

DRAFT MISUSE OF DRUGS (AMENDMENT No. 2) (JERSEY) LAW 200-

**Lodged au Greffe on 20th June 2000
by the Health and Social Services Committee**



STATES OF JERSEY

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REPORT

In November 1999, H.M. Attorney General requested the Health and Social Services Committee to consider two minor amendments to the Misuse of Drugs (Jersey) Law 1978, as described below. In considering this request, the Committee also reviewed advice received from the Law Officers' Department regarding a further amendment in respect of potential offences by a doctor in failing to comply with an Order under the Law and contravention of a licence issued under the Law.

The amendments proposed were as follows -

(a) **To amend the penalty for incitement or attempt to supply under Article 19(4) of the 1978 Law**

The aim of this amendment is to address a shortcoming in the existing legislation, which became apparent during a recent proposition for serious drug trafficking offences (in which the drugs were intercepted and the relevant penalty was consequently wholly inadequate in relation to the value of the drugs involved). The change suggested by the Attorney General would align the maximum penalty for inciting to supply (e.g. planning major drugs offences) with that of the substantive offence - i.e. up to life imprisonment.

(b) **To amend Article 19(1) of the Law to eliminate the lacuna arising in respect of an offence under the Misuse of Drugs (Addicts) Order 1980**

This amendment is intended to address an anomaly which provides that a breach of the Misuse of Drugs (Addicts) Order is *not* an offence under the principal Law. The existing Order is therefore incapable of adequate enforcement, and it is considered this situation needs to be rectified.

It is further proposed that Article 19(2), in connection with contravention of the terms of a licence issued by the Committee to permit a doctor to prescribe a controlled drug, should similarly be amended.

(c) **To amend Article 5B(2) of the Law to enable the Committee to require prior notification of sales made by Jersey registered companies (or companies administered in Jersey) where exportation is made from a third country**

This amendment would address a concern that the Committee is presently only empowered to make an Order in respect of transactions involving physical export from Jersey, and not export from a third country where the transaction is merely arranged through a Jersey company. It is apparent that such transactions involving third countries could currently lead to lack of control in the international trade in substances that are precursors to controlled drugs and might possibly be useful for unlawful activities. It is proposed that the Committee shall make an Order to regulate such matters in due course.

During the drafting of the above amendments, the Health and Social Services Committee has also taken the opportunity to effect certain minor amendments regarding the definitions contained in Article 2 of the Law. The reasons for these changes are to ensure legal clarity and to eliminate any inconsistencies between the Misuse of Drugs (Jersey) Law 1978, the Pharmacy, Poisons and Medicines (Jersey) Law 1952, and the Medicines (Jersey) Law 1995.

Explanatory Note

This draft Law would further amend the Misuse of Drugs (Jersey) Law 1978.

Article 1 identifies the Law that is to be amended (“the principal Law”).

Article 2 revises the definitions “person lawfully conducting a retail pharmacy business” and “pharmacist” in the principal Law.

Article 3 enables the Health and Social Services Committee to make Orders under the principal Law requiring the notification of the arranging or procuring - within Jersey - of the exportation from an overseas country to another country of substances that are useful for the manufacturing of controlled drugs. At present, the principal Law only enables the Committee to require notification of the exportation of such substances from Jersey itself.

Article 4 creates an offence for a doctor -

- (a) to fail to comply with an Order made by the Committee requiring him to give to the Medical Officer of Health particulars of a patient whom he has reasonable grounds to suspect of being addicted to a controlled drug, or
- (b) to contravene the terms of a licence issued by the Committee to permit him to prescribe, supply or administer a controlled drug for a person so addicted.

Article 5 revises the general penalty for attempting to commit or inciting or attempting to incite another person to commit an offence under the principal Law. The current maximum penalty is two years imprisonment and an unlimited fine. The effect of the amendment would be to make the maximum penalty the same as it is for the substantive offence itself.

Article 6 describes how the amending Law may be cited, and provides for it to come into force on the seventh day following its registration in the Royal Court.

MISUSE OF DRUGS (AMENDMENT No. 2) (JERSEY) LAW 200-

A LAW to amend further the Misuse of Drugs (Jersey) Law 1978; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 200-)

STATES OF JERSEY

The day of 200-

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

ARTICLE 1

In this Law, “principal Law” means the Misuse of Drugs (Jersey) Law 1978,^[1] as amended.^[2]

ARTICLE 2

For the definitions “person lawfully conducting a retail pharmacy business” and “pharmacist” in Article 1(1) of the principal Law^[3] there shall be substituted the following definitions respectively -

“ ‘person lawfully conducting a retail pharmacy business’ shall be construed in accordance with Article 68 of the Medicines (Jersey) Law 1995;”;

“ ‘pharmacist’ means a person registered as a pharmacist under the Pharmacy, Poisons and Medicines (Jersey) Law 1952;”.

ARTICLE 3

For Article 5B(2)(a) of the principal Law^[4] there shall be substituted the following sub-paragraph -

“(a) the notification of -

- (i) the proposed exportation from the Bailiwick to any country specified in the Order; or
- (ii) the arranging or procuring, in the Bailiwick, of the proposed exportation from any other country to any country specified in the Order,

of any substance specified in Table 1 of the Fifth Schedule to this Law; and”.

ARTICLE 4

(1) In Article 19(1) of the principal Law,^[5] the words “, other than an Order under sub-paragraph (h) or (j) of paragraph (2) of Article 11 of this Law” shall be deleted.

(2) In Article 19(2) of the principal Law,⁵ the words “, not being a licence issued under any Order made in pursuance of sub-paragraph (j) of paragraph (2) of Article 11 of this Law” shall be deleted.

ARTICLE 5

In the Fourth Schedule to the principal Law^[6] -

- (a) in the first column of the entries relating to paragraphs (1), (2), (3) and (4) of Article 19, for “(3) and (4)” there shall be substituted “and (3)”;
- (b) after the entries (as amended by paragraph (a) of this Article) relating to paragraphs (1), (2) and (3) of Article 19 there shall be inserted (in the columns respectively indicated in the Schedule to this Law) the entries set out in the Schedule to this Law.

ARTICLE 6

This Law may be cited as the Misuse of Drugs (Amendment No. 2) (Jersey) Law 200~~0~~ and shall come into force on the seventh day following its registration.

SCHEDULE

(Article 5)

<i>First column</i>	<i>Second column</i>	<i>Third column</i>	<i>Fourth column</i>	<i>Fifth column</i>	<i>Sixth column</i>
<i>Article relating to offence</i>	<i>General Nature of offence</i>	<i>Punishment</i>			
					<i>General</i>
Article 19(4)	Attempting to commit or inciting or attempting to incite another to commit an offence under any provision of this Law.				The same penalty as that for the offence to which the attempt to commit or incitement or attempt to incite relates.”.

[1] Volume 1975-1978, page 449.

[2] Volume 1982-1983, page 157, Volume 1988-1989, page 292, Volume 1996-1997, page 423, Volume 1999, page 419 and R & Os 6779, 7458, 7866, 8067, 8245 and 9377.

[3] Volume 1975-1978, page 450.

[4] Volume 1975-1978, page 453 and Volume 1996-1997, page 424.

[5] Volume 1975-1978, page 463.

[6] Volume 1975-1978, page 478, Volume 1988-1989, page 292 and Volume 1996-1997, page 429.