

STATES OF JERSEY



DRAFT PROCEEDS OF CRIME AND TERRORISM (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 201- (P.163/2013): AMENDMENT

Lodged au Greffe on 28th January 2014
by the Chief Minister

STATES GREFFE

1 PAGES 28 AND 29, ARTICLE 8(2) –

- (a) in the substituted Article 19(1)(a), omit the word “(‘B’)”;
 - (b) in the substituted Article 19(1)(b), for the words “a trade,” substitute the words “A’s trade,”;
 - (c) for the substituted Article 19(3), substitute the following paragraph –
 - “(3) Where this Article applies, A must disclose, in accordance with the conditions set out in paragraph (4) –
 - (a) the belief or suspicion mentioned in paragraph (1)(a); and
 - (b) the information on which that belief or suspicion is based, and if A does not make such a disclosure, A commits an offence.”;
- and
- (d) in the substituted Article 19(4)(c), omit the word “reasonably”.

2 PAGE 30, ARTICLE 8(3) –

- (a) for sub-paragraphs (a) and (b) substitute –
 - “(a) for paragraphs (1) to (4) there shall be substituted the following paragraphs –
 - ‘(1) This Article applies where the conditions in both paragraph (2) and paragraph (3) are fulfilled.
 - (2) The first condition is that a person (“A”) knows, suspects or has reasonable grounds for suspecting that –
 - (a) another person has committed an offence under Article 15 or 16; or
 - (b) any property is or may be terrorist property.
 - (3) The second condition is that the information or other matter on which A’s knowledge or suspicion is based, or which gives reasonable grounds for such suspicion, came to A in the course of business of a financial institution.
 - (4) Where this Article applies, A must disclose, in accordance with the conditions set out in paragraph (4A) –
 - (a) the knowledge, suspicion or grounds for suspicion mentioned in paragraph (2); and
 - (b) the information or other matter mentioned in paragraph (3),and if A does not make such a disclosure, A commits an offence.
 - (4A) The conditions mentioned in paragraph (4) are that the disclosure is made –

- (a) to a designated police officer, a designated customs officer or a nominated officer;
 - (b) in good faith; and
 - (c) as soon as is practicable after the information or other matter comes to A.’ ”; and
- (b) renumber sub-paragraphs (c) and (d) accordingly as sub-paragraphs (b) and (c).

3 PAGE 43, ARTICLE 31 –

For the text of Article 31, substitute –

“In Article 34A of the 1999 Law –

- (a) for paragraph (1) of Article 34A of the 1999 Law there shall be substituted the following paragraphs –

‘(1) This Article applies where –

- (a) a person (“A”) knows or suspects that another person is engaged in money laundering; and
- (b) the information or other matter on which that knowledge or suspicion is based comes to A’s attention in the course of A’s trade, profession, business or employment.

(1A) Where this Article applies, A must disclose, in accordance with the conditions set out in paragraph (1B) –

- (a) the knowledge or suspicion mentioned in paragraph (1)(a); and
- (b) the information or other matter mentioned in paragraph (1)(b),

and if A does not make such a disclosure, A commits an offence.

(1B) The conditions mentioned in paragraph (1A) are that the disclosure is made –

- (a) to a police officer;
- (b) in good faith; and
- (c) as soon as is practicable after the information or other matter came to A’s attention.’;

- (b) in paragraph (3), after the words ‘Where a person discloses to a police officer’ there shall be inserted the words ‘in good faith’.’.

4 PAGES 43 AND 44, ARTICLE 32 –

For the text of Article 32, substitute –

“In Article 34D of the 1999 Law –

- (a) for paragraphs (1) to (4) there shall be substituted the following paragraphs –

- '(1) This Article applies where the conditions in both paragraph (2) and paragraph (3) are fulfilled.
- (2) The first condition is that a person (“A”) knows, suspects or has reasonable grounds for suspecting that –
 - (a) another person is engaged in money laundering; or
 - (b) any property constitutes or represents proceeds of criminal conduct.
- (3) The second condition is that the information or other matter on which A’s knowledge or suspicion is based, or which gives reasonable grounds for such suspicion, came to A in the course of the carrying on of a financial services business.
- (4) Where this Article applies, A must disclose, in accordance with the conditions set out in paragraph (4A) –
 - (a) the knowledge, suspicion or grounds for suspicion mentioned in paragraph (2); and
 - (b) the information or other matter mentioned in paragraph (3),and if A does not make such a disclosure, A commits an offence.
- (4A) The conditions mentioned in paragraph (4) are that the disclosure is made –
 - (a) to a designated police officer, a designated customs officer or a nominated officer;
 - (b) in good faith; and
 - (c) as soon as is practicable after the information or other matter comes to A.’;
- (b) in paragraph (9), after the word ‘discloses’ there shall be inserted the words ‘in good faith’.”.

CHIEF MINISTER

REPORT

1. On 12th December 2013, at the 43rd Moneyval Plenary in Strasbourg, a written analysis of Jersey's progress in respect of the Financial Action Task Force Core Recommendations was presented by the Moneyval Secretariat and approved by the Plenary. Paragraph 42 of the written analysis made the following recommendation –

“Lastly, the Secretariat noted that the IMF assessors did consider whether the relevant provisions of the POCL, DTOL and TL, which created an offence for failing to report when the required conditions are met rather than overtly requiring reporting of suspicions, are fully in line with Recommendation 13 and Special Recommendation IV, for compliance with which only a direct reporting requirement is acceptable. The assessors had concluded that in practice, the inverted nature of the reporting requirement did not appear to impact negatively on the decisions of relevant persons to report and thus, they considered that those could be equivalent to a direct reporting requirement. This issue would need to be reconsidered in the context of the 4th round follow-up visit. Meanwhile, given that the authorities are now consolidating into one law the Anti-Money Laundering requirements, and that this legislation is yet to be adopted, it is strongly advised to reconsider in this process the approach previously taken and use this opportunity to include a direct reporting obligation, which would fully meet the Recommendation 13 and Special Recommendation IV's requirements, and to set out clearly the recipient of such reports.”

2. The proposed amendment seeks to address this recommendation by amending the obligation to report in Articles 34A and 34D of the Proceeds of Crime (Jersey) Law 1999 and in the proposed amended and renumbered Articles 19 and 21 (currently Articles 20 and 23) of the Terrorism (Jersey) Law 2002 to provide that, rather than it simply being an offence to fail to disclose, that there is a positive obligation to disclose and that failure to comply with this obligation is an offence. There is no need to amend the Drug Trafficking Offences (Jersey) Law 1988 as referred to in the recommendation, as it is being repealed by the draft Law.
3. The proposed amendment also provides that disclosure must in all cases be made as soon as is practicable.

Financial and manpower implications

4. There are no financial or manpower implications for the States arising from the adoption of this amendment.

Human Rights implications

5. No additional human rights notes are annexed to this amendment, because the Law Officers' Department has indicated that the draft amendment does not give rise to any human rights issues.