

STATES OF JERSEY



DRAFT UNITED NATIONS FINANCIAL SANCTIONS (JERSEY) LAW 201-

Lodged au Greffe on 18th October 2016
by the Minister for External Relations

STATES GREFFE



Jersey

DRAFT UNITED NATIONS FINANCIAL SANCTIONS (JERSEY) LAW 201-

European Convention on Human Rights

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

In the view of the Minister for External Relations, the provisions of the Draft United Nations Financial Sanctions (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator Sir P.M. Bailhache**
Minister for External Relations

Dated: 17th October 2016

REPORT

1. Background

- 1.1 Sanctions are used as one of Jersey's External Relations policy tools as part of a broader strategy, in line with the international community, to achieve a desired outcome from a target country or regime. They also demonstrate Jersey's commitment to meeting international obligations and standards in relation to the financial services industry, which includes combatting money-laundering and terrorist financing.
- 1.2 Sanctions are usually agreed and co-ordinated at an international level by the United Nations ("UN") Security Council, under Article 41 of the UN Charter. They may include travel, arms, financial and trade restrictions against the individuals and entities who are subject to the restrictions, and in some cases against broad sectors within a jurisdiction, for example, financial restrictions against banks.
- 1.3 The primary aim of all UN sanctions, as set out in Chapter VII of the UN Charter, is to implement decisions by its Security Council for the maintenance of international peace and security.
- 1.4 Sanctions may be imposed on an individual or entity ("the target") to –
 - (i) coerce the target into changing its behaviour, by increasing the cost on them to such an extent that they decide the offending behaviour is no longer optimal;
 - (ii) constrain the target, by trying to deny them access to key resources needed to continue their offending behaviour;
 - (iii) signal disapproval of the target as a way of stigmatising and potentially isolating them, or as a way of sending broader political messages to international or domestic constituencies.
- 1.5 Financial sanctions resolutions usually include a requirement for states to prohibit the transfer of funds and assets, directly or indirectly, to a sanctioned individual or entity, and a requirement to freeze their funds and assets "without delay". Other financial sanctions may also prohibit the provision of insurance and re-insurance, financial services, or financing for either specific sectors or target entities.

2. United Kingdom legislative proposals

- 2.1 The United Kingdom government has introduced to Parliament the Policing and Crime Bill, which includes provisions to address similar issues to those described below, and which are consistent with recommendations of the Financial Action Task Force ("FATF"). Subject to adoption by the UK Parliament, the Act will enable the UK to swiftly implement UN sanctions, by providing H.M. Treasury with a power, by Regulations (subject to a negative resolution of Parliament), to create a temporary financial sanctions regime to implement UN-mandated financial sanctions.

- 2.2 The temporary UK regime must include provisions to ensure the measures cease to have effect when the EU implements the UN-mandated regime, or after a default period, whichever is shorter. The default period must be no more than 30 days from the date of the UN Security Council Resolution, but may be extended for a further period of 30 days.
- 2.3 The temporary UK provisions would enable H.M. Treasury to impose a freeze on funds and prohibit making funds and economic resources available to a person who has been designated by the UN in connection with the relevant sanction's regime. Such Regulations may include ambulatory reference to the particular UN list, so that persons subsequently listed by the UN under that regime will be immediately designated under the temporary UK measures. There is provision for exceptions and derogations; for example, for a person's basic needs or legal representation. The maximum penalty for offences under the Regulations would be increased to 7 years' imprisonment, in line with terrorist asset-freezing regimes.

3. Sanctions in force in Jersey

- 3.1 Jersey currently has more than 20 international financial sanctions regimes in force, plus terrorism sanctions regimes targeting, amongst other entities, the Taliban, ISIL (Da'esh) and Al-Qaida. Jersey also implements terrorist financing restrictions through the Terrorist Asset-Freezing (Jersey) Law 2011 ("TAFL").
- 3.2 When sanctions are imposed by the UN, Jersey acts in compliance with its international obligations to give effect to the sanctions in Jersey law. These measures can be introduced in Jersey in one of 3 ways –
- UN sanctions are implemented by the EU and, once implemented through EU Regulations, they are given effect in Jersey together with enforcement provisions by sanctions Orders made by the Minister for External Relations, under provisions of the European Union Legislation (Implementation) (Jersey) Law 2014 ("EU Implementation Law").
 - In the case of terrorism sanctions, the assets of persons designated by the UN terrorism sanctions Committees are frozen directly and without delay in accordance with Article 2 of TAFL.
 - Further provisions are available, in specific circumstances, to implement financial sanctions in Jersey under the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012 ("MLWDD Law").

4. Issues addressed by the Draft United Nations Financial Sanctions (Jersey) Law 201- ("the Law")

- 4.1 The following concerns arise under the existing process to implement sanctions –
- Due to the processes by which EU legislation is drafted, which involves translation into several languages, and the need for sanctions legislation to be brought into force by the Foreign Affairs Council of the European Union, there can be a delay of some weeks before UN Security Council sanctions resolutions are given effect.

- Under TAFL, the maximum penalty for dealing with frozen funds or making frozen funds available to or for the benefit of a designated person, etc. is 7 years and a fine. In comparison, the EU Implementation Law provides for the maximum penalty under a sanctions Order to be not more than 2 years' imprisonment and a fine, and the maximum penalty for contravention of a requirement imposed by a Direction under the MLWDD Law is 2 years and a fine. The principal aims of the Law are therefore to address 3 issues, as discussed further below –

- (i) to minimise delay in implementing asset-freezes for non-terrorism UN sanctions resolutions;
- (ii) to balance the need to immediately implement financial restrictions with due regard to the human rights of individuals affected;
- (iii) and to resolve an inconsistency in the maximum penalties available for related offences arising under different legislation.

4.2 The Law would also apply or mirror, with adjustments where necessary, relevant supplementary provisions of TAFL (Articles 21–29, 33, 34, 36 and 38 and the Schedule) in the case of a person designated under the Law. In particular, those Articles include provisions regarding –

- the reporting obligations of financial institutions;
- powers and duties in connection with the disclosure of information to or by the Minister;
- and, most importantly, provisions for appeal to the Royal Court against a designation decision.

4.3 An appeal against designation under the Law in direct consequence of designation in the UK, by Regulations made under the Policing and Crime Bill, would ordinarily lie in the UK. Similarly, appeal against a decision of the EU to designate a person would be made to the European Court. However, if a person has been designated in Jersey by the Minister for External Relations, either on an interim or final basis, the person may appeal against that decision to the Royal Court.

5. Without Delay

5.1 The Law will enable Jersey to comply with its international treaty obligations under the United Nations Charter. The UN ordinarily requires states to put financial sanctions restrictions into place “without delay”. While there is no definition of “without delay”, the FATF have said that restrictions should ideally be in place “within hours”, and at most within 48 hours.

5.2 Historically, the EU has taken significantly longer than 48 hours, often some weeks, to implement new UN-mandated financial sanctions regimes. This delay exposes Jersey to the risk of asset flight from UN-listed persons, and potentially places Jersey in breach of its international obligations. In order to avoid these issues, the Law would create a mechanism for an interim financial sanctions regime to temporarily implement the UN-mandated financial sanctions resolution, until the equivalent EU measures have been brought into force or the Minister has made a final Order.

- 5.3 The draft Law generally builds on the established provisions of the TAFL to apply an immediate asset-freeze to a person who has been designated by a non-terrorism UN financial sanctions resolution. It does so by parallel with the existing TAFL mechanism for the Minister to make an “interim” or “final” designation to implement a UN non-terrorism financial sanctions resolution. It should be noted that a “designated person” may be a natural person or a corporate body or organisation.
- 5.4 The Law would therefore implement asset-freezing restrictions in respect of a “designated person”, as defined in Article 3, who is a person who is a temporary UK-designated person (a UN-listed person in relation to whom the UK has implemented a relevant UN financial sanctions resolution, but only where Jersey’s Minister has made an Order specifying the provision of UK law under which the resolution has been implemented), a temporary EU-designated person (a UN-listed person in relation to whom the EU has implemented the relevant UN financial sanctions) and/or a person designated under either an interim or final asset-freezing Order made by the Minister for External Relations.
- 5.5 The Minister can make an interim asset-freezing Order to implement a UN sanctions resolution. The Minister must be satisfied that –
- the resolution appears to be a UN financial sanctions resolution;
 - there is an urgent need to implement it;
 - it is proportionate to do so on an interim basis.
- 5.6 The Order must specify the UN sanctions resolution (meaning that a person who becomes UN-listed at any given time becomes designated).
- 5.7 Each interim asset-freezing Order will include a sunset provision so that it expires after 30 days, or sooner if there is an EU Order made or the UN resolution itself expires.
- 5.8 The Minister can make a final asset-freezing Order to implement a UN sanctions resolution. The Minister must be satisfied that –
- the resolution is in fact a UN financial sanctions resolution;
 - it requires the full asset-freezing regime in Part 3 to be applied, or that doing so is a proportionate way to implement the resolution in Jersey.
- 5.9 The Order must describe the persons who are designated, but must do so by reference to the UN list, and can also make ambulatory reference to the UN list so that designation is automatically updated.
- 5.10 Each final asset-freezing Order will include a sunset provision of 12 months, but this can be renewed indefinitely.
- 5.11 The Minister must also take account of whether the EU has implemented or not. Where it has not, the Minister must look at the reason for that, but can still make the final Order if appropriate. Where the EU has implemented, the Minister must look at whether it is still effective and proportionate to make the final Order instead of using other legislation to implement the EU Regulation itself.

5.12 In addition, Article 3 of the Law includes a provision that the Minister may by Order provide that a particular UN-listed person is not a designated person for the purposes of the Law. It also provides a power for the Minister to provide that a corrected identity, description or history of a particular UN-listed person is to apply where he is satisfied that there is an inaccurate reference to Jersey, or a matter relating to Jersey, in the identity.

6. Human rights considerations

6.1 The Law would provide that, if a person is designated, no person may deal with the funds or other economic resources belonging to or held, directly or indirectly, by that person, including transferring frozen funds or enabling them to be used in any way. Designation also prohibits making funds, economic resources or financial services available to, or for the benefit of, a designated person. There are specific exceptions, including receipt of interest or other payments credited to a frozen account, payments due under contract before the asset-freeze was introduced, and receipt of social security benefits.

6.2 Whilst asset-freezing is a necessary measure in certain circumstances, freezing the assets of a designated person may have drastic consequences for the individual concerned, and any family members or business interests. Accordingly, asset-freezing should not be undertaken without due consideration of the personal and social impact and human rights implications.

6.3 For these reasons, the Law would provide a number of safeguards to protect the interests, rights and freedoms of individuals as far as reasonably possible without defeating the purposes of the Law. The human rights aspects of this Law are properly considered in a Note prepared by the Law Officers' Department in the **Appendix** to this Report, for the information of States Members.

7. Penalties

7.1 There is inconsistency between the perceived seriousness of an offence and maximum level of penalty applicable in the event of a breach of a sanctions measure made under the EU Implementation Law, MLWDD Law and TAFL.

7.2 The relevant offences and maximum penalties are currently as listed below –

TAFL provision	Offence	Maximum penalty
Article 13	Failure to freeze funds and economic resources	Imprisonment for up to 7 years and a fine
Article 14	Making funds or financial services available to designated person	Imprisonment for up to 7 years and a fine
Article 15	Making funds or financial services available for benefit of designated person	Imprisonment for up to 7 years and a fine
Article 16	Making economic resources available to designated person	Imprisonment for up to 7 years and a fine
Article 17	Making economic resources available for benefit of designated person	Imprisonment for up to 7 years and a fine

Sanctions Orders under EU Implementation Law	Offence	Maximum penalty
Article 2(1) Implementation of EU provisions through Orders	Contravention of a provision that may be made by Order under paragraph (1)	Imprisonment for up to 2 years and a fine
MLWDD Law provision	Offence	Maximum penalty
Article 14	Failure to comply with a requirement imposed by a direction	Imprisonment for up to 2 years and a fine

- 7.3 Whilst the requirements of the EU Implementation Law and MLWDD Law do not relate to terrorism or terrorist financing, it is possible that the equivalent offences relating to breaches of sanctions under these Laws could be as serious as an offence committed under the TAFL.
- 7.4 For this reason, it is proposed that the relevant maximum penalties in each case should be commensurate, and would be appropriately set at a maximum of imprisonment for up to 7 years and a fine in each instance.
- 7.5 It is noted that FATF recommends that the penalties for sanctions-related offences should reflect the seriousness of the offence and be sufficiently dissuasive. The UK Policing and Crime Bill (2016) similarly proposes to increase the penalties for equivalent offences under UK legislation, namely the European Communities Act 1972, the Anti-Terrorism, Crime and Security Act 2001 and the Counter-Terrorism Act 2008.
- 7.6 The Law would accordingly amend the EU Implementation Law and the MLWDD Law to increase the relevant penalties to match those under the TAFL.
- 7.7 The Law includes a maximum penalty of 5 years' imprisonment for breach of a licence and amends the TAFL penalty for a similar breach from 2 to 5 years' imprisonment.

8. Coming into force

The Law includes provision for the Minister to bring the Law into force by Order. This would allow the Law to come into force soon after the equivalent provisions of the UK's Policing and Crime Bill enter into force. Such provision enables Jersey to comply with its international obligations in a timely manner and avoids the delay that would necessarily result from the use of an Appointed Day Act.

9. Financial and manpower implications

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

10. Human 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.**

**Human Rights Notes on the
Draft United Nations Financial Sanctions (Jersey) Law 201-**

These Notes have been prepared in respect of the Draft United Nations Financial Sanctions (Jersey) Law 201- (“**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law would enable the Minister for External Relations (“**Minister**”) to implement financial sanctions required by the United Nations (“**UN**”). Amongst other things, the provisions in the draft Law cover the application of asset-freezing orders, compliance with freezing-orders and reporting obligations, and the appeal and review of Orders and the Minister’s decisions. From a human rights perspective, the draft Law engages rights to private life and property and elements of the right to a fair trial.

Article 6 ECHR – The right to a fair trial

Article 6(1) ECHR entitles an individual to a fair and public hearing in the determination of his civil rights or obligations or any criminal charge against him. Article 6 ECHR is engaged principally by 2 aspects of the draft Law: appeal and review provision in Article 17(1) and (2), and the rules relating to proceedings dealt with by Article 17(3).

Appeal and review

For the safeguards guaranteed by Article 6 ECHR to be applicable there must be a “determination of civil rights or obligations”. The imposition of an asset-freezing Order under Part 2 will be a decision that impacts upon civil rights and obligations for Article 6(1) ECHR purposes, notably the interference with the right to free enjoyment of property (see discussion further below). As a result, Article 6 ECHR is applicable in the context of the decision of the Minister to impose an Order and other matters, and the review of those decisions under Article 17 of the draft Law.

Article 6(1) ECHR requires that civil rights be determined by an “independent and impartial tribunal”. The process of determining rights and obligations under the draft Law will be compatible with Article 6 ECHR as a whole on the basis that the Minister’s decisions are subject to subsequent control by a judicial body that has full jurisdiction and provides the guarantees of Article 6(1) ECHR. That body is the Royal Court, who will hear appeals against the Minister’s decisions under the draft Law, under Article 17(1) and (2) (applying Articles 28 and 29 of the Terrorism Asset-Freezing (Jersey) Law 2011 (“**Terrorism Law**”).

In this case, the ability to appeal to the Royal Court under the provisions in Article 28 and to seek judicial review under Article 29 of the Terrorism Law is sufficient to make the process of determining civil rights and obligations under the draft Law compatible with Article 6 ECHR. With regard to Article 28 of the Terrorism Law, it is relevant to note that the provision does not seek to restrict the nature or ground of an appeal, and allows flexibility in the appeal grounds. Moreover, the Court has, under Article 28(3)

of the Terrorism Law, the power to make such order as it thinks appropriate, and that could conceivably be to quash, vary or remit the Minister's Order.

Regarding an application for a review under Article 29 of the Terrorism Law, Article 28(3) provides that the Court must apply the principles applicable on an application for judicial review. The influence of human rights obligations on the Royal Court and modern perspectives of the judicial review jurisdiction would suggest that the Royal Court, in practice, would adopt an expansive judicial review scope that would ensure that the ultimate determination of civil rights pursuant to the review would be compatible with Article 6(1) ECHR standards.

Closed procedures

Article 17(3) of the draft Law applies paragraphs 2 to 5 of the Schedule to the Terrorism Law in relation to proceedings and appeals under Article 17(1) and (2) of the draft Law, i.e. appeal against a decision of the Minister and application for decision to be set aside. Paragraphs 3 to 5 of the Schedule to the Terrorism Law contain provisions relating to the making of rules of court to be applicable in proceedings pursuant to the draft Law, the disclosure of material relied upon by the Minister or affecting or supporting his case, and the appointment of special counsel whose role it is to represent the interests of a party to proceedings, and their representative, from which they are excluded.

Typical civil procedure, and Article 6 ECHR procedural safeguards, require that a party to proceedings is entitled to know the allegations against him and to see the evidence relied on. Courts have interpreted Article 6 ECHR as requiring that individuals are given sufficient information to enable them to give effective instructions in order to refute allegations against them. It may be permissible in certain cases, in view of pressing public interest concerns, to override this imperative.

The draft Law permits proceedings and court rules in relation to the review of the imposition of asset-freezing orders to adopt "closed procedures", i.e. procedures which depart from ordinary rules relating to disclosure, hearings and information. Paragraph 3 of the Schedule to the Terrorism Law provides that rules of court may make provision, amongst other things, enabling proceedings to take place without full particulars of the reasons for decisions being given to a party to the proceedings. Paragraph 4 of the Schedule provides that rules of court may make provision, amongst other things, enabling the Minister to apply to court for permission not to disclose material relevant to proceedings or that such material is considered in the absence of parties to the proceedings.

The provisions in the Schedule to the Terrorism Law are largely similar to provisions in the Counter-Terrorism Act 2008¹ which were incorporated by reference in the Terrorism Asset-Freezing Act 2010 ("**UK Terrorism Act**"). The ECHR assessment of the effect of these provisions in the context of the UK Terrorism Act noted that the issue of the compatibility of the use of closed material and special advocates with Article 6(1) ECHR had been considered a number of times in the UK and in the European Court of Human Rights ("**ECtHR**"), particularly in connection with control orders. The House of Lords, in *Secretary of State for the Home Department v AF (No. 3)*² considered that, following the decision of the ECtHR in *A v United Kingdom*³, the controlled person had to be given sufficient information about the allegations

¹ Sections 66 and 67

² [2009] UKHL 28

³ (Application No. 3455/05), ruling 20th February 2009

against him to be able to give effective instructions to the special advocate in respect of the controlled person, and concluded that “provided that requirement was satisfied, there could be a fair trial notwithstanding that he was not provided with the detail or sources of the evidence forming the basis of the allegations⁴.”

In the context of the draft Law, compatibility with Article 6 ECHR in this respect should be achieved in by ensuring that the designated person subject to an Order and who is challenging a Minister’s decision is given sufficient information to discharge the Article 6 ECHR obligation. A notable safeguard in this context is in paragraph 4(5) of the Schedule to the Terrorism Law, which expressly states that nothing in the rules around disclosure or in provisions relating to the making of court rules in the Terrorism Law is to be read as requiring the courts to act in a manner that is inconsistent with Article 6 ECHR. The provisions can be considered compatible with Article 6 ECHR in principle, but must be applied so as to strike a fair balance between the Article 6 ECHR rights of the individual and the public interest.

Article 8 ECHR – The right to respect for private and family life

Parts 2 and 3 of the draft Law contain provisions relating to the making of asset-freezing Orders and their effect, which engage the right to respect for private and family life under Article 8 ECHR. In particular, Articles 4 and 6 of the draft Law allow the Minister to make an interim asset-freezing Order and a final asset-freezing Order, respectively, to implement a UN sanctions resolution. The effect of such Orders is that any person who is, or becomes, a UN-listed person under a UN sanctions resolution is designated for the purposes of the draft Law. As a designated person this, in turn, means that the person in question becomes subject to the asset-freezing provisions in Part 3 of the draft Law. The effect of the provisions in Part 3 of the draft Law is, amongst other things, that a designated person is prevented from having access to funds and financial services, unless the Minister grants a licence under Article 13 dis-applying those provisions.

The private life element of Article 8(1) ECHR incorporates, amongst other things, protection for the moral and physical integrity of the person, the right to live life privately, and the right to have relationships with other people. The family life element of Article 8(1) ECHR protects family relationships and matters essential to those relationships. As noted above, the scope of the effect of the imposition of an asset-freezing Order is extensive, and have the potential to constitute an interference with the Article 8(1) ECHR right to family and private life.

Any interference with the Article 8(1) right must be justified under Article 8(2), meaning it must be: (a) in accordance with the law; (b) in pursuit of one of the legitimate aims set out in Article 8(2); and (c) necessary in a democratic society. “Necessity” requires the identification of a pressing social need and the existence of “relevant and sufficient” reasons to justify the interference at issue. A measure will only be proportionate to the legitimate aim if supported by sufficiently persuasive reasons.

The nature of interference constituted by the provisions in the draft Law would be deemed to be ‘in accordance with the law’; those provisions have a basis in domestic law and can be viewed as sufficiently precise and accessible, therefore being foreseeable.

⁴ Paragraph 59

In terms of what is “necessary in a democratic society”, this requires there to be a pressing social need for the interference in question. The rationale for the provisions in Parts 2 and 3 of the draft Law is to enable Jersey to meet its international obligations as regards sanctions, which in turn have peace and security objectives. Asset-freezing powers and associated prohibitions are “necessary” for meeting these standards, and obligations and security and prevention of crime is a clear and pressing social need in any context. An interference pursuant to these provisions and in pursuit of the draft Law’s objectives would fall neatly within the national security and prevention of crime categories of justification under Article 8(2) ECHR.

In terms of proportionality, while there could be an interference with the Article 8 ECHR right under the provisions in the draft Law, the licensing system in Article 13 of the draft Law would allow a fair balance to be struck in the imposition of asset-freezing Orders, depending on the nature of the particular case. The draft Law also contains provision enabling a designated person to appeal to the Royal Court or seek the setting aside of a decision of the Minister. Taken as a whole, the proposed powers in Parts 2 and 3 of the draft Law are proportionate, when supported by the strength of rationale for the freezing of assets.

Article 1 of the First Protocol of the ECHR (“A1P1”) – Right to property

As noted above, Parts 2 and 3 of the draft Law contains provisions relating to the making and effect of asset-freezing Orders. A1P1 provides that every person (natural or legal) is entitled to the peaceful enjoyment of his possessions and that no-one shall be deprived of their possessions, except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The provisions in Parts 2 and 3 of the draft Law engage the right to property guaranteed by A1P1 which includes, within its ambit of “possessions”, the types of assets to which the draft Law applies, e.g. cash, deposits, interest. The nature and effect of the asset-freezing provisions contained in Parts 2 and 3 of the draft Law is that a person’s funds and economic resources are frozen, and those provisions will also prohibit making funds, economic resources or financial services available to or for the benefit of a designated person. These provisions can include restrictions on the enjoyment of the property of others (notably through restrictions on the provision of such property to a designated person). These provisions will constitute a considerable interference with the A1P1 rights of designated persons, and will amount to either a deprivation of property or at least a control of use of their property.

Much of the assessment of justification for an interference under A1P1 is similar to that discussed above in relation to Article 8 ECHR. For an interference with the A1P1 right to be lawful, it must be “necessary” and meet a “pressing social need”. The primary aim of UN Sanctions is to implement decisions by the UN Security Council for the maintenance of international peace and security. The draft Law, and the asset-freezing provisions in particular, are aimed at addressing these wider objectives specifically, in addition to demonstrating Jersey’s commitment to meeting international obligations and standards in relation to the financial services industry. Implementing provisions in pursuit of strategies for the maintenance of peace and security is an obviously permissible aim for the state to pursue, so would be deemed “necessary” and in pursuit of a “pressing social need”. It should also be noted that, where property rights are concerned, states have a considerable margin of appreciation in determining the existence of a problem of general public concern, such as combatting the types of activities to which UN sanctions are aimed at addressing, and in implementing measures designed to meet it, such as an asset-freezing system. A

final point to note here is that the interference with the A1P1 rights would be considered to be lawful because the prohibitions are sufficiently accessible and certain, i.e. contained in clearly expressed statutory provisions.

A measure interfering with the A1P1 right must also be proportionate to achieving the identified “social need”, and must constitute the least restrictive way of interfering with individual rights. As noted above with respect to Article 8 ECHR, a fair balance has been struck between the public interest and the interests of the property-owner in particular by means of the licensing system in Article 13, which allows controlled access to funds. As such, the framework of provisions under which there can be an interference with property is compatible with A1P1 in principle, but the provisions must be applied in a proportionate manner, with concessions under the licensing system introduced where required to prevent the designated person being faced with an individual and excessive burden.

Explanatory Note

This draft Law would enable the Minister for External Relations to implement financial sanctions required by the United Nations (“UN”). In particular the UN sanctions could be implemented without waiting for them to be implemented by the European Union first and then making an Order under Article 2(1)(b) of the European Union Legislation (Implementation) (Jersey) Law 2014 (the “EU Implementation Law”). The Law does not cover UN sanctions against terrorists, which are already separately provided for in the Terrorist Asset-Freezing (Jersey) Law 2011 (the “Terrorist Asset-Freezing Law”), but makes provision modelled on that Law in several respects.

Part 1 contains interpretation provisions.

Article 1 contains general definitions. The “Minister” is defined as the Minister for External Relations. A “UN sanctions resolution” is defined as a UN Security Council resolution adopted under Article 41 of the UN Charter. Several expressions are given the same meanings as in the Terrorist Asset-Freezing Law.

Article 2 defines “UN financial sanctions resolution” and “UN-listed person”. A “UN sanctions resolution” is defined as a UN financial sanctions resolution that requires states to impose a prohibition to freeze funds or economic resources of specified persons, prevent funds or economic resources being made available to specified persons, or prohibit access to financial markets or financial services by specified persons. The persons may be specified in the UN financial sanctions resolution itself, or in another UN sanctions resolution, or in another instrument drawn up by an organ of the UN for the purpose. A “UN-listed person” is defined as a person who is specified in that way in relation to such a prohibition under a UN financial sanctions resolution. The UN resolution may require other measures to be taken in addition to asset-freezing (such as travel bans or export restrictions), but that does not prevent it counting as a UN financial sanctions resolution. However, if there is a person against whom the resolution requires only those additional measures to be taken, who is not to be subjected to any of the asset-freezing prohibitions, that person will not count as a UN-listed person (and accordingly cannot be a designated person or be subject to asset-freezing under *Part 3*).

Article 3 defines “designated person” as a “temporary UK-designated person”, a “temporary EU-designated person”, or a person designated by virtue of an interim or final asset-freezing Order. A “temporary UK-designated person” is a UN-listed person in relation to whom the United Kingdom has implemented the relevant UN financial sanctions resolution. But that applies only if the Minister has made an Order specifying the provision of United Kingdom law under which the resolution has been implemented, and only lasts for 30 days from the adoption of the UN resolution. A “temporary EU designated person” is a UN-listed person in relation to whom the EU has implemented the relevant UN financial sanctions resolution. But that only lasts until the EU provision is implemented in Jersey (under the EU Implementation Law), or until 30 days after the adoption of the UN resolution (if the EU provision is not implemented in Jersey within that time).

A person is not treated as designated under this Law at any time at which that person is designated under the Terrorist Asset-Freezing Law. The asset-freezing provisions of this Law are based on those of that Law, so the effect of designation is very similar.

The Minister can, by Order, provide that a particular UN-listed person is not a designated person, despite falling within any of the definitions that otherwise apply. If a list drawn up by the UN, the United Kingdom or the EU contains an inaccurate reference in relation to Jersey in the identity, description or history of a UN-listed person, the Minister can, by Order, correct that reference for the purpose of this Law.

Part 2 contains provisions about asset-freezing Orders.

Article 4 allows the Minister to make an interim asset-freezing Order to implement a UN sanctions resolution. The power is available if the Minister considers that the resolution appears to be a UN financial sanctions resolution, that there is an urgent need to implement the resolution, and that it is proportionate to do so on an interim basis to avoid a risk that the resolution might not otherwise be implemented effectively. The Order must specify the UN resolution. The effect is that any person who is, or becomes (including after the Order is made), a UN-listed person under that resolution is designated for the purpose of this Law.

Article 5 requires an interim asset-freezing Order to include a sunset provision, so that the Order expires 30 days after the adoption of the UN resolution. The Order will expire sooner if it is replaced by an Order under the EU Implementation Law that implements an EU provision that in turn implements the same UN resolution, or if the UN resolution itself expires. The time limit can be extended beyond the 30 days, but only once and only to 60 days at most.

Article 6 allows the Minister to make a final asset-freezing Order. A final Order can only be made if the resolution is in fact a UN financial sanctions resolution (a higher hurdle than the Minister considering that it appears to be one). The Minister must also consider that the resolution requires the full asset-freezing regime in *Part 3* to be applied (taking account of the power to grant licences so that the regime may not apply in full in every case), or at least that applying the full regime is a proportionate way to implement the resolution in Jersey. The Minister must take account of whether the EU has implemented the UN resolution, in which case the Minister must consider whether instead to implement it under the EU Implementation Law. If the EU has not implemented the UN resolution, the Minister must consider whether there is a reason to implement it under this Law despite whatever led the EU not to implement it. A final Order must include a sunset clause under which it expires after no more than 12 months (but it can be amended or renewed, starting a fresh 12 month period each time). A final Order must describe the persons who are designated, but can do so by reference to the UN list and can also make ambulatory reference to the UN list, so that the designation is automatically updated when the UN amends its list (whether by adding or removing a person, or amending their identifying details).

Part 3 contains asset-freezing and reporting obligations that apply when a person is designated under an interim or final Order. The provisions reproduce, with necessary adjustments, those in Articles 13 to 21 of the Terrorist Asset-Freezing Law.

Article 7 prohibits dealing with the funds or economic resources of a designated person. It reproduces the effect of Article 13 of the Terrorist Asset-Freezing Law. It is an offence, carrying imprisonment for up to 7 years and an unlimited fine (or both), to contravene the prohibition.

Article 8 prohibits making funds or financial services available to a designated person. It reproduces the effect of Article 14 of the Terrorist Asset-Freezing Law. It is an

offence, carrying imprisonment for up to 7 years and an unlimited fine (or both), to contravene the prohibition.

Article 9 prohibits making funds or financial services available to another person for the benefit of a designated person. It reproduces the effect of Article 15 of the Terrorist Asset-Freezing Law. It is an offence, carrying imprisonment for up to 7 years and an unlimited fine (or both), to contravene the prohibition.

Article 10 prohibits making economic resources available to a designated person. It reproduces the effect of Article 16 of the Terrorist Asset-Freezing Law. It is an offence, carrying imprisonment for up to 7 years and an unlimited fine (or both), to contravene the prohibition.

Article 11 prohibits making economic resources available to another person for the benefit of a designated person. It reproduces the effect of Article 17 of the Terrorist Asset-Freezing Law. It is an offence, carrying imprisonment for up to 7 years and an unlimited fine (or both), to contravene the prohibition.

Article 12 provides exceptions to the prohibitions in *Articles 7, 8 and 9*. It reproduces the effect of Article 18 of the Terrorist Asset-Freezing Law. It allows financial services institutions to credit frozen accounts with certain amounts, and allows payment of social security benefits to other persons in respect of designated persons. The financial services institution must notify the Minister when it credits the account (a contravention is not an offence in itself, but can be restrained by injunction).

Article 13 provides for the Minister to grant licences to do what is otherwise prohibited by *Articles 7 to 11*. It reproduces the effect of Article 19 of the Terrorist Asset-Freezing Law. Licences can be general or particular, conditional or unconditional, and limited or unlimited in duration. It is an offence, carrying imprisonment for up to 5 years and an unlimited fine (or both), to provide false information or a false document to obtain a licence. It is also an offence, carrying the same penalty, to fail to comply with a condition on a licence. The equivalent maximum prison sentences, in Articles 19(6) and (7) of the Terrorist Asset-Freezing Law, are currently set at 2 years, but see notes on *Article 23* below for the corresponding amendment to increase the penalties from 2 to 5 years in the Terrorist Asset-Freezing Law.

Article 14 prohibits activities to circumvent the prohibitions in *Articles 7 to 11*. It reproduces the effect of Article 20 of the Terrorist Asset-Freezing Law. It is an offence, carrying imprisonment for up to 7 years and an unlimited fine (or both), to contravene the prohibition.

Article 15 requires a financial services institution to report to the Minister when it knows, or has reasonable cause to suspect, that it holds an account of (or has been approached on behalf of) a designated person. It reproduces the effect of Article 21 of the Terrorist Asset-Freezing Law. It is an offence, carrying imprisonment for up to 12 months and a fine of up to level 3 on the standard scale (or both), to fail to comply with the requirement. Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, as recently amended by the Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016, level 3 on the standard scale is £10,000.

Part 4 contains miscellaneous and final provisions.

Article 16 makes provision in relation to information, by applying Articles 22, 23, 25, 26 and 27 of the Terrorist Asset-Freezing Law, subject to adaptations. Those Articles enable the Minister to demand information and require the production of documents,

and to disclose information to relevant persons. The Articles also set out the relationship of these functions to other legislation on information, and require the Attorney General and the Minister to take appropriate steps to co-operate with investigations in Jersey or elsewhere. Paragraphs (2), (3) and (4) reproduce the effect of Article 24 of the Terrorist Asset-Freezing Law. They make it an offence, carrying imprisonment for up to 12 months and a fine of up to level 3 on the standard scale (or both), to fail to comply with a demand for information (and a court convicting a person of the offence can make orders to secure compliance). These paragraphs also make it an offence to provide false information, destroy documents or otherwise obstruct the Minister, but that offence carries imprisonment for up to 2 years and an unlimited fine (or both), to match the equivalent increase in penalty for the equivalent offences in Article 24 of the Terrorist Asset-Freezing Law (see note on *Article 23(c)* below).

Article 17 makes provision in relation to appeals to the Royal Court against the Minister's decision to make (or amend or renew) an asset-freezing Order in relation to a person, or to refuse to make an Order under *Article 3* to prevent the person being designated (see note above) by an asset-freezing Order. It also makes provision in relation to reviews by the Royal Court of other decisions by the Minister under the Law. It does so by applying Articles 28 and 29 of, and the Schedule to, the Terrorist Asset-Freezing Law (and adapts the rules of court that apply to cases under that Law, unless the rules provide otherwise).

Article 18 makes provision in relation to offences. It applies Articles 33 and 36 of the Terrorist Asset-Freezing Law, which provide for the extra-territorial application of offences, and make special provision for unincorporated associations. It also makes the standard provision in relation to bodies corporate and certain types of partnership, for directors and other similar offices to be liable for offences committed with their consent or connivance or attributable to their neglect.

Article 19 applies Article 38 of the Terrorist Asset-Freezing Law, which allows the Minister to delegate his or her functions under this Law.

Article 20 allows the States, by Regulations, to amend any of Articles 1, 2, 3, 4, 6 and 18 of this Law (except Article 6(4) which is the sunset provision). It also allows the States, by Regulations, to amend other relevant legislation to cater for the changes made by this Law and to provide for whether breaches of this Law are to be treated as money laundering for the purposes of the other legislation.

Article 21 allows Orders and Regulations under this Law to contain transitional, consequential, incidental and supplementary provisions.

Article 22 amends the EU Implementation Law, in relation to Orders under Article 2 of that Law, which implement EU provisions in Jersey. It increases the penalty that can be imposed by such an Order to imprisonment for up to 7 years, where the Order implements an EU sanction (and leaves it at 2 years in other cases). It also allows such an Order, if it implements an EU sanction that in turn implements a UN financial sanctions resolution, to include provision that when a person is later added by the UN to the list of those subject to an asset-freeze under that resolution, that person should immediately be treated on an interim basis as if already listed by the EU, before the EU amends its list in response to the UN. The deemed interim listing only lasts for a maximum of 30 days (or until the EU does update its list, or the UN withdraws its listing of the person, if either of those happens within the 30 days).

Article 23 amends the Terrorist Asset-Freezing Law. It updates the reference in Article 2 of that Law to the UN sanctions list relating to Al-Qaida, which now also applies to ISIL (Da'esh). It also adds provision that limits the effect of automatic designation under Article 2(d) of that Law (by virtue of appearing on UN lists relating to terrorism), so that the designation expires after 30 days at the latest (assuming the person has not been removed from the UN list in that time), unless the person becomes designated within that time under one of the other provisions in Article 2 of that Law (by the Minister, the UK or the EU). In addition it increases, from 2 years to 5 years, the maximum term of imprisonment for an offence under 19(6) and (7) of that Law in relation to a licence. Lastly, in paragraph (c), it amends Article 24 of that Law to increase, from 12 months to 2 years, the maximum term of imprisonment (and to remove the limit on a fine) for the offences of providing false information, destroying documents or otherwise obstructing the Minister (which are offences that can only be committed knowingly, recklessly or intentionally).

Article 24 amends the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012. It increases, from 2 years to 7 years, the maximum term of imprisonment for an offence under the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012.

Article 25 names the Law. It also gives the Minister the power to make an Order to bring the Law into force on a date or dates specified by, or calculated under, the Order (similar to an Appointed Day Act made by the Assembly, but not subject to the 4 week lodging period).



Jersey

DRAFT UNITED NATIONS FINANCIAL SANCTIONS (JERSEY) LAW 201-

Arrangement

Article

PART 1	23
INTERPRETATION	23
1 Interpretation	23
2 Meaning of “UN financial sanctions resolution” and “UN-listed person”	24
3 Meaning of “designated person”	25
PART 2	26
ASSET-FREEZING ORDERS	26
4 Interim asset-freezing Order to implement UN financial sanctions resolution.....	26
5 Interim asset-freezing Order: sunset provision	27
6 Final asset-freezing Order	27
PART 3	28
ASSET-FREEZING AND REPORTING	28
7 Freezing of funds and economic resources	28
8 Making funds or financial services available to designated person	29
9 Making funds or financial services available for benefit of designated person	29
10 Making economic resources available to designated person.....	29
11 Making economic resources available for benefit of designated person.....	29
12 Exceptions	30
13 Licences.....	30
14 Circumventing prohibitions etc.....	31
15 Reporting obligations of relevant institutions	31
PART 4	32
MISCELLANEOUS AND FINAL	32

16	Information	32
17	Appeal and review	33
18	Offences	34
19	Delegation	35
20	Power to make amendments by Regulations	35
21	Orders and Regulations.....	35
22	Amendment of European Union Legislation (Implementation) (Jersey) Law 2014	36
23	Amendment of Terrorist Asset-Freezing (Jersey) Law 2011.....	37
24	Amendment of Money Laundering and Weapons Development (Directions) (Jersey) Law 2012	37
25	Citation and commencement.....	38



Jersey

DRAFT UNITED NATIONS FINANCIAL SANCTIONS (JERSEY) LAW 201-

A LAW to enable financial sanctions, required by United Nations Security Council resolutions, to be implemented in Jersey, and for related purposes.

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 –

PART 1

INTERPRETATION

1 Interpretation

- (1) In this Law, unless the context otherwise requires –
- “designated person” has the meaning given by Article 3;
 - “EU” has the meanings given by the EU Implementation Law;
 - “EU Implementation Law” means the European Union Legislation (Implementation) (Jersey) Law 2014¹;
 - “EU provision” has the meanings given by the EU Implementation Law;
 - “interim asset-freezing Order” means an Order made under Article 4;
 - “final asset-freezing Order” means an Order made under Article 6;
 - “Minister” means the Minister for External Relations;
 - “person” includes an organization, an unincorporated body, and any other association or combination of persons;

“Terrorist Asset-Freezing Law” means the Terrorist Asset-Freezing (Jersey) Law 2011²;

“UN financial sanctions resolution” has the meaning given by Article 2(1);

“UN-listed person” has the meaning given by Article 2(2);

“UN sanctions resolution” means a resolution adopted by the UN Security Council under Article 41 of the Charter of the United Nations;

“UN Security Council” means the Security Council of the United Nations.

- (2) In this Law each of the following expressions has the same meaning as in the Terrorist Asset-Freezing Law –

“directly or indirectly”;

“economic resources”;

“financial services”;

“funds”;

“owned, held or controlled”;

“relevant institution”.

2 Meaning of “UN financial sanctions resolution” and “UN-listed person”

- (1) In this Law “UN financial sanctions resolution” means a UN sanctions resolution that requires states to impose a prohibition for one or more of the following purposes –
- (a) freezing funds or economic resources owned, held or controlled directly or indirectly by a person specified in –
 - (i) the UN sanctions resolution itself,
 - (ii) another UN sanctions resolution, or
 - (iii) an instrument made by an organ of the United Nations for the purpose of the UN sanctions resolution;
 - (b) preventing funds or economic resources being made available to, or for the benefit of a person so specified;
 - (c) prohibiting access to financial markets or financial services by, or for the benefit of a person so specified.
- (2) In this Law “UN-listed person” means a person who, in relation to a UN financial sanctions resolution, is specified in a manner described in a subparagraph of paragraph (1) for a purpose falling within that subparagraph.
- (3) For the purposes of this Article it is irrelevant whether the UN sanctions resolution requires states to take other measures in addition to imposing a prohibition for a purpose mentioned in paragraph (1).

3 Meaning of “designated person”

- (1) In this Law “designated person” means a person falling within any one or more of the following descriptions –
 - (a) a temporary UK-designated person, within the meaning of paragraph (2);
 - (b) a temporary EU-designated person, within the meaning of paragraph (3);
 - (c) a person who is a designated person by virtue of an interim asset-freezing Order, under Article 4(3);
 - (d) a person who is a designated person by virtue of a final asset-freezing Order, under Article 6(6).
- (2) For the purpose of this Article a person is a “temporary UK-designated person” if –
 - (a) the person is a UN-listed person;
 - (b) an enactment of the United Kingdom implements, in the United Kingdom and in respect of that person, the UN financial sanctions resolution by virtue of which that person is a UN-listed person;
 - (c) that enactment is made under a power that is conferred by a provision that is specified by the Minister by Order for the purpose of this paragraph; and
 - (d) no more than 30 days have elapsed since the day on which the UN financial sanctions resolution was adopted by the UN Security Council.
- (3) For the purpose of this Article a person is a “temporary EU-designated person” if –
 - (a) the person is a UN-listed person;
 - (b) an EU provision (“the relevant EU provision”) implements, in the EU and in respect of that person, the UN financial sanctions resolution by virtue of which the person is a UN-listed person;
 - (c) the relevant EU provision was adopted by the EU as described in Article 2(1)(b) of the EU Implementation Law;
 - (d) no more than 30 days have elapsed since the day on which the UN financial sanctions resolution was adopted by the UN Security Council; and
 - (e) no Order, made under Article 2(1)(b) of the EU Implementation Law, has come into force to implement, in Jersey, the relevant EU provision.
- (4) Despite paragraph (1), a person is not a designated person under this Law at any time at which that person is a designated person within the meaning of the Terrorist Asset-Freezing Law.
- (5) The Minister may by Order –
 - (a) provide that a particular UN-listed person is not, despite any or all of paragraphs (1) to (3), a designated person for the purpose of this Law; or

-
- (b) provide that a corrected identity, description or history of a particular UN-listed person is to apply for the purpose of this Law, if satisfied that there is an inaccurate reference to Jersey, or to a matter relating to Jersey, in the identity, description or history of that person in –
 - (i) the resolution or instrument by virtue of which that person is a UN-listed person,
 - (ii) the enactment of the United Kingdom by virtue of which that person is a temporary UK-designated person, or
 - (iii) the EU provision by virtue of which that person is a temporary EU-designated person.
 - (6) An Order under paragraph (2)(c) may specify a provision by reference to that provision as amended from time to time.

PART 2

ASSET-FREEZING ORDERS

4 Interim asset-freezing Order to implement UN financial sanctions resolution

- (1) The Minister may by Order (an “interim asset-freezing Order”) specify a resolution, adopted by the UN Security Council, for the purpose of this Article if the Minister considers that all of the conditions in paragraph (2) are met.
- (2) The conditions are –
 - (a) that the resolution appears to be a UN financial sanctions resolution, and accordingly that it appears that it does or will relate to one or more UN-listed persons;
 - (b) that there is an urgent need to implement the resolution in respect of UN-listed persons to whom the resolution does or will relate; and
 - (c) that it is proportionate to make the Order, for the purpose of temporarily imposing the requirements of Part 3 in relation to UN-listed persons to whom the resolution does or will relate, in order to avoid a risk that the resolution might not otherwise be implemented effectively in Jersey.
- (3) A person is a designated person by virtue of an interim asset-freezing Order at any time at which that person is a UN-listed person in relation to the resolution specified by the interim asset-freezing Order.
- (4) For the purpose of paragraph (3) it is irrelevant whether that person is a UN-listed person at the time of the making of the Order or becomes a UN-listed person after that time.

5 Interim asset-freezing Order: sunset provision

- (1) An interim asset-freezing Order must provide that (unless earlier revoked) it ceases to have effect on whichever is the soonest of –
 - (a) the end of a period of 30 days after the day of the adoption by the UN Security Council of the UN sanctions resolution that is implemented by that Order (the “relevant UN resolution”);
 - (b) the commencement of any Order under Article 2(1)(b) of the EU Implementation Law that gives effect to an EU provision that implements (in the EU) the relevant UN resolution; and
 - (c) the date (if any) on which the relevant UN resolution ceases to have effect.
- (2) The Minister must not amend the sunset provision of an interim asset-freezing Order, being the provision that is made under paragraph (1), except –
 - (a) on only one occasion, and only if that occasion falls before the day on which the Order otherwise ceases to have effect;
 - (b) so as to substitute, for the period of 30 days mentioned in paragraph (1)(a), a period of a number of days, specified in the amending Order, being no more than 60 days; and
 - (c) without limiting the operation of the provision made under paragraph (1)(b).

6 Final asset-freezing Order

- (1) The Minister may by Order (a “final asset-freezing Order”) specify a UN sanctions resolution for the purpose of this Article if the Minister considers that one of the conditions in paragraph (2) is met.
- (2) The conditions are that, in respect of the UN sanctions resolution, the Minister considers –
 - (a) that the resolution requires all of the provisions of Part 3 to be applied in relation to the persons who are or will become UN-listed persons in relation to that resolution, or does so when regard is had to the power to grant licences under Article 13; or
 - (b) that, although the condition in sub-paragraph (a) is not met, it is proportionate, in order to implement the resolution effectively in Jersey, to apply all of those provisions in relation to those persons until the date specified under paragraph (4).
- (3) In determining whether to make a final asset-freezing Order, the Minister must take account of whether the EU has implemented the resolution, and –
 - (a) if the EU has implemented the resolution, of whether it would be more effective or more proportionate to implement the resolution by an Order under Article 2(1)(b) of the EU Implementation Law; or

- (b) if the EU has not implemented the resolution, of whether there is some reason to implement the resolution in Jersey despite any apparent reason for the EU not doing so.
- (4) A final asset-freezing Order must provide that, unless earlier revoked, it ceases to have effect on a date specified in the Order, being no later than 12 months after the Order was made or last amended.
- (5) A final asset-freezing Order must describe each person who is a UN-listed person in relation to the resolution specified under paragraph (1), but the Order –
 - (a) may do so in any manner, including by referring to the resolution or other instrument in which the person is specified as a UN-listed person; and
 - (b) may provide that a reference in the Order to such a resolution or instrument is to have effect as a reference to the resolution or instrument as amended from time to time, including in relation to persons who may become UN-listed persons after the commencement of the Order.
- (6) A person is a designated person by virtue of a final asset-freezing Order at any time at which that person is a UN-listed person described, under paragraph (5), in a final asset-freezing Order.

PART 3

ASSET-FREEZING AND REPORTING

7 Freezing of funds and economic resources

- (1) A person (“P”) must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.
- (2) In paragraph (1) “deal with” means –
 - (a) in relation to funds –
 - (i) use, alter, move, allow access to, or transfer, the funds,
 - (ii) deal with the funds in any other way that would result in any change in their volume, amount, location, ownership, possession, character or destination, or
 - (iii) make any other change that would enable use of the funds, including by way of, or in the course of, portfolio management; or
 - (b) in relation to economic resources, exchange, or use in exchange, for funds, goods or services.
- (3) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

8 Making funds or financial services available to designated person

- (1) A person (“P”) must not make funds or financial services available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.
- (2) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

9 Making funds or financial services available for benefit of designated person

- (1) A person (“P”) must not make funds or financial services available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the funds or financial services so available.
- (2) For the purposes of paragraph (1) –
 - (a) funds are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and
 - (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (3) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

10 Making economic resources available to designated person

- (1) A person (“P”) must not make economic resources available (directly or indirectly) to a designated person if P knows, or has reasonable cause to suspect –
 - (a) that P is making the economic resources so available; and
 - (b) that the designated person would be likely to exchange the economic resources, or use them in exchange, for funds, goods or services.
- (2) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

11 Making economic resources available for benefit of designated person

- (1) A person (“P”) must not make economic resources available to any person for the benefit of a designated person if P knows, or has reasonable cause to suspect, that P is making the economic resources so available.
- (2) For the purposes of paragraph (1) –
 - (a) economic resources are made available for the benefit of a designated person only if that person thereby obtains, or is able to obtain, a significant financial benefit; and

- (b) “financial benefit” includes the discharge of a financial obligation for which the designated person is wholly or partly responsible.
- (3) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

12 Exceptions

- (1) Articles 7(1), 8(1) and 9(1) are not contravened by a relevant institution crediting a frozen account with –
 - (a) interest or other earnings due on the account; or
 - (b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.
- (2) Articles 7(1) and 8(1) do not prevent a relevant institution from crediting a frozen account where it receives funds transferred to the account.
- (3) Article 9(1) is not contravened by the making of a payment that –
 - (a) is a benefit under or by virtue of an enactment relating to social security (irrespective of the name or nature of the benefit); and
 - (b) is made to a person who is not a designated person, whether or not the payment is made in respect of a designated person.
- (4) A relevant institution must, as soon as practicable but in any case within 14 days, inform the Minister if it credits a frozen account with a payment referred to in paragraph (1)(b) or in the circumstances referred to in paragraph (2).
- (5) A failure to comply with paragraph (4) does not constitute an offence but the Royal Court may, on the application of the Attorney General or the Minister, grant an injunction or other order in respect of compliance with paragraph (4).
- (6) In this Article “frozen account” means an account with a relevant institution, being an account held or controlled (directly or indirectly) by a designated person.

13 Licences

- (1) Articles 7(1), 8(1), 9(1), 10(1) and 11(1) do not apply to anything done under the authority of a licence granted by the Minister under this Article.
- (2) The Minister may grant a licence in respect of a designated person.
- (3) A licence granted under this Article –
 - (a) must specify the acts authorized by it;
 - (b) may be general or granted to a category of persons or to a particular person;
 - (c) may be unconditional or subject to conditions; and
 - (d) may be unlimited or limited in duration.
- (4) The Minister may at any time vary or revoke a licence granted under this Article.

-
- (5) On the grant, variation or revocation of a licence under this Article, the Minister must –
- (a) in the case of a licence granted to a particular person, give written notice of the grant, variation or revocation to that person; or
 - (b) in the case of a general licence or a licence granted to a category of persons, take such steps as the Minister considers appropriate to publicize the grant, variation or revocation of the licence.
- (6) A person who, for the purpose of obtaining a licence under this Article, knowingly or recklessly –
- (a) provides information that is false in a material respect; or
 - (b) provides or produces a document that is not what it purports to be,
- commits an offence and is liable to imprisonment for a term of 5 years and to a fine.
- (7) A person who purports to act under the authority of a licence granted under this Article but fails to comply with any condition to which the licence is subject commits an offence and is liable to imprisonment for a term of 5 years and to a fine.

14 Circumventing prohibitions etc.

- (1) A person must not intentionally participate in activities knowing that the object or effect of them is (whether directly or indirectly) –
- (a) to circumvent Article 7(1), 8(1), 9(1), 10(1) or 11(1); or
 - (b) to enable or facilitate the contravention of any of those provisions.
- (2) A person who contravenes paragraph (1) commits an offence and is liable to imprisonment for a term of 7 years and to a fine.

15 Reporting obligations of relevant institutions

- (1) A relevant institution must inform the Minister as soon as practicable if –
- (a) it holds an account of a person, has entered into dealings or an agreement with a person or has been approached by or on behalf of a person;
 - (b) it knows, or has reasonable cause to suspect, that the person –
 - (i) is a designated person, or
 - (ii) has committed an offence under this Part; and
 - (c) the information or other matter on which the knowledge or reasonable cause for suspicion is based came to it in the course of carrying on its business.
- (2) The information given to the Minister under paragraph (1) must include –
- (a) the information or other matter on which the institution's knowledge or reasonable cause for suspicion is based;
 - (b) any information that the institution holds about the person by which the person can be identified; and

- (c) if the person is a customer or client of the institution, the nature and amount or quantity of any funds or economic resources held by the institution for the person at the time when –
 - (i) the institution first had the knowledge or reasonable cause for suspicion, or
 - (ii) this Article came into force,whichever time is the later.
- (3) A relevant institution that fails to comply with paragraph (1) commits an offence and is liable to imprisonment for a term of 12 months and to a fine of level 3 on the standard scale.

PART 4

MISCELLANEOUS AND FINAL

16 Information

- (1) Articles 22 and 23 of the Terrorist Asset-Freezing Law apply in relation to a designated person under this Law as they apply in relation to a designated person under that Law, and as if –
 - (a) the references in those Articles to that Law were references to this Law; and
 - (b) the references in those Articles to a licence granted under Article 19 of that Law were references to a licence granted under Article 13 of this Law.
- (2) A person commits an offence, and is liable to imprisonment for a term of 12 months and to a fine of level 3 on the standard scale, if the person, without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with a requirement made under Article 22 or 23 of the Terrorist Asset-Freezing Law as applied by paragraph (1).
- (3) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person –
 - (a) knowingly or recklessly gives any information, or produces any document, that is false in a material particular in response to a requirement made under Article 22 or 23 of the Terrorist Asset-Freezing Law as applied by paragraph (1);
 - (b) with intent to evade the provisions of Article 22 or 23 of the Terrorist Asset-Freezing Law as applied by paragraph (1), destroys, mutilates, defaces, conceals or removes a document; or
 - (c) otherwise intentionally obstructs the Minister in the exercise of the Minister's powers under Article 22 or 23 of the Terrorist Asset-Freezing Law as applied by paragraph (1).
- (4) A court that convicts a person of an offence under paragraph (2) or (3)(a) may make an order requiring the person, within such period as may be specified in the order, to comply with the relevant requirement in

accordance with the order, or to do such other thing relating to the requirement as the court orders.

- (5) Articles 25, 26 and 27 of the Terrorist Asset-Freezing Law apply in relation to a designated person under this Law as they apply in relation to a designated person under that Law, and as if –
- (a) the references in those Articles to Part 4 of that Law were references to Article 15 of this Law and to this Article;
 - (b) the reference in Article 25(1)(g) of that Law to relevant Security Council Resolutions was a reference to any UN financial sanctions resolution;
 - (c) the reference in Article 25(1)(h)(i) of that Law to an offence included an offence under an enactment of the United Kingdom, being an enactment by virtue of which a person is a designated person under Article 3(1)(b);
 - (d) the reference in Article 25(1)(h)(ii) of that Law to an offence under that Law included a reference to an offence under this Law; and
 - (e) the reference in Article 27(5) of that Law to the Minister's functions under Article 19 of that Law was a reference to the Minister's functions under Article 13 of this Law.

17 Appeal and review

- (1) Article 28(2) to (4) of the Terrorist Asset-Freezing Law applies, in relation to a person designated by virtue of an interim or final asset-freezing Order, to a decision of the Minister –
- (a) to make or amend the interim or final asset-freezing Order;
 - (b) to renew the final asset-freezing Order; or
 - (c) to refuse to make an Order under Article 3(5)(a) to provide that the person is not a designated person for the purpose of this Law,
- as it applies, in relation to a person subject to a designation under the Terrorist Asset-Freezing Law, to a decision falling within Article 28(1) of that Law.
- (2) Article 29(2) to (4) of the Terrorist Asset-Freezing Law applies in relation to a decision of the Minister taken in the performance of, or in connection with, his or her functions under this Law, other than a decision falling within paragraph (1), as it applies in relation to a decision falling within Article 29(1) of that Law.
- (3) Paragraphs 2 to 5 of the Schedule to the Terrorist Asset-Freezing Law apply, with the substitution of references to the Minister for External Relations for references to the Chief Minister –
- (a) in relation to proceedings under paragraph (1) or (2) of this Article; and
 - (b) to proceedings on an appeal relating to proceedings under paragraph (1) or (2) of this Article,
- as they apply in relation to proceedings falling within paragraph 1 of that Schedule.

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- (4) Rules of court made under paragraph 2 of the Schedule to the Terrorist Asset-Freezing Law apply to proceedings falling within paragraph (3) –
- (a) with the substitution of references to the Minister for External Relations for references to the Chief Minister; and
 - (b) to the extent that provision is not made otherwise by those rules of court.

18 Offences

- (1) Articles 33 and 36 of the Terrorist Asset-Freezing Law apply to an offence under this Law as they apply in relation to an offence under that Law.
- (2) In paragraphs (3) and (4) –
- “relevant offence” means an offence under this Law committed by a limited liability partnership, a separate limited partnership, an incorporated limited partnership or another body corporate;
- “relevant person” means –
- (a) if the relevant offence is committed by a limited liability partnership, a partner of the partnership;
 - (b) if the relevant offence is committed by a separate limited partnership or an incorporated limited partnership –
 - (i) a general partner, or
 - (ii) a limited partner who is participating in the management of the partnership;
 - (c) if the relevant offence is committed by a body corporate other than an incorporated limited partnership –
 - (i) a director, manager, secretary or other similar officer of the body corporate, and
 - (ii) if the affairs of the body corporate are managed by its members, a member who is acting in connection with the member’s functions of management; and
 - (d) a person purporting to act in any capacity described in sub-paragraphs (a) to (c) in relation to the partnership or body that commits the relevant offence.
- (3) If a relevant offence is proved to have been committed with the consent or connivance of a relevant person, that relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (4) If a relevant offence –
- (a) is an offence that may be committed by neglect; and
 - (b) is proved to be attributable to any neglect on the part of a relevant person,

that relevant person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.

19 Delegation

Article 38 of the Terrorist Asset-Freezing Law applies in relation to the functions of the Minister under this Law as it applies in relation to the functions of the Minister under that Law.

20 Power to make amendments by Regulations

- (1) The States may, by Regulations, amend any of Articles 1, 2, 3, 4, 6 (except Article 6(4)) and 18.
- (2) The States may, by Regulations, amend any enactment listed in paragraph (3) to make such provision as they consider necessary or expedient –
 - (a) in consequence of the coming into force of this Law, or of an amendment made under paragraph (1); or
 - (b) in relation to a reference (direct or indirect) in that other enactment to money laundering, to the freezing of assets, to the United Nations Act 1946 of the United Kingdom, to any an Order in Council (whether extending to Jersey or not) made under that Act, or to any of the other enactments listed in paragraph (3).
- (3) The enactments referred to in paragraph (2) are –
 - (a) the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012³;
 - (b) the Proceeds of Crime (Jersey) Law 1999⁴;
 - (c) the Police Procedures and Criminal Evidence (Jersey) Law 2003⁵;
 - (d) the Regulation of Investigatory Powers (Jersey) Law 2005⁶;
 - (e) the Community Provisions (Wire Transfers) (Jersey) Regulations 2007⁷;
 - (f) the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008⁸;
 - (g) the Terrorist Asset-Freezing Law;
 - (h) any enactment made under any of the enactments listed in sub-paragraphs (a) to (g);
 - (i) the EU Implementation Law;
 - (j) any Order made under Article 2(1)(b) of the EU Implementation Law;
 - (k) any other enactment (not including this Law) that includes a reference to money laundering, to the freezing of assets, or to any of the enactments listed in sub-paragraphs (a) to (h) or (j).

21 Orders and Regulations

An Order or Regulations under this Law may contain such transitional, consequential, incidental or supplementary provision as appears to the Minister or the States to be necessary or expedient for the purposes of the Order or Regulations respectively.

22 Amendment of European Union Legislation (Implementation) (Jersey) Law 2014

(1) For Article 2(6)(a) of the European Union Legislation (Implementation) (Jersey) Law 2014⁹, there is substituted the following sub-paragraph –

- “(a) imposing a penalty of imprisonment –
 - (i) for more than 7 years, for an offence of contravening a provision made under paragraph (1)(b), or
 - (ii) for more than 2 years, for any other offence;”.

(2) After Article 3 of that Law, there is inserted the following Article –

“3A Interim application to UN designated person pending EU designation

(1) In this Article –

- (a) the terms ‘person’, ‘UN financial sanctions resolution’ and ‘UN-listed person’ have the same meaning as in the United Nations Financial Sanctions (Jersey) Law 201-¹⁰; and
- (b) ‘asset-freezing measure’ means a prohibition imposed for a purpose falling within a sub-paragraph of Article 2(1) of that Law.

(2) This Article applies to an Order under Article 2(1)(b) that gives effect to an EU provision that –

- (a) implements, in the EU, a UN financial sanctions resolution; and
- (b) lists the persons (‘EU-listed persons’), being UN-listed persons in relation to that resolution, in respect of whom an asset-freezing measure is to be applied in the EU.

(3) The Order may include provision that, if, after the making of the Order, a person becomes a UN-listed person in relation to the UN resolution, that person is to be treated, for the purpose of the EU provision as implemented by the Order, as if that person were already listed by the EU provision as an EU-listed person.

(4) A provision made under paragraph (3) must be expressed so as to cease to have effect in relation to each UN-listed person on whichever is the soonest of –

- (a) the end of a period of 30 days starting when that person becomes a UN-listed person;
- (b) the coming into force of an amendment to the EU provision, by virtue of which that person becomes an EU-listed person (under the EU provision as it has effect in the EU, rather than as it is implemented in Jersey by the Order); and
- (c) the date (if any) on which that person ceases to be a UN-listed person.

(5) Nothing in this Article is to be read as preventing a provision described in paragraph (3) from being read as forming part of the Order by virtue of a general provisions Order under Article 4.”.

23 Amendment of Terrorist Asset-Freezing (Jersey) Law 2011

In the Terrorist Asset-Freezing (Jersey) Law 2011¹¹ –

- (a) in Article 2 –
 - (i) the existing opening text is re-numbered as paragraph (1) of that Article,
 - (ii) at the start of paragraph (1)(d) there are inserted the words “subject to paragraph (2),”;
 - (iii) for paragraph (1)(d)(i) there is substituted the following clause –
 - “(i) listed on the ISIL (Da’esh) and Al-Qaida Sanctions List maintained and amended from time to time by the Committee established under resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da’esh), Al-Qaida and associated individuals and entities,”;
 - (iv) at the end of the Article there is added the following paragraph –
 - “(2) Despite paragraph (1)(d), a designation by virtue of that sub-paragraph ceases to have effect if the natural or legal person, group or entity remains listed as mentioned in that sub-paragraph –
 - (a) at the end of a period of 30 days after it was first so listed; or
 - (b) at the time, if sooner, at which it becomes designated by virtue of any of paragraphs (1)(a), (b) and (c).”;
- (b) in Article 19(6) and (7) for the words “imprisonment for a term of 2 years and to a fine” there are substituted the words “imprisonment for a term of 5 years and to a fine”;
- (c) for Article 24(1) there are substituted the following paragraphs –
 - “(1) A person commits an offence, and is liable to imprisonment for a term of 12 months and to a fine of level 3 on the standard scale, if the person, without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with a requirement made under this Part.
 - (1A) A person commits an offence, and is liable to imprisonment for a term of 2 years and to a fine, if the person –
 - (a) knowingly or recklessly gives any information, or produces any document, that is false in a material particular in response to a requirement made under this Part;
 - (b) with intent to evade the provisions of this Part, destroys, mutilates, defaces, conceals or removes a document; or
 - (c) otherwise intentionally obstructs the Minister in the exercise of the Minister’s powers under this Part.”.

24 Amendment of Money Laundering and Weapons Development (Directions) (Jersey) Law 2012

In Article 14(7) of the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012¹² for the words “imprisonment for a term of two

years and to a fine” there are substituted the words “imprisonment for a term of 7 years and to a fine”.

25 Citation and commencement

This Law may be cited as the United Nations Financial Sanctions (Jersey) Law 201- and comes into force on such day as the Minister may by Order appoint.

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- 1 *chapter 17.245*
 - 2 *chapter 17.861*
 - 3 *chapter 08.685*
 - 4 *chapter 08.780*
 - 5 *chapter 23.750*
 - 6 *chapter 08.830*
 - 7 *chapter 17.245.57*
 - 8 *chapter 08.785*
 - 9 *chapter 17.245*
 - 10 *P.108/2016*
 - 11 *chapter 17.861*
 - 12 *chapter 08.685*