

STATES OF JERSEY



DRAFT POLICE PROCEDURES AND CRIMINAL EVIDENCE (AMENDMENT OF SCHEDULE 1) (No. 1) (JERSEY) REGULATIONS 200-

**Lodged au Greffe on 4th August 2008
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT POLICE PROCEDURES AND CRIMINAL EVIDENCE (AMENDMENT OF SCHEDULE 1) (No. 1)(JERSEY) REGULATIONS 200-

REPORT

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1. These draft Regulations seek to add to the definition of “*serious offence*” in the Police Procedures and Criminal Evidence (Jersey) Law, 2003 (“PPCE”). At present, Article 3(2)(c) of the PPCE provides that drug trafficking offences, as defined in Article 1(1) of the Drug Trafficking Offences (Jersey) Law, 1988 (“DTOL”), are “*serious offences*” for the purpose of the Law. That definition covers the offences set out in Articles 30, 37, 38 and 46 of the DTOL. The PPCE currently omits offences committed under Articles 40, 40A and 41 of the DTOL and offences committed under the Proceeds of Crime (Jersey) Law, 1999 (“POCL”) and the Terrorism (Jersey) Law, 2002 (“TL”) from Schedule 1. These amendments are designed to correct that anomaly.
 2. The overall purpose of the amendments is to enhance police investigatory powers in respect of the existing offences listed in the explanatory note to the draft Regulations (“existing offences”) and, in doing so, satisfy Recommendation 28 of the Financial Action Task Force, against which Jersey will be assessed by the IMF in October of this year.
 3. Recommendation 28 of the Financial Action Task Force requires that –
“28.1 Competent authorities responsible for conducting investigations of ML, FT and other underlying predicate offences should have the powers to be able to –
 - (a) *Compel production of,*
 - (b) *Search persons or premises of,*
 - (c) *Seize and obtain,**transaction records, identification data obtained through the CDD process, account files, business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons. Such powers should be exercised through lawful process (for example, subpoenas, summonses, search and seizure warrants, or court orders) and be available for use in investigations and prosecutions of ML, FT, and other underlying predicate offences, or in related actions e.g. actions to freeze and confiscate the proceeds of crime.”*
 4. The States of Jersey Police have, on occasion, encountered difficulties in obtaining production orders and search warrants under the present provisions because the existing offences are not listed under the Schedule to the PPCE as a “*serious offence*” and may not, on their facts, meet the criteria for a “*serious offence*” listed in Article 3(4) and (6) of the PPCE.
 5. Article 3(4) of the PPCE provides that any other offence, other than the offences listed in Schedule 1, is serious only if its commission –
 - (a) has led to any of the consequences specified in paragraph (6); or
 - (b) is intended or is likely to lead to any of those consequences.
 6. Article 3(6) of the PPCE provides that the consequences listed in Article 3(4) are –
 - (a) serious harm to the security of Jersey or to public order;

- (b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
 - (c) the death of any person;
 - (d) serious injury to any person;
 - (e) substantial financial gain to any person;
 - (f) serious financial loss to any person.
7. It is not always the case that one of these criteria is met in respect of the commission of an existing offence. This is particularly the case in relation to the failing to report offences, tipping off offences and breaches of the Money Laundering Order, 2008.
 8. The POCL, DTOL and TL also include provisions that enable the police to obtain production orders and search premises. Problems also arise in the current operation of those powers. To take the POCL as an example, a condition to be satisfied in order to obtain a production order or a search warrant under Articles 40 and 41 of the POCL is that “*there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct*”. This requirement will not always be met, for example in respect of a tipping off offence, and therefore an application for a search warrant or production order will not get off the ground. Similar problems are encountered with the DTOL and TL.
 9. Overall this means that, depending on the factual circumstances of a case, the police may not have the power to obtain production orders or search premises with a view to the investigation of offences under the POCL, DTOL and TL. Without the use of such powers to obtain evidence, it is difficult for successful investigations and prosecutions to ensue. The offences themselves have already been enacted by the States of Jersey and these amendments are designed to ensure that all the offences listed in the draft Regulations, whatever the factual circumstances, can be properly investigated.
 10. The amendment proposed by the draft Regulation is also in furtherance of the States Strategic Plan 2005-2010 which recognises the need to support those concerned with the investigation of crime in order to enhance Jersey’s international reputation.

Resource Implications

There are no additional financial or manpower implications to the Home Affairs Department arising from this amendment to Regulations.

Explanatory Note

These draft Regulations would amend Schedule 1 to the Police Procedures and Criminal Evidence (Jersey) Law 2003 (the “2003 Law”). Schedule 1 to the 2003 Law lists offences that are serious offences for the purposes of the 2003 Law. The amendment adds to the list certain offences under the Drug Trafficking Offences (Jersey) Law 1988 (“DTOL”), the Proceeds of Crime (Jersey) Law 1999 (“POCL”) and the Terrorism (Jersey) Law 2002 (“TL”).

However, the purposes of the 2003 Law for which the offence is made a serious offence are restricted in certain cases. The restriction is that that the offence is not a serious offence for the purposes of Article 13 of the 2003 Law (the power, when authorized, to conduct a vehicle check where it is suspected that the vehicle is carrying a person who has committed, witnessed or intends to commit, a serious offence). The offences to which the restriction applies are marked below as “restricted application”.

The offences added to Schedule 1 to the 2003 Law are as follows –

- (a) Article 40 of DTOL: failure to disclose a knowledge or suspicion of drug money laundering (restricted application);
- (b) Article 40A of DTOL: failure, in a financial institution, to report a suspicion that another person is engaged in drug money laundering (restricted application);
- (c) Article 41 of DTOL: tipping- off (restricted application);
- (d) Article 32 of POCL: assisting another to retain the benefit of criminal conduct;
- (e) Article 33 of POCL: acquisition, possession or use of the proceeds of crime;
- (f) Article 34 of POCL: concealing or transferring the proceeds of crime;
- (g) Article 34A of POCL: failure to disclose a knowledge or suspicion of money laundering (restricted application);
- (h) Article 34D of POCL: failure, in a financial institution, to report a suspicion of money laundering (restricted application);
- (i) Article 35 of POCL: tipping-off (restricted application);
- (j) Article 37(4) of POCL: contravention of or failure to comply with the Money Laundering (Jersey) Order 2008 or any Order that from time to time replaces it (restricted application);
- (k) Article 15 of TL: offences connected with raising funds for use for terrorist purposes;
- (l) Article 16 of TL: use and possession of property for terrorist purposes;
- (m) Article 17 of TL: involvement in arrangements for making property (including money) available for terrorist purposes;
- (n) Article 18 of TL: laundering of terrorist property (including money);
- (o) Article 20 of TL: failure to disclose a suspicion of an offence under Articles 15 to 18 (restricted application);
- (p) Article 23 of TL: failure, in a financial institution, to report a suspicion of an offence under Articles 15 to 18 (restricted application);
- (q) Article 35 of TL: tipping-off and interfering with material relevant to an investigation (restricted application);
- (r) Article 50 of TL: providing weapons training for purposes connected with terrorism;
- (s) Article 51 of TL: directing a terrorist organization;
- (t) Article 52 of TL: possessing an article for purposes connected with the commission of an act of terrorism;
- (u) Article 53 of TL: collecting information for purposes connected with the commission of an act of terrorism;
- (v) Article 54 of TL: inciting another person to commit an act of terrorism outside Jersey.

The Regulations would come into force 7 days after they are made.



Jersey

DRAFT POLICE PROCEDURES AND CRIMINAL EVIDENCE (AMENDMENT OF SCHEDULE 1) (No. 1)(JERSEY) REGULATIONS 200-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Articles 3(10) and 113 of the Police Procedures and Criminal Evidence (Jersey) Law 2003^[1], have made the following Regulations –

1 Schedule 1 to the Police Procedures and Criminal Evidence (Jersey) Law 2003 amended

In Part 2 of Schedule 1 to the Police Procedures and Criminal Evidence (Jersey) Law 2003^[2] –

(a) for entry 6 there shall be substituted the following entry –

“6. In the Drug Trafficking Offences (Jersey) Law 1988^[3] –

(a) any of the offences mentioned in the definition ‘drug trafficking offence’ in Article 1(1); and

(b) Articles 40, 40A and 41 (except that an offence against any of these Articles is not a serious offence for the purposes of Article 13 of this Law).”;

(b) after entry 12 there shall be added the following entries –

“13. In the Proceeds of Crime (Jersey) Law 1999^[4] –

(a) Articles 32, 33 and 34; and

(b) Articles 34A, 34D, 35 and 37(4) (except that an offence against any of these provisions is not a serious offence for the purposes of Article 13 of this Law).

14. In the Terrorism (Jersey) Law 2002^[5] –

(a) Articles 15, 16, 17, 18, 50, 51, 52, 53 and 54; and

(b) Articles 20, 23 and 35 (except that an offence against any of these Articles is not a serious offence for the purposes of Article 13 of this Law).”.

2 Citation and commencement

These Regulations may be cited as the Police Procedures and Criminal Evidence (Amendment of Schedule 1) (No. 1) (Jersey) Regulations 200 and shall come into force 7 days after they are made.

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- [\[1\]](#) *chapter 23.750*
- [\[2\]](#) *chapter 23.750*
- [\[3\]](#) *chapter 08.580*
- [\[4\]](#) *chapter 08.780*
- [\[5\]](#) *chapter 17.860*