

STATES OF JERSEY



DRAFT TERRORISM (AMENDMENT No. 4) (JERSEY) LAW 201-

Lodged au Greffe on 24th February 2015
by the Chief Minister

STATES GREFFE



Jersey

DRAFT TERRORISM (AMENDMENT No. 4) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Deputy Chief Minister has made the following statement –

In the view of the Deputy Chief Minister, the provisions of the Draft Terrorism (Amendment No. 4) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator A.K.F. Green, M.B.E.**

Deputy Chief Minister

Dated: 23rd February 2015

REPORT

Overview

The draft Law makes amendments to the Terrorism (Jersey) Law 2002 (the “T(J)L”) in furtherance to Jersey’s on-site evaluation by MONEYVAL regarding compliance with the FATF Recommendations on anti-money laundering and countering the financing of terrorism. The amendments specifically deal with FATF Special Recommendation II (criminalisation the financing of terrorism and associated money laundering).

During the on-site visit, in addition to positive comments made by the assessors as to amendments recently made to T(J)L by virtue of the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014, comments were made as to the definition of “property” under T(J)L and the definition of “legal professional privilege”. The draft Law seeks to address those comments.

It should be noted that equivalent amendments are being made by virtue of draft Regulations proposing amendments to the Proceeds of Crime (Jersey) Law 1999 to deal with these issues in the circumstances of money laundering (see P.22/2015).

Definition of “Property”

The definition of “property” is relevant to confiscation of property under the T(J)L. The evaluators commented that whilst the definition of “property” in the T(J)L was broad, in their opinion, the international standards in this regard were not comprehensively transposed into domestic legislation. The evaluators considered that the language of the conventions (and the FATF definitions) clearly covering legal documents or instruments evidencing title to or interest in such assets should be adopted to avoid legal uncertainty. They further commented that the UK Proceeds of Crime Act 2002 contained extended definitions of property which could also be relevant in the context of money laundering in Jersey. The evaluators urged the insular authorities to reconsider the relevance of these terms in the local context.

The Chief Minister’s Department, along with the Law Officers’ Department, and with specific consultation with H.M. Solicitor General, have considered section 340 of the UK Proceeds of Crime Act 2002, the FATF definitions and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime and on the Financing of Terrorism (“the Warsaw Convention”), and are of the view that the revised definition contained in the draft Law should therefore meet the evaluators’ concerns.

Definition of legal professional privilege

The evaluators commented that they considered that the definition of legal professional privilege in T(J)L is wider than the customary law definition. They went on to recommend that the definition in the T(J)L should be removed. The Chief Minister’s Department, along with the Law Officers’ Department, and with specific consultation with H.M. Solicitor General, have considered the matter and have concluded that it is therefore advisable to remove the definition of legal professional privilege in T(J)L. The provisions in the draft Law should therefore meet the evaluators’ concerns.

By removing references in the T(J)L to information coming to a professional legal adviser in “privileged circumstances” and instead referring to “items subject to legal privilege”, any references to legal privilege in that Law shall have the meaning as acquired by the customary law of Jersey. In *Bene Ltd. v VAR Hanson & Partners*

[1997] JLR N10a, the Royal Court comprehensively described direct communications between a lawyer and his client (or via third-party agents) to be subject to legal privilege if they are confidential and for the dominant purpose of seeking or giving legal advice on the client's legal position or rights ("legal advice privilege"). Also privileged are confidential communications between a lawyer and his client, non-professional agent or third party, made after litigation has been commenced or contemplated and for the sole or dominant purpose of advising in relation to, or seeking evidence or information for, such litigation ("litigation privilege").

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of the draft Law.

Human Rights

The Deputy Chief Minister has been provided with separate advice from the Law Officers' Department and has been advised that it is appropriate for a statement to be made in accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, confirming that the Deputy Chief Minister is of the view that the provisions of the Draft Terrorism (Amendment No. 4) (Jersey) Law 201- are compatible with the Convention Rights.

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Note on the Draft Terrorism (Amendment No. 4) (Jersey) Law 201-

There are no ECHR issues arising in respect of the draft Law. The draft Law simply amends the definition of “property” under the Law and removes definitions regarding legal privilege so the latter shall be defined with reference to customary law. The changes will not affect the ECHR compatibility of the Terrorism (Jersey) Law 2002.

Explanatory Note

This Law amends definitions used in the Terrorism (Jersey) Law 2002 (the “Law”).

Article 1 amends the definition of “property” to make it clear that “property” includes legal documents or instruments evidencing title or interest in property, and includes any interest in or power in respect of property and, in relation to movable property, includes a right to possession.

Articles 2 and 3 remove references to information coming to a professional legal adviser in “privileged circumstances” and instead refers to “items subject to legal privilege” coming to such a person. *Article 4* removes the definition of “items subject to legal privilege” from Schedule 5 to the Law. The effect of these amendments are that the question of whether an item is subject to legal privilege will be determined in accordance with Jersey customary law.

Article 5 gives the title to this Law and provides for it to come into force 7 days after it is registered.



Jersey

DRAFT TERRORISM (AMENDMENT No. 4) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT TERRORISM (AMENDMENT No. 4) (JERSEY) LAW 201-

A LAW to amend the Terrorism (Jersey) Law 2002

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 Article 1 amended

In Article 1(1) of the Terrorism (Jersey) Law 2002¹, for the definition “property” there shall be substituted the following definition –

“ ‘property’ means all property, whether movable or immovable, or vested or contingent, and whether in Jersey or elsewhere, including –

- (a) any legal document or instrument evidencing title to or interest in any such property;
- (b) any interest in or power in respect of any such property;
- (c) in relation to movable property, any right, including a right to possession,

and for the avoidance of doubt, a reference in this Law to property being obtained by a person includes a reference to any interest in that property being obtained.

2 Article 19 amended

In Article 19 of the Terrorism (Jersey) Law 2002 –

- (a) in paragraph (5)(b) for the words “comes to A in privileged circumstances” there shall be substituted the words “is an item subject to legal privilege”;
- (b) in paragraph (6) for the words “information obtained by A in privileged circumstances, or any belief or suspicion based on such information”

there shall be substituted the words “ an item subject to legal privilege or any belief or suspicion based on information contained in an item subject to legal privilege.

- (c) paragraphs (7) and (8) shall be deleted.

3 Article 21 amended

In Article 21 of the Terrorism (Jersey) Law 2002 –

- (a) in paragraph (5)(b) for the words “came to him or her in privileged circumstances” there shall be substituted the words “is an item subject to legal privilege”;
- (b) paragraphs (8) and (9) shall be deleted.

4 Schedule 5 amended

In Schedule 5 of the Terrorism (Jersey) Law 2002, paragraphs 11(1) and 11(2) shall be deleted.

5 Citation and commencement

This Law may be cited as the Terrorism (Amendment No. 4) (Jersey) Law 201- and shall come into force the day after the day on which it is registered.

¹ *chapter 17.860*