

STATES OF JERSEY

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DRAFT DRUG TRAFFICKING OFFENCES (AMENDMENT No. 2)(JERSEY) LAW 200

**Lodged au Greffe on 29th July 2008
by the Minister for Treasury and Resources**

STATES GREFFE



Jersey

DRAFT DRUG TRAFFICKING OFFENCES (AMENDMENT No. 2) (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 No. 2) (Jersey) Law 200 are compatible with the Convention Rights.

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

REPORT

The Island's framework to counter money laundering and the financing of terrorism will be subject to review by the International Monetary Fund ("IMF") in October 2008.

A set of changes to the Drug Trafficking Offences (Jersey) Law 1988 ("DTOL"), as well as the Proceeds of Crime (Jersey) Law 1999 ("POCL") and the Terrorism (Jersey) Law 2002 ("TL"), have already been passed by the States of Jersey and are now in force. The most important changes introduced in this 'first wave' of amendments were the introduction of standardised obligations to report knowledge or suspicion of money laundering and terrorist financing across all 3 Laws and extended powers to investigate suspected money laundering and terrorist financing.

These amendments form the 'second wave' of amendments and fall into 5 discrete areas:

1. Designating Officers

Article 1 of the DTOL currently defines a police officer as meaning "*a member of the Honorary Police, the States of Jersey Police Force or an officer within the meaning of the Customs and Excise (Jersey) Law 1999*".

Currently the DTOL, POCL and TL all provide that certain offences will not be committed by a person who knows or suspects another is engaged in money laundering, drug trafficking or terrorist financing, provided that knowledge or suspicion is disclosed to a police officer. Financial institutions routinely make such disclosures to the Joint Financial Crimes Unit ("JFCU") in a set format, known as a suspicious activity report. As the DTOL currently stands, disclosures can be made to an honorary police officer, as well as States of Jersey Police or Customs Officer.

Jersey was last assessed by the IMF in 2003. The 2003 IMF report noted that, for the purpose of reporting knowledge or suspicion of money laundering, the definition of "police officer" in Jersey legislation was too broad. In particular the IMF was of the view that the definition, in this context, should be amended to remove any reference to honorary police officers. Furthermore, the IMF requested Jersey to require such disclosures to be submitted to the JFCU, which has practical responsibility for the receipt, analysis and dissemination of suspicious activity reports from financial institutions.

It is not possible for the Law to be amended to require that disclosures are made directly to "*the JFCU*" because the JFCU has no separate statutory identity. In order to get around this issue the approach used in the Money Laundering (Jersey) Order, 2008 ("MLO") has been adopted. The MLO already establishes the concept of designated police and customs officers (to be designated by the Chief of Police and the Agent of the Impôts) as a means of specifying the staff of the JFCU (see Article 6 of the MLO).

The amendments set out in Articles 2 – 5 would mean that in the case of a disclosure by a financial institution, the disclosure would have to be made to a designated officer who will be an officer in the JFCU. In the case of a disclosure by anyone else, who may not be aware of the existence of the JFCU, a disclosure can still be made to any member of the Honorary Police, the States of Jersey Police or a Customs Officer.

2. Provision for Codes and guidance to be issued under the Supervisory Bodies Law

Article 3 also amends Article 40A(7) of the DTOL, so that new Codes of Practice to be issued under the Proceed of Crime (Supervisory Bodies (Jersey) Law 2008 ("Supervisory Bodies Law"), can be taken into account by the Royal Court when determining if an offence under Article 40A (failure in a financial institution to make a report) has been committed. This reflects a revision already made to Article 23(6) of the TL by the Supervisory Bodies Law to make reference to Codes of Practice and guidance that will be issued under the Supervisory Bodies Law by the Commission and any body that is designated by the Minister under Article 6 of that Law. It is proposed that the same change is made to Article 34D(7) of the POCL so that there is consistency among the 3 Laws.

3. Tipping off when a disclosure will be made

Article 6 amends Article 41 of the DTOL so that the offence of tipping off is committed not only where a report has been made but where it will be made, in order to prevent tipping off taking place prior to the making of a report. This will bring the provision in line with Article 35 of the TL. It is proposed that Article 35 of the POCL is amended in the same way.

4. Definition of business relationship

The definition of “*business relationship*” in Schedule 2, paragraph 6(2) of the DTOL would be amended by Article 7 to mirror the definition that is now used in Article 1(1) of the MLO. The same amendment is proposed to Schedule 3, paragraph 6(2) of the POCL and Schedule 6, paragraph 7(2) of the TL.

5. Person carrying on financial services business

Article 36(1) of the POCL defines “*financial services business*” as a business described in Schedule 2 of the Law. In this context, business is to be understood as the type of business that may be conducted, e.g. deposit-taking business, or the business of operating a casino, and a person that carries on financial services business is generally described as such.

However, throughout Schedule 2 of the POCL reference is not made to a person that carries on a financial services business, but instead to a “*financial services business*”. The amendments in Article 7 are designed to correct this anomaly.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of 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 28th July 2008 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 No. 2) (Jersey) Law 2008 are compatible with the Convention Rights.

Explanatory Note

This draft Law amends the Drug Trafficking Offences (Jersey) Law 1988 (the “principal Law”).

Article 1 defines the principal Law.

Article 2 amends the Interpretation Article in the principal Law to insert the definitions “designated police officer” and “designated customs officer” to mean an officer designated under Article 40AA.

Article 3 amends Article 40A of the principal Law to restrict the persons to whom financial institutions must report suspicion of drug money laundering to a designated police officer or a designated customs officer. The existing provision allows disclosure to be made to any police officer or customs officer. The amendment also allows the Royal Court to take into account Codes of Practice issued by supervisory bodies under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 for the purpose of determining whether an offence has been committed under Article 40A.

Article 4 inserts a new Article 40AA into the principal Law to give the Chief Officer of the States of Jersey Police Force and the Agent of the Impôts power to designate one or more officers for the purposes of Article 40A.

Article 5 amends Article 40B of the principal Law to reflect the new references in that Part to “designated police officer” and “designated customs officer”.

Article 6 amends Article 41 of the principal Law to broaden the circumstances in which one of the offences relating to tipping-off may be committed to include suspicion that disclosure will be made to a police officer about suspicion of drug money laundering, not just where such disclosure has been made.

Article 7 amends various references to “financial services business” in Schedule 2 to the principal Law so that its provisions relate to the person carrying a financial services business rather than to the business itself. The Article also amends the definition of “business relationship” to reflect the definition in the Money Laundering (Jersey) Order 2008.

Article 8 provides for the title of the draft Law and that it shall come into force 7 days after registration.



Jersey

DRAFT DRUG TRAFFICKING OFFENCES (AMENDMENT No. 2) (JERSEY) LAW 200

Arrangement

Article

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Article 1 amended</u>
<u>3</u>	<u>Article 40A amended</u>
<u>4</u>	<u>Article 40AA inserted</u>
<u>5</u>	<u>Article 40B amended</u>
<u>6</u>	<u>Article 41 amended</u>
<u>7</u>	<u>Schedule 2 amended</u>
<u>8</u>	<u>Citation and commencement</u>



Jersey

DRAFT DRUG TRAFFICKING OFFENCES (AMENDMENT No. 2) (JERSEY) LAW 200

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

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 Interpretation

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

2 Article 1 amended

In Article 1(1) of the principal Law there shall be inserted the following definitions in the appropriate places –

“ ‘designated police officer’ means a police officer who is designated under Article 40AA(1) or, if no one is for the time being designated, the Chief Officer of the States of Jersey Police Force;”;

“ ‘designated customs officer’ means an officer of the Impôts who is designated under Article 40AA(2) or, if no one is for the time being designated, the Agent of the Impôts.”.

3 Article 40A amended

In Article 40A of the principal Law –

(a) in the heading and in paragraphs (4) and (9) for the words “police officer or to a” there shall be substituted the words “designated police officer, designated customs officer or”;

(b) for paragraph (7) there shall be substituted the following paragraphs–

“(7) In deciding whether a person has committed an offence under this Article, the court –

(a) shall take account of any relevant Code of Practice or guidance that applies to that person or the business carried on by that person and is issued by the supervisory body exercising supervisory functions in respect of that person; or

(b) if no such Code of Practice or guidance applies, shall take into account any

relevant Code of Practice or guidance that is issued by another supervisory body; or

(c) if there is no such relevant Code of Practice or guidance, may take account of any other relevant guidance issued by a body that is representative of that person or any supervised business carried on by that person.

(7A) For the purposes of paragraph (7), ‘Code of Practice’, ‘supervised business’, ‘supervisory body’ and ‘supervisory functions’ have the same meaning as in the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008^[2].”.

4 Article 40AA inserted

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

“40AA Designated police and customs officers

- (1) The Chief Officer of the States of Jersey Police Force may by public notice designate one or more police officers (whether by reference to the name of the officer or officers or post), being members of that Force, for the purposes of Article 40A.
- (2) The Agent of the Impôts may by public notice designate one or more officers of the Impôts for the purposes of Article 40A.”.

5 Article 40B amended

For Article 40B(1) of the principal Law there shall be substituted the following paragraph–

- “(1) Information that is disclosed –
- (a) to a police officer under any of Articles 37, 38 and 40; or
 - (b) to a designated police officer or designated customs officer,
- shall not be disclosed by that officer or by any person who obtains information directly or indirectly from that officer, unless its disclosure is permitted under Article 40C or 40D.”.

6 Article 41 amended

In Article 41(2)(a) and (3)(a) of the principal Law after the words “has been” there shall be inserted the words “or will be”.

7 Schedule 2 amended

In Schedule 2 to the principal Law –

- (a) in Part 1 paragraph 1(1) for the words “a financial services business to which” there shall be substituted the words “a person carrying on a financial services business to whom”;
- (b) for Part 1 paragraph 1(2) there shall be substituted the following subparagraph –

- “(2) An order under this Part of this Schedule may provide that it applies to –
- (a) all persons carrying on a financial services business;
 - (b) a particular description, or particular descriptions, of persons carrying on a financial services business; or
 - (c) a particular person, or particular persons, carrying on a financial services business.”;

- (c) in Part 1 paragraph 1(4) for the words “A financial services business that” there shall be substituted the words “A person carrying on a financial services business who”;
- (d) for Part 1 paragraph 1(5) there shall be substituted the following subparagraph –
 - “(5) It is a defence for a person carrying on a financial services business who is charged with an offence under sub-paragraph (4) to prove–
 - (a) that the information required was not in the possession of the person carrying on the financial services business; or
 - (b) that it was not reasonably practicable for the person carrying on the financial services business to comply with the requirement.”;
- (e) in Part 1 paragraph 1(6) for the words “A financial services business” there shall be substituted the words “A person carrying on a financial services business who is”;
- (f) for Part 1 paragraph 6(2) there shall be substituted the following subparagraph –
 - “(2) For the purposes of this Part of this Schedule ‘business relationship’ means a business, professional or commercial relationship between a person carrying on a financial services business and a customer where that relationship is expected by the first person, at the time when contact is established, to have an element of duration.”;
- (g) for Part 2 paragraph 1(3) there shall be substituted the following subparagraph –
 - “(3) The application for an account monitoring order must state that the order is sought against the person specified in the application carrying on a financial services business in relation to information which –
 - (a) relates to an account or accounts held with the person carrying on a financial services business by the person specified in the application (whether solely or jointly with another); and
 - (b) is of the description so specified.”;
- (h) for Part 2 paragraph 1(4)(a) there shall be substituted the following clause–
 - “(a) all accounts that the person specified in the application for the order holds with the other person specified in the application carrying on the financial services business;”;
- (i) in Part 2 paragraph 1(5) for the words “the financial services business specified in the application for the order” there shall be substituted the words “the person specified in the application for the order carrying on a financial services business”;
- (j) for Part 2 paragraph 5(1) there shall be substituted the following subparagraph –
 - “(1) A statement made by a person carrying on a financial services business in response to an account monitoring order may not be used in evidence against that person in criminal proceedings.”;
- (k) in the following provisions there shall be inserted before the words “financial services business” each place they occur the words “person carrying on a” –
 - (i) Part 1 paragraphs 6(1)(a) and 7(1), and
 - (ii) Part 2 paragraphs 1(1), 5(2) and (3).

8 Citation and commencement

- (1) This Law may be cited as the Drug Trafficking Offences (Amendment No. 2) (Jersey) Law 200.
- (2) This Law shall come into force 7 days after it is registered.

[1]

chapter 08.580

[2]

L.32/2008