

# **STATES OF JERSEY**

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## **DRAFT CRIME (TRANSNATIONAL ORGANIZED CRIME) (JERSEY) LAW 200**

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**Lodged au Greffe on 24th September 2007  
by the Minister for Home Affairs**

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**STATES GREFFE**





Jersey

## **DRAFT CRIME (TRANSNATIONAL ORGANIZED CRIME) (JERSEY) LAW 200**

### **European Convention on Human Rights**

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

In the view of the Minister for Home Affairs the provisions of the Draft Crime (Transnational Organized Crime) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

# REPORT

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## 1. Introduction

Playing its full part in efforts to combat international organised crime, trafficking in persons and smuggling of migrants across borders is an extremely important element of the Island's international profile.

The Government of Jersey has undertaken, as a matter of policy, to implement the so called "40 Recommendations"<sup>[1]</sup> of the Financial Action Task Force on Money Laundering ("FATF").

Recommendation 35 of the 40 Recommendations says that –

*"35.1 Countries should sign and ratify, or otherwise become a party to, and fully implement, the Vienna Convention<sup>[2]</sup>, the Palermo Convention and the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism<sup>[3]</sup>".*

The Palermo Convention is the United Nations Convention against Transnational Organised Crime, which was opened for signature in 2000 and came into force on 29th September 2003<sup>[4]</sup>.

The UK ratified it in February 2006.

The Palermo Convention has 3 protocols; the Protocol to Prevent, Suppress and Punish Trafficking in Persons (in force December 2003); the Protocol against Smuggling of Migrants by Land, Sea or Air (in force January 2004); and the Protocol against Illicit Manufacturing and Trafficking in Small Arms (in force July 2005).

Although the FATF recommendation does not specifically mention any of the three Protocols as being included in the requirement for implementation, it is assumed that the first two are to be included; the third has been signed by the UK but not yet ratified and implementation is not a part of this exercise.

Article 34 of the Convention (implementation) provides –

- "1. Each State Party shall take the necessary measures, including legislative and administrative measures . . . to ensure the implementation of its obligations under this Convention.*
- 2. The offences established in accordance with Articles 5, 6, 8<sup>[5]</sup> and 23 of this Convention shall be established in the domestic law of each State party independently of the transnational nature or the involvement of an organised criminal group as described in article 3, paragraph 1, except to the extent that article 5 of this Convention would require the involvement of an organised criminal group.*
- 3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating transnational organised crime."*

Article 37 says, in part –

- "1. This Convention may be supplemented by one or more protocols.*
- 2. In order to become a party to a protocol, a State . . . must also be a party to this Convention."*

The Palermo Convention is the main international measure against transnational organised crime. It is described by the United Nations Office on Drugs and Crime (UNODC) as –

*". . . a major step forward in the fight against transnational organised crime and signifies the recognition by Member States of the seriousness of the problems posed by it, as well as the need to foster and enhance international co-operation in order to tackle these problems."*

It is further stated by UNODC that –

*"States that ratify this instrument commit themselves to taking a series of measures against transnational organised crime, including the creation of domestic criminal offences (participation in an organised criminal group, money laundering, corruption and obstruction of justice)".*

The UNODC describes the Protocol against trafficking in Persons as –

*"the first global legally binding instrument with an agreed definition of trafficking in persons",*

which has as its objective the –

*“convergence in national approaches with regard to the establishment of domestic criminal offences that would support efficient international co-operation in investigating and prosecuting trafficking in persons cases”.*

And of the second Protocol against smuggling of migrants UNODC says that it –

*“deals with the growing problem of organised criminal groups who smuggle migrants, often at high risk to the migrants and at great profit to the offenders”.*

It is the creation of these new offences, for the purpose of implementing the Convention and the first two Protocols which is the objective of this draft Law.

Other existing measures, such as the laws on corruption extradition, international co-operation and proceeds of crime will also contribute towards full implementation of the Palermo Convention, but there are some legislative requirements which are not yet met by legislation in Jersey and the objective is to fill in these gaps with new legislation.

## **2. Article 5 (of the Palermo Convention) Participation in organised Criminal group**

This Article requires States Parties to criminalise participation in an organised criminal group.

There is currently no offence of this nature in Jersey Statutory law or, except where the facts would amount to a conspiracy, at customary law either.

It is therefore necessary, in order to implement this Article, to create a new offence which criminalises the participation of a person in the activities of such a group knowing the objective of the group is to commit crime and that this participation will contribute to the achievement of the objective. This will be done by Article 2 of the draft Law.

## **3. Article 23 of the Palermo Convention– Criminalisation of Obstruction of Justice**

This Article of the Convention requires States Parties to establish as criminal offences the threat or use of force, intimidation or the offer of a reward or advantage to induce false testimony or interference with testimony in evidence in proceedings for an offence covered by the Convention (and the Protocols). It also requires criminalisation of the use of such methods in relation to judicial officials or police officers in connection with proceedings for an offences covered by the Convention.

There is no direct equivalent to this offence in statutory or customary law in Jersey, though some offences, such as conspiracy to pervert the course of justice, perjury or corruption may cover some, if not most of the factual situations that could arise in relation to such matters.

However, to ensure full implementation of the Convention, it is necessary to create a new statutory offence reflecting the terms of Article 23. This will be done by Article 7 of the draft law, which will apply in relation to obstruction of justice in relation to any offence under the draft Law.

## **4. Protocol to Prevent etc. Trafficking in Persons**

Article 5 of the Protocol requires States Parties to criminalize conduct set forth in Article 3 of the Protocol which is described as follows –

- (a) Trafficking in persons shall mean the recruitment, transportation, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, or abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.*
- (b) The consent of a victim of trafficking in persons to the intended exploitation set forth in paragraph (a) of this article shall be irrelevant where any of the means set forth in paragraph (a) have been used;*
- (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of the means set forth in sub-paragraph (a) of this Article.”.*

There is no offence in Jersey statutory or customary law which specifically criminalises such activities and therefore a new offence will be created by Article 4 of the draft Law.

## **5. Protocol Against Smuggling of Migrants**

Article 6.1 of this Protocol requires States Parties to criminalise, when committed in order to obtain any financial or other benefit –

- “(a) *the smuggling of migrants;*
- (b) *when committed for the purpose of enabling the smuggling of migrants*
  - (i) *producing fraudulent travel or identity documents;*
  - (ii) *procuring providing or possessing similar documentation.*
- (c) *Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the States by the means mentioned in sub-paragraph (b) or any other illegal means.”* (This sub-paragraph deals with matters governed in Jersey by UK immigration Acts as extended to Jersey.)

“*Smuggling of migrants*” is defined in Article 3 of the Protocol as –

“. . . *the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;*”,

and “*illegal entry*” is defined in the same Article as –

“. . . *crossing borders without complying with the necessary requirements for legal entry into the receiving State;*”.

Though existing provisions of the Immigration Act 1971 as extended to Jersey may cover some aspects of this – e.g. assisting illegal entry – as may the customary law offences of kidnapping and false imprisonment, and the offence of forgery may cover some elements of the offences of relating to fake travel or identity documents, to be certain of fully implementing this Article of the Protocol, new offences will need to be created. This will be done by Article 3 of the draft Law in relation to the smuggling of migrants and by Article 6 in relation to forgery, etc of the travel documents.

## **6. Aggravated forms of offences of Trafficking in People and Smuggling Migrants**

The offences in Articles 3 and 4 of the draft Law will be supplemented by Article 5, which prescribes aggravating factors, such as whether anyone was killed or subjected to inhuman or degrading treatments in the course of commission of an offence against either Article, to which the Court will have regard in deciding the appropriate sentence for the offence. This provision, which is novel for Jersey, is adapted from a similar provision of the Crimes Act 1961 of New Zealand, and while not a specific requirement of the Protocol, would recognise and reflect the preamble to the Protocol on trafficking of persons which refers to the special prevalence of, and vulnerability to, trafficking of women and children (for forced labour and prostitution). It also reflects Article 4 of the Protocol, which refers particularly to the requirement of criminalisation of transnational and organised offences relating to trafficking in persons.

## **7. Article 6.1(b) (of the Smuggling of Migrants Protocol) and forgery of travel documents etc.**

As mentioned above, this Article requires States Parties to criminalise, when committed in connection with smuggling of migrants (this is a minimum requirement and does not preclude criminalising such matters apart from in such cases), producing, procuring or possessing fraudulent travel or identity documents.

It is quite possible that the customary law offences of forgery and uttering will cover some aspects of this, but to ensure complete compliance, Article 6 of the draft Law will create a new offence of forgery, etc. of travel documents in connection with the offences of people trafficking and smuggling migrants.

## **8. Jurisdiction over offences – Extraterritorial effect**

Article 15 of the Palermo Convention requires States Parties to adopt such measures as may be necessary to establish jurisdiction over offences covered by the Convention when committed on the territory of the State or on a ship registered in the State. The draft Law will do this for the new offences, in conjunction with the provisions of the Shipping (Jersey) Law 2002, in relation to Jersey ships. Article 15.2 of the Convention, in effect encourages States Parties to take wider powers to prosecute offences, especially when committed overseas by their own nationals. Article 8 of the draft Law goes much wider; for instance, it would give the Courts in Jersey jurisdiction over residents of Jersey who, and Jersey companies which commit offences against the Law overseas are offences committed abroad and where the victim of the offence is a resident of, or is found in, Jersey.

## **9. Further Explanation of the provisions of the draft Law**

Further detailed descriptions of the provisions of the draft Law are given by the Law Draftsman's explanatory note.

**10. Financial and manpower implications**

It is not possible to predict the resource implications of the proposed new Law with any accuracy, but a significant increase in resource requirements would seem unlikely. The situation will be monitored post implementation.

**European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 20th September 2007 the Minister for Home Affairs made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Home Affairs the provisions of the Draft Crime (Transnational Organized Crime) (Jersey) Law 200- are compatible with the Convention Rights.

## Explanatory Note

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This Law implements, in part, the United Nations Convention Against Transnational Organised Crime adopted by the General Assembly of the United Nations on 15 November 2000, the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons and the Protocol thereto Against Smuggling of Migrants.

In accordance with the Convention and the relevant protocols, the Law contains offences which may be committed in any country or territory. However, Article 8 sets out the necessary links with Jersey that must be established by the prosecution in order to bring a prosecution in Jersey for an offence against the Law.

*Article 1* is an interpretative provision.

*Article 2* makes it an offence for a person to participate in a criminal organization, if the person knows that it is a criminal organization and knows, or is reckless as to whether, his or her participation contributes, or may contribute, to the occurrence of a serious offence against the law of a State. A serious offence is one which is a “serious offence” within the meaning of the Police Procedures and Evidence (Jersey) Law 2003 or would be such an offence if it occurred in Jersey. The penalty for an offence against Article 2 is a fine and/or a maximum of 5 years’ imprisonment.

*Article 3* makes it an offence for a person to engage in people smuggling for the material benefit of a person.

The offence may be committed by arranging for a person who is not authorized to enter a State to be brought to the State, or to enter the State, and may be committed whether or not the perpetrator knows, or is reckless as to whether, the person is authorized to enter the State. It may also be committed whether or not the person consented to be brought to, or to enter, the State.

*Article 4* makes it an offence for a person to engage in people trafficking.

People trafficking consists of arranging, organizing, or procuring, the reception, concealment or harbouring in a State of another person who has entered or travelled within the State, while knowing that the entry of the other person into the State, or the travel of the person within the State, was arranged by one or more acts of coercion against, or deception of, the other person for the purposes of physical exploitation of the other person.

Physical exploitation consists of –

- (a) using another person for sexual purposes;
- (b) removing a body part from another person, except if for the benefit (other than the financial, monetary, or equivalent, benefit) of the other person; or
- (c) the use of another person in forced labour.

The offence is punishable by a fine and/or a maximum of 20 years’ imprisonment.

*Article 5* sets out aggravating factors (that is, factors that should lead to a higher penalty being imposed) for an offence against Article 3 or 4, or an offence under another Law of –

- (a) attempting to commit an offence against Article 3 or 4 of this Law;
- (b) aiding, abetting, counselling or procuring the commission of an offence against Article 3 or 4 of this Law; or
- (c) conspiring or inciting another person to commit an offence against Article 3 or 4 of this Law.

*Article 6* sets out offences related to the preparation of false travel documents, prepared for the purpose of enabling people smuggling to occur.

*Article 7* creates an offence of obstructing a prosecution for –

- (a) an offence under this Law; or
- (b) an offence under another Law of –
  - (i) attempting to commit an offence against this Law;
  - (ii) aiding, abetting, counselling or procuring the commission of an offence against a provision of this Law; or
  - (iii) conspiring or inciting another person to commit an offence against a provision of this Law,



by attempting to induce false testimony or interfere with the giving of testimony or the production of evidence, by –

- (a) using physical force, or threats, against;
- (b) intimidating or attempting to intimidate; or
- (c) promising, or offering, a benefit to,

a witness, a judicial officer, or a police officer, who takes part in or engages in activities in respect of the proceedings.

The offence is punishable by a fine and/or a maximum of 15 years' imprisonment.

*Article 8* sets out the circumstances in which a prosecution may be brought against a person for an offence against a Law, by setting out the connection with Jersey that the offence must have.

The connection may be that the perpetrator is ordinarily resident in Jersey, has been found in Jersey and has not been extradited or is a body corporate incorporated under a law of Jersey or a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997.

The connection may also be that the “victim” is ordinarily resident in Jersey or is found in Jersey, or that an offence has been committed against Article 3 or 4 of bringing, or arranging the entry of, a person to Jersey.

The connection may also be, for an offence against Article 2 of participating in a criminal organization, that the criminal organization is alleged to have as its objective (or one of its objectives) the obtaining of material benefits by the commission in Jersey of an offence against a law of Jersey that is a serious offence within the meaning of Article 3 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.

The connection may also be established on the above grounds for –

- (a) attempting to commit an offence against this Law;
- (b) aiding, abetting, counselling or procuring the commission of an offence against a provision of this Law; or
- (c) conspiring or inciting another person to commit an offence against a provision of this Law.

*Article 9* requires that a prosecution for an offence against this Law be brought only by, or with the consent of, the Attorney General.

*Article 10* amends Articles 3 and 101 of the Police Procedures and Criminal Evidence (Jersey) Law 2003 (“the amended Law”).

Article 3 of the amended Law defines what is a “serious offence”. The classification of an offence as a serious offence enables, amongst other things, search warrants to be issued under the Law in relation to those offences.

This amendment amends Article 3 of the amended Law, firstly, by adding the “inciting” of offences to the list of offences that constitute a “serious offence” for the purposes of the amended Law, and secondly by also classifying offences committed under this Law as such offences.

Article 101 of the amended Law enables the issue of authorizations that permit the taking of actions in relation to property and wireless telegraphy, if they may enable the prevention or detection of an offence that is a “serious crime” within the meaning of that Article.

A “serious crime” is defined in paragraph (4) of that Article as conduct which constitutes one or more offences which involves violence, results in substantial financial gain, is conducted by a large group of people with a common purpose or is an offence for which a person over the age of 21, with no previous convictions, could reasonably be expected to be sentenced for 3 years or more.

The amendment in Article 10 of this Law (which, in effect, adds a new sub-paragraph (b) to paragraph (4)) ensures that conduct, part or all of which occurred outside Jersey, would be a “serious crime” within the meaning of that Article if, had the conduct occurred in Jersey, it would have been conduct constituting such an offence.

*Article 11* amends Article 18 of the Extradition (Jersey) Law 2004, which provides that a request for extradition may be refused if it is believed to be requested for the purposes of enabling the prosecution or punishment of a person on certain grounds.

The amendment shall add “ethnic origin” as a ground for such a refusal.

*Article 12* specifies the name by which this Law may be cited, and that it shall come into force 7 days after it is registered.







Jersey

# DRAFT CRIME (TRANSNATIONAL ORGANIZED CRIME) (JERSEY) LAW 200

## Arrangement

### Article

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<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Participating in criminal organization</u>
<u>3</u>	<u>People smuggling</u>
<u>4</u>	<u>Trafficking in persons</u>
<u>5</u>	<u>Aggravating factors in relation to migrant smuggling and trafficking in persons</u>
<u>6</u>	<u>Travel documentation offences</u>
<u>7</u>	<u>Obstructing justice</u>
<u>8</u>	<u>Territorial application</u>
<u>9</u>	<u>Consent to prosecution</u>
<u>10</u>	<u>Amendment of Police Procedures and Criminal Evidence (Jersey) Law 2003</u>
<u>11</u>	<u>Amendment of Extradition (Jersey) Law 2004</u>
<u>12</u>	<u>Citation and commencement</u>





Jersey

## **DRAFT CRIME (TRANSNATIONAL ORGANIZED CRIME) (JERSEY) LAW 200**

**A LAW** to provide for the implementation in Jersey of the United Nations Convention Against Transnational Organised Crime adopted by the General Assembly of the United Nations on 15 November 2000, the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons and the Protocol thereto Against Smuggling of Migrants; to amend the Police Procedures and Criminal Evidence (Jersey) Law 2003 and the Extradition (Jersey) Law 2004; and for related purposes.

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*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 –

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### **1 Interpretation**

In this Law –

“material benefit” includes, but is not limited to including, financial, monetary or equivalent benefits and sexual gratification;

“State” means any country or territory, and includes Jersey.

### **2 Participating in criminal organization**

- (1) A person commits an offence if he or she –
  - (a) participates in a criminal organization, knowing that it is a criminal organization; and
  - (b) knows, or is reckless as to whether, his or her participation contributes, or may contribute, to the occurrence of a serious offence against the law of a State.
- (2) A person who commits an offence against paragraph (1) shall be liable to imprisonment for a term of 5 years and to a fine.
- (3) A person shall only be taken to participate in a criminal organization for the purposes of paragraph (1) if he or she is a member, an associate member, or a prospective member, of the organization.
- (4) For the purposes of this Article, a criminal organization is a group of 3 or more persons who have as their objective, or one of their objectives, obtaining, directly or indirectly, a material benefit from the committal of a serious offence against a law of a State by the organization, or a member, an associate member, or a prospective member, of the organization, but does not include a group that is randomly formed for the immediate commission of a single offence.

- (5) For the purposes of this Article, a group of 3 or more persons may be a criminal organization whether or not –
- (a) some of them are subordinates or employees of other members of the group or other persons;
  - (b) only some of the people involved in the group at a particular time are involved in the planning, arrangement, or execution, at that time, of any particular action, activity or transaction;
  - (c) its membership changes from time to time;
  - (d) the persons are present in Jersey;
  - (e) a serious offence against a law of a State was committed by the organization or a member, an associate member, or a prospective member, of the organization, and whether a serious offence against a law of a State was, or was intended to be, committed within or outside Jersey by the organization or a member, an associate member, or a prospective member, of the organization;
  - (f) any person received a material benefit from the commission of a serious offence against a law of a State by the organization or a member, an associate member, or a prospective member, of the organization.
- (6) In this Article, participation in a criminal organization includes, but is not limited to including –
- (a) agreeing with another person to participate in an act that contributes, or may contribute, to the occurrence of a serious offence against a law of a State; and
  - (b) organizing, directing, taking part in, or assisting in, the commission of a serious offence against a law of a State by the organization or a member, an associate member, or a prospective member, of the organization.
- (7) In this Article, “serious offence against a law of a State” means –
- (a) an offence against the law of Jersey that is a serious offence within the meaning of Article 3 of the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>[1]</sup>; or
  - (b) an offence against the law of a State other than Jersey that, if it had been committed in Jersey, would be a serious offence within the meaning of Article 3 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.
- (8) In criminal proceedings in relation to the alleged commission of an offence against paragraph (1) by a person who participates in a criminal organization, it is not necessary to prove that –
- (a) a serious offence was committed by the organization or a member, an associate member, or a prospective member, of the organization;
  - (b) a serious offence that was, or that was intended to be, committed by the organization or a member, an associate member, or a prospective member, of the organization, was committed, or intended to be committed, in Jersey;
  - (c) any person received a material benefit from the commission of a serious offence by the organization or a member, an associate member, or a prospective member, of the organization; or
  - (d) the person knew the identity of any member of the criminal organization.

### **3 People smuggling**

- (1) A person commits an offence if he or she –
- (a) arranges for an unauthorized migrant to enter a State;
  - (b) does so for the purpose of obtaining, directly or indirectly, a material benefit for himself or herself or any other person; and
  - (c) knows that, or is reckless as to whether, the unauthorized migrant is an unauthorized migrant.
- (2) A person commits an offence if he or she –
- (a) arranges for an unauthorized migrant to be brought to a State;

- (b) does so for the purpose of obtaining, directly or indirectly, a material benefit for himself or herself or any other person;
  - (c) knows that, or is reckless as to whether, the unauthorized migrant is an unauthorized migrant; and
  - (d) knows that, or is reckless as to whether, the unauthorized migrant intends to try to enter the State.
- (3) A person who commits an offence against paragraph (1) or (2) shall be liable to imprisonment for a term of 20 years and to a fine.
- (4) An offence against paragraph (1) may be committed even if the unauthorized migrant in relation to whom the alleged offence occurred –
- (a) consented to the arrangement for him or her to enter the State; or
  - (b) did not enter the State in respect of which the arrangement was made.
- (5) An offence against paragraph (2) may be committed even if the unauthorized migrant in relation to whom the alleged offence occurred –
- (a) consented to the arrangement for him or her to be brought to the State; or
  - (b) was not brought to the State in respect of which the arrangement was made.
- (6) In this Article –
- “arrange for an unauthorized migrant to be brought to a State” includes, but is not limited to including the following –
- (a) organizing, or procuring, the bringing of an unauthorized migrant to a State;
  - (b) recruiting a person to be brought, as an unauthorized migrant, to a State;
  - (c) carrying an unauthorized migrant to a State;
- “arrange for an unauthorized migrant to enter a State” includes, but is not limited to including, the following –
- (a) organizing or procuring the entry of an unauthorized migrant into a State;
  - (b) recruiting a person to enter, as an unauthorized migrant, into a State;
  - (c) carrying an unauthorized migrant into a State;
- “unauthorized migrant”, in relation to a State, means a person who –
- (a) is not a citizen of the State; and
  - (b) does not have possession of all the documents required by or under the law of the State to lawfully enter the State.

#### **4 Trafficking in persons**

- (1) A person commits an offence if he or she –
- (a) arranges for another person who is under the age of 18 years to enter a State, or travel within a State, for the purposes of physical exploitation of the other person; or
  - (a) arranges, by one or more acts of coercion against, or deception of, another person, for the other person to enter a State, or travel within a State, for the purposes of physical exploitation of the other person.
- (2) A person commits an offence if –
- (a) he or she –
    - (i) arranges, organizes or procures the reception, concealment or harbouring in a State of another person who is under the age of 18 years and who has entered or travelled within the State, and



- (ii) knows that the entry of the other person into the State, or the travel of the person within the State, was arranged for the purposes of physical exploitation of the other person; or
- (b) he or she –
  - (i) arranges, organizes or procures the reception, concealment or harbouring in a State of another person who has entered or travelled within the State, and
  - (ii) knows that the entry of the other person into the State, or the travel of the person within the State, was arranged by one or more acts of coercion against, or deception of, the other person for the purposes of physical exploitation of the other person.
- (3) A person who commits an offence against paragraph (1) or (2) shall be liable to imprisonment for a term of 20 years and to a fine.
- (4) An offence against paragraph (1) or (2) in respect of a State may be committed even if the person who was coerced or deceived –
  - (a) did not in fact enter, or travel within, the State; or
  - (b) was not in fact received, concealed, or harboured, in the State.
- (5) An offence against paragraph (1) or (2) in respect of a State may be committed even if steps in the process by which the person who was coerced or deceived entered, or was to enter, the State, or travelled, or was to travel, within the State, did not involve an act of coercion or deception.
- (6) In this Article, an act of coercion by a person against another person includes, but is not limited to including, the following acts –
  - (a) abducting the other person;
  - (b) using force in respect of the other person;
  - (c) harming the other person;
  - (d) threatening, expressly or impliedly, to harm the other person or another person or to use force against the other person or another person;
  - (e) abusing the person's power in relation to the other person or exploiting the other person's position of vulnerability;
  - (f) encouraging the other person to believe that he or she has no other reasonable choice but to comply with the requirements of the person.
- (7) In this Article, harming another person means to cause harm of any kind to the other person, and includes, but is not limited to including, any of the following –
  - (a) causing physical, psychological, or financial harm to the other person;
  - (b) sexually mistreating the other person;
  - (c) causing harm to the other person's reputation, status or prospects.
- (8) In this Article, "physical exploitation of the other person" means any of the following –
  - (a) the use of the other person for sexual purposes;
  - (b) the removal of a body part from the other person, except if for the benefit (other than the financial, monetary, or equivalent, benefit) of the other person;
  - (c) the use of the other person in forced labour.
- (9) In this Article, "use of the other person for sexual purposes" by a person includes, but is not limited to including, any of the following –
  - (a) the taking, or transmission, by any means, of an image of the other person engaged in real or simulated sexual activities;
  - (b) the taking, or transmission, by any means, of images of the other person's genitalia, anus, or breasts, for the purpose of obtaining, directly or indirectly, a material benefit for the person, the other person or any third person;
  - (c) the other person's participation, for the purpose of obtaining, directly or indirectly, a material

benefit for the person, the other person or any third person, in a performance or display, or other employment, that involves the exposure of the other person's genitalia, anus or breasts.

- (10) In this Article, "use of the other person for sexual purposes" does not include –
- (a) the taking, in good faith, for purposes primarily other than the exposure of body parts of the other person for the sexual gratification of a viewer, of an image of the other person as part of an artistic or cultural performance or display;
  - (b) the taking or transmission of an image of the other person for the purpose of depicting, for the instruction or information of health professionals, a medical condition or a surgical or medical technique; or
  - (c) the taking or transmission of an image of the other person for the purpose of –
    - (i) providing medical or health education,
    - (ii) providing information relating to medical or health matters, or
    - (iii) advertising a product, instrument, or service, intended to be used for medical or health purposes.
- (11) The other person in respect of whom an offence against this Article was committed, or is suspected of being committed, cannot be charged as a party to the offence.

## **5 Aggravating factors in relation to migrant smuggling and trafficking in persons**

- (1) In determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against Article 3 or 4, a court shall take into account –
- (a) whether bodily harm or death (whether to or of a person in respect of whom the offence was committed or some other person) occurred during the commission of the offence;
  - (b) whether the offence was committed for the benefit of, at the direction of, or in association with, a criminal organization within the meaning of Article 2;
  - (c) whether a person in respect of whom the offence was committed was subject to inhuman or degrading treatment as a result of the commission of the offence; and
  - (d) if during the relevant criminal proceedings the person was convicted of the same offence in respect of 2 or more people, the number of people in respect of whom the offence was committed.
- (2) In determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against Article 4, a court shall also take into account–
- (a) whether a person in respect of whom the offence was committed was also subject to other exploitation (including but not limited to physical exploitation of the other person, within the meaning of that Article) as a result of the commission of the offence;
  - (b) the age of the person in respect of whom the offence was committed and, in particular, whether the person was under the age of 18 years; and
  - (c) whether the person committed the offence, or took actions that were part of the offence, for a material benefit.
- (3) This Article does not limit the matters to which a court may have regard when determining the sentence to be imposed on, or other way of dealing with, a person convicted of an offence against Article 3 or 4.
- (4) In paragraph (1), a reference to an offence against Article 3 or 4 includes an offence, against a provision of another enactment, of –
- (a) attempting to commit an offence against either of those Articles;
  - (b) aiding, abetting, counselling or procuring the commission of an offence against either of those Articles; or
  - (c) conspiring or inciting another person to commit an offence against a provision of either of

those Articles.

## **6 Travel documentation offences**

- (1) A person commits an offence if he or she forges, or falsifies, a travel document that he or she knows, or has reason to suspect, is intended to be used in the course of, or for purposes related to, the commission of an offence against Article 3 by any person.
- (2) A person commits an offence if, without reasonable excuse –
  - (a) knowing a travel document to be forged, or false, he or she –
    - (i) uses it, deals with it, or acts upon it, as if it were genuine, or
    - (ii) causes another person to use it, deal with it, or act upon it, as if it were genuine, in the course of, or for purposes related to, the commission of an offence against Article 3 by any person;
  - (b) he or she has in his or her possession, or under his or her control, a travel document that he or she knows or has reason to suspect –
    - (i) is a forged or false travel document, and
    - (ii) is intended to be used in the course of, or for purposes related to, the commission of an offence against Article 3 by any person;
  - (c) he or she sells, hires, lends, gives, or otherwise disposes of to another person, a travel document that he or she knows or has reason to suspect –
    - (i) is a forged or false travel document, and
    - (ii) is intended to be used in the course of, or for purposes related to, the commission of an offence against Article 3 by any person; or
  - (d) he or she –
    - (i) makes, uses, has in his or her possession, or disposes of to another person, any paper or other material that he or she knows is specially provided by the proper authorities of a State for any purpose related to travel documents of the State, and
    - (ii) knows or has reason to suspect that the paper or other material is intended to be used in the course of, or for purposes related to, the commission of an offence against Article 3 by any person.
- (3) A person who commits an offence against paragraph (1) or (2) shall be liable to imprisonment for a term of 10 years and to a fine.
- (4) In this Article –

“document” includes a thing that is, or is intended to be –

  - (a) attached to a document; or
  - (b) stamped or otherwise signified on a document;

“forge” includes the following –

  - (a) to make a copy of an existing document or writing with the intention of representing it to be the original document or writing;
  - (b) to alter an existing document or writing with the intention of representing the altered document or writing to be the original document or writing;
  - (c) to make a document or writing that purports to be made or issued by or on behalf of a person who did not make or issue it or authorize its making or issue, or who does not exist, with the intention of representing it was made or issued by or on behalf of that person;
  - (d) to make a document or writing that falsely purports to be made at a particular place or time, or before or witnessed by a particular person, with the intention of representing that such particulars are true;

“travel document” means a document, issued by the proper authority of a State, that contains information that –

- (a) purports to relate to the person to whom it was issued;
- (b) is supplied by or on behalf of the person as part of, or in connection with, the person’s application for the document; and
- (c) is false, or relates to another person.

## **7 Obstructing justice**

- (1) A person commits an offence if, for the purpose of –
  - (a) inducing false testimony;
  - (b) interfering with the giving of testimony; or
  - (c) interfering with the production of evidence,in relation to proceedings in respect of an offence against a provision of this Law, he or she –
  - (i) uses physical force, or threats, against;
  - (ii) intimidates or attempts to intimidate; or
  - (iii) promises, or offers, a benefit to,a witness, a judicial officer, or a police officer, who takes part in or engages in activities in respect of the proceedings.
- (2) A person who commits an offence against paragraph (1) shall be liable to imprisonment for a term of 15 years and to a fine.
- (3) In paragraph (1), a reference to proceedings in respect of an offence against a provision of this Law includes proceedings in respect of an offence, against a provision of another enactment, of –
  - (a) attempting to commit an offence against a provision of this Law;
  - (b) aiding, abetting, counselling or procuring the commission of an offence against a provision of this Law; or
  - (c) conspiring or inciting another person to commit an offence against a provision of this Law.

## **8 Territorial application**

- (1) Proceedings for an offence against a provision of this Law (including an offence against any provision referred to in another paragraph of this Article) by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Jersey, if the person –
  - (a) is ordinarily resident in Jersey;
  - (b) has been found in Jersey and has not been extradited; or
  - (c) is a body corporate incorporated under a law of Jersey or a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997<sup>[2]</sup>.
- (2) Proceedings for an offence against a provision of this Law (including an offence against any provision referred to in another paragraph of this Article) by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Jersey, if a person in relation to whom the offence is alleged to have been committed –
  - (a) is ordinarily resident in Jersey; or
  - (b) has been found in Jersey.
- (3) Proceedings for an offence against Article 2 by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Jersey, if paragraph (4) applies to the person.

- (4) This paragraph applies to a person if the criminal organization, within the meaning of Article 2, in which the person is alleged to have participated is alleged to have as its objective (or one of its objectives) the obtaining of material benefits by the commission in Jersey of an offence against a law of Jersey that is a serious offence within the meaning of Article 3 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.
- (5) Proceedings for an offence against Article 3(1) by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Jersey, if the act or omission is alleged to relate to arranging for a person to enter Jersey.
- (6) Proceedings for an offence against Article 3(2) by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Jersey, if the act or omission is alleged to relate to arranging to bring a person to Jersey.
- (7) Proceedings for an offence against Article 4 by a person may be brought although some or all of the acts alleged to constitute the offence occurred outside Jersey, if the act or omission is alleged to relate to arranging for a person to enter Jersey or to travel in Jersey.
- (8) Proceedings against a person for an offence, against a provision of another enactment, of attempting to commit an offence against a provision of this Law may be brought although some or all of the acts alleged to constitute the offence against the provision of the other enactment occurred outside Jersey, if, had the offence been an offence against the provision of this Law, the proceedings could have been brought by virtue of another paragraph of this Article.
- (9) Proceedings against a person for an offence, against a provision of another enactment, of –
  - (a) aiding, abetting, counselling or procuring the commission of an offence against a provision of this Law; or
  - (b) conspiring or inciting another person to commit an offence against a provision of this Law,
 may be brought although some or all of the acts alleged to constitute the offence against the provision of the other enactment occurred outside Jersey, if, had the offence been an offence against the provision of this Law to which sub-paragraph (a) or (b), as the case may be, applies, the proceedings could have been brought by virtue of another paragraph of this Article.

## 9 Consent to prosecution

A prosecution in Jersey for an offence against this Law may only be brought by, or with the consent of, the Attorney General.

## 10 Amendment of Police Procedures and Criminal Evidence (Jersey) Law 2003

In the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>[3]</sup> –

- (a) in Article 3, in paragraph (9), for the word “counselling” there shall be substituted the words “counselling, inciting”;
- (b) in Article 101, for paragraph (4) there shall be substituted the following paragraph–
  - “(4) In this Article ‘serious crime’ means –
    - (a) conduct which constitutes one or more offences –
      - (i) which involves the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose, or
      - (ii) for which a person who has attained the age of 21 and has no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more; or

(b) conduct which is, or corresponds to, any conduct which, if it all took place in Jersey, would constitute an offence, or offences, of the kind referred to in subparagraph (a)”;

(c) in Schedule 1, in Part 2, at the end, there shall be added the following item and entry–

“12. Any offence in the Crime (Transnational Organized Crime) (Jersey) Law 200-.”.

## **11 Amendment of Extradition (Jersey) Law 2004**

In the Extradition (Jersey) Law 2004<sup>[4]</sup>, in Article 18, in paragraphs (a) and (b), after the word “nationality” there shall be inserted the words “, ethnic origin”.

## **12 Citation and commencement**

- (1) This Law may be cited as the Crime (Transnational Organized Crime) (Jersey) Law 200-.
- (2) This Law shall come into force 7 days after it is registered.

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[1] *It has also been decided to implement the 9 Special Recommendations of FATF Supplementing the 40 Recommendations but these are not relevant for present purposes.*

[2] *This is a UN Convention on Drugs and not relevant for present purposes.*

[3] *This Convention will be implemented by virtue of the Terrorism (Jersey) Law 2002, but is not relevant for present purposes.*

[4] *The text of the Convention and Protocols can be viewed at [www.unodc.org/unode/en/crime\\_cicp\\_convention.html](http://www.unodc.org/unode/en/crime_cicp_convention.html)*

[5] *The offences established in Accordance with Articles 6 and 8 of the Convention are already offences in Jersey by virtue of existing measures against money laundering and corruption.*

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[1] *chapter 23.750*

[2] *chapter 13.475*

[3] *chapter 23.750*

[4] *chapter 17.325*