development are met. Licences may be granted under the Law to exempt certain transactions or types of transaction from the requirements of a direction. An application may be made under the Law to set aside the Chief Minister’s decision on the ground that it is “unreasonable having regard to all the circumstances of the case”. This amending Law would remove that ground and, instead, require the Royal Court to apply the principles of judicial review in determining whether a decision should be set aside.

This amending Law would come into force 7 days after it is registered.



Jersey

DRAFT MONEY LAUNDERING AND WEAPONS DEVELOPMENT (DIRECTIONS) (AMENDMENT) (JERSEY) LAW 201-

A LAW to amend further the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012.

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 Money Laundering and Weapons Development (Directions) (Jersey) Law 2012 amended

For Article 10 of the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012¹ there shall be substituted the following Article –

“10 Applications in relation to a direction or licence

- (1) Subject to Article 11, any person affected by a decision of the Minister under this Law may apply to the Court to set aside the Minister’s decision.
- (2) In determining whether the decision should be set aside, the Court must apply the principles applicable on an application for judicial review.
- (3) If the Court decides that the decision should be set aside it may make any such order, or give any such relief, as may be made or given in proceedings for judicial review.

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- (4) Without prejudice to the generality of paragraph (3), if the Court sets aside the Minister’s decision to give a direction (including amending a direction) it must –
 - (a) quash the direction if given by notice; or
 - (b) direct the Minister to revoke the relevant Order forthwith, if the direction is given by Order.
 - (5) This Article does not apply to any decision of the Minister to make an Order under Article 4.”.

2 Citation and commencement

This Law may be cited as the Money Laundering and Weapons Development (Directions) (Amendment) (Jersey) Law 201- and shall come into force 7 days after it is registered.

¹

L.1/2012