

STATES OF JERSEY

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DRAFT CRIME (TRANSNATIONAL ORGANIZED CRIME) (JERSEY) LAW 200- (P.132/2007): AMENDMENTS

Lodged au Greffe on 23rd October 2007
by the Minister for Home Affairs

STATES GREFFE

DRAFT CRIME (TRANSNATIONAL ORGANIZED CRIME) (JERSEY) LAW 200- (P.132/2007):
AMENDMENTS

PAGE 17, ARTICLE 3 –

For paragraph (3) substitute the following paragraphs –

- “(3) A person commits an offence if he or she –
- (a) enables a person who is not a national or a permanent resident of a State to remain in the State by the means described in Article 6 or any other illegal means;
 - (b) does so for the purpose of obtaining, directly or indirectly, a material benefit for himself or herself or any other person; and
 - (c) knows that the person referred to in sub-paragraph (a) is not a national or a permanent resident of the State or is reckless as to the person’s status.
- (4) A person who commits an offence against paragraph (1), (2) or (3) shall be liable to imprisonment for a term of 20 years and to a fine.”

PAGE 18, ARTICLE 4 –

For Article 4 substitute the following Article –

“4 Trafficking in persons

- (1) A person commits an offence if, for the purposes of the physical exploitation of another person, he or she –
 - (a) recruits or arranges for the other person to enter a State, or travel within a State; or
 - (b) arranges, organizes or procures the reception, concealment or harbouring, in a State of the other person.
- (2) Where the person physically exploited or intended to be physically exploited is aged 18 years or more, a person only commits an offence against paragraph (1) if the recruitment, arrangement, organization or procurement is by means of any of the following –
 - (a) the threat or use of force or other forms of coercion;
 - (b) abduction;
 - (c) fraud or deception;
 - (d) the abuse of power or of a position of vulnerability;
 - (e) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.
- (3) A person who commits an offence against paragraph (1) shall be liable to imprisonment for a term of 20 years and to a fine.
- (4) An offence against paragraph (1) may be committed even if the person physically exploited or intended to be physically exploited –
 - (a) did not in fact enter, or travel within, the State; or
 - (b) was not in fact received, concealed, or harboured, in the State.
- (5) An offence against paragraph (1) may be committed in respect of a person aged 18 years or more even if steps in the process by which the person entered, or was to enter, the State, or travelled, or was to travel, within the State, did not involve means described in paragraph (2).

- (6) In this Article, any reference to the physical exploitation of a person means any of the following –
- (a) the use of the person for sexual purposes;
 - (b) the removal of a body part from the person, unless for the benefit (other than the financial, monetary, or equivalent, benefit) of the person;
 - (c) the use of the person in forced labour or services, slavery or practice similar to slavery, or servitude.
- (7) Paragraph (6)(a) includes, but is not limited to including, any of the following –
- (a) the taking, or transmission, by any means, of an image of the person engaged in real or simulated sexual activities;
 - (b) the taking, or transmission, by any means, of images of the person’s genitalia, anus, or breasts, for the purpose of obtaining, directly or indirectly, a material benefit for the person or any other person;
 - (c) the person’s participation, for the purpose of obtaining, directly or indirectly, a material benefit for the person or any other person, in a performance or display, or other employment, that involves the exposure of the person’s genitalia, anus or breasts.
- (8) Paragraph (6)(a) does not include –
- (a) the taking, in good faith, for purposes primarily other than the exposure of body parts of the person for the sexual gratification of a viewer, of an image of the person as part of an artistic or cultural performance or display;
 - (b) the taking or transmission of an image of the person for the purpose of –
 - (i) depicting, for the instruction or information of health professionals, a medical condition or a surgical or medical technique,
 - (ii) providing medical or health education,
 - (iii) providing information relating to medical or health matters, or
 - (iv) advertising a product, instrument, or service, intended to be used for medical or health purposes.
- (9) The other person in respect of whom an offence against this Article is committed, or is suspected of being committed, shall not be charged as a party.”

PAGE 20, ARTICLE 5 –

(a) *in paragraph (1), after sub-paragraph (a) insert the following sub-paragraph –*

“(b) whether the life or safety of any person in respect of whom the offence was committed was endangered or likely to be endangered;”

(b) *delete paragraph (4).*

PAGE 22, ARTICLE 6 –

In paragraph (4), for the definition “travel document” substitute the following definition –

“ ‘travel document’ includes an identification document.”

PAGE 23, ARTICLE 8 –

Delete paragraphs (8) and (9).

PAGE 24, NEW ARTICLE –

After Article 8 insert the following Article –

“9 General provisions as to offences

- (1) A person who –
 - (a) aids, abets, counsels or procures the commission of an offence under any provision of this Law (a “principal offence”); or
 - (b) conspires, attempts or incites another to commit a principal offence,shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for the principal offence.
- (2) A person alleged to have committed an offence by virtue of paragraph (1) shall be triable in the same manner as a person would be tried for the principal offence.
- (3) Where an offence against any provision of this Law committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person shall also be guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to acts and defaults of a member in connection with his or her functions of management as if he or she were a director of the body corporate.
- (5) Article 8 shall apply to proceedings for an offence that is an offence by virtue of paragraph (1) or (3) as it would apply to proceedings for the principal offence.”

and renumber the provisions of the Law and any internal cross-references consequently upon the amendments.

MINISTER FOR HOME AFFAIRS

REPORT

These amendments of the draft Crime (Transnational Organized Crime) (Jersey) Law 200- have mainly come about as a result of helpful comments made by the legal advisers in the Ministry of Justice, to whom the draft Law was sent for comment, both generally and especially as to whether it complied with the requirements of the UN Transnational Organised Crime Convention and the Protocols thereto.

Unfortunately, although the draft Law was sent to the MOJ before it was lodged au Greffe, the comments were not received until after it was lodged. The draft Law had to be lodged before the MOJ responded, in order to meet the deadline for the planned States debate of all the IMF-related principal legislation in November.

In the light of the MOJ comments, it is clear that some changes to the draft Law are necessary in order to make sure that it is compatible with the Convention.

The first changes are to Article 3 of the draft Law and involve the insertion of a new paragraph which makes it an offence for a person knowingly, and with a view to material benefit for himself or another, to enable a person who is not entitled to stay in a country to remain there. This will fill a gap left by the original Article which, the MOJ pointed out, did not cover the requirement of Article 6(1)(c) of the Protocol to the UN Convention on Smuggling of Migrants.

Next, Article 4 of the draft Law is replaced in its entirety. Article 4 is designed to implement Article 3 of the Protocol to the UN Convention on Trafficking in Persons. The MOJ made a number of comments on the original Article in the draft Law, suggesting that it needed to be widened in scope to cover the transportation, harbouring or receipt of persons, in addition to their travel to, and entry into, a State. After consideration, the Law Draftsman decided that, in order to make the changes necessary and to correct one or two other deficiencies in the Article which were mentioned by the MOJ, it would be better to redraft the whole Article. This has the added advantage of making it easier to follow. The Explanatory Note gives a detailed explanation of the effect of the new Article.

Article 5 of the draft Law will also be amended to add in a reference to the requirement in Article 6(3)(a) of the Protocol on Migrant Smuggling, that States make it an aggravating factor for the courts to consider, when dealing with an offence of smuggling migrants, if the life of any person was endangered in the course of the commission of the offence. The Article will also be amended as a result of the insertion of the new Article 9 in the draft Law, as to which see further below.

Article 6 will be amended to substitute the definition of “travel document”.

In Article 8, paragraphs (8) and (9) will be deleted due to the insertion of the new Article 9.

The new Article 9 inserts provisions about “secondary parties” (aiders and abettors etc.) to offences which were usually included on a new Law which created new criminal offences, but which would be rendered unnecessary, and were therefore not included in the original draft Law, by the proposed Criminal Offences (Jersey) Law 200- adopted by the States earlier this year. It is not clear whether the draft Law will be sanctioned and come into force before the Criminal Offences Law, hence it has been decided to put these provisions into the draft Law to avoid any problems that might arise if it takes effect first. These provisions will be superseded when the Criminal Offences Law does come into force.

There are no financial or manpower implications arising from these amendments.