

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

AMENDMENTS TO CRIMINAL JUSTICE LEGISLATION IN RESPECT OF MONEY LAUNDERING
AND TERRORIST FINANCING

The States are asked to decide -

Whether, after consideration of the Policy Letter dated 2nd September, 2019, of the Committee *for* Home Affairs, they are of the opinion to endorse the policy approaches set out in the Policy Letter:

1. To agree to amend the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, the Criminal Justice (International Cooperation) (Bailiwick of Guernsey) Law, 2001 the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 and the Disclosure (Bailiwick of Guernsey) Law, 2007 to enable the delegation of the functions and powers of Her Majesty's Procureur under those Laws to a Crown Advocate or another Advocate of the Royal Court.
2. To agree to amend the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 and the Disclosure (Bailiwick of Guernsey) Law, 2007 to extend the prohibition on tipping off to all requests for information made under those Laws.

The above Proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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Presiding Officer
Royal Court
St Peter Port
Guernsey

2nd September, 2019

Dear Sir

1. Executive Summary

- 1.1 The Bailiwick's criminal justice framework contains legislation which addresses money laundering and terrorist financing (Anti Money Laundering and Combatting the Financing of Terrorism (AML/CFT) Laws). It has been developed and amended over many years to seek to keep pace with international norms and also to address matters of effective implementation or technical matters which arise from time to time. Two matters, relevant to each of these perspectives, have been raised by HM Procureur in proposing amendments to the legal framework.
- 1.2 The legislation concerned is the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, the Criminal Justice (International Cooperation) (Bailiwick of Guernsey) Law, 2001, the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (the Terrorism Law) and the Disclosure (Bailiwick of Guernsey) Law, 2007 (the Disclosure Law).
- 1.3 The first amendment relates to the delegation by HM Procureur of her powers and functions in relation to applications to the Court for orders to be made or in relation to the disclosure of information under the legislation specified in the paragraph above. The second amendment relates to including specific protection against tipping off under the Disclosure Law and the Terrorism Law in relation to recent revisions so that all requests for information made under these two enactments will be treated in the same way.

2. Legislative proposals

- 2.1 On 6 August 2019, HM Procureur wrote to the Committee to set out the rationale for recommended amendments to the Bailiwick's criminal justice framework for addressing money laundering and terrorist financing.

Court orders

HM Procureur has a range of powers and functions under the AML/CFT Laws concerning the obtaining of evidence for the investigation and prosecution of crime. Primarily, these relate to making applications for court orders such as production orders (which require the provision of documents or other material); customer information orders (which require businesses to produce the information they hold on their clients); and account monitoring orders (orders which enable the authorities to keep track of payments in or from named bank accounts for a specified period). References to HM Procureur in Bailiwick legislation are defined as including HM Comptroller. As a consequence, the powers and functions of HM Procureur may be exercised by either of HM Procureur or HM Comptroller. The AML/CFT Laws do not enable HM Procureur to delegate the exercise the powers and functions to another party such as a Crown Advocate or other Advocate of the Royal Court. .

However, there are fewer constraints which apply to investigations into the civil forfeiture of the proceeds of crime or criminal investigations into fraud than there are for criminal investigations into money laundering and terrorist financing. In this connection, under section 51 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (Civil Forfeiture Law) HM Procureur may, either generally or in a specific case, arrange for any of her functions under the Civil Forfeiture Law (other than the power of delegation itself) to be exercised in her name by a Crown Advocate or other Advocate of the Royal Court. Similarly, under section 1 of the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law , 1991, which gives HM Procureur certain investigatory powers that do not require a court order, she may authorise any person to exercise those powers on her behalf.

HM Procureur has further advised that the current position with regard to criminal investigation is inconsistent with that in jurisdictions with similar legal systems, such as the UK, where delegation of investigatory powers for crimes of all kinds is commonplace, and that there are no policy grounds to retain the current position under the AML/CFT Laws.

In order to ensure consistency across the legal framework in relation to the issue of court orders, reduce any possibility of delay if both Law Officers were to be unavailable to sign an application for an order, and to be consistent with international norms, HM Procureur has therefore recommended that the AML/CFT Laws (those specified in paragraph 1.2 above) should be amended to include a provision in line with that in section 51 of the Civil Forfeiture Law as outlined above; this would be modified as necessary in the case of each of the individual AML/CFT Laws. Any modifications should ensure however that powers and functions that are

not related to criminal investigations or proceedings (e.g. those relating to the application of counter-terrorism measures) are not included within any new statutory power of delegation. The Disclosure Law was not included within HM Procureur's recommendation on this point in her letter of 6 August 2019, as it does not include any powers relating to court orders. However, it contains a power for HM Procureur to disclose information in certain circumstances, and since writing on 6 August 2019, HM Procureur has further advised that this power should be made subject to delegation in the same way as her powers and functions under the other AML/CFT Laws.

The Committee agrees with these recommendations and notes that the AML/CFT Laws can be amended by Ordinance.

Tipping Off

Under the Disclosure Law and the Terrorism and Crime Law there is a power for the Financial Intelligence Service (FIS) at the Guernsey Border Agency to obtain additional information from any person following the making of a report under those Laws. This is a report of suspicion of money laundering or terrorist financing that a person acquires in the course of a business. A request for additional information from the FIS is subject to safeguards, including a prohibition on tipping off, i.e. revealing that a request for additional information has been made.

The Disclosure Law and the Terrorism Law were recently amended to give the FIS the power to obtain additional information following the making of other reports, i.e. reports that are not required under those Laws. These are primarily reports (including requests for information) from overseas or domestic authorities with responsibilities relating to economic crime. This new power was, to a large extent, made subject to the same safeguards as the existing power to obtain additional information. However, while there are some generic tipping off provisions elsewhere in the legal framework, in order to ensure consistency of approach within the two laws to all requests for information made under them and certainty of coverage of the tipping off framework, it would be best to apply the tipping off provisions in the two Laws to requests that relate to the recent amendment.

Therefore, HM Procureur has advised that the Disclosure Law and the Terrorism Law should be amended to ensure that the protection against tipping off applies to all requests for additional information in the same way. The Committee agrees with this advice, which can be achieved by Ordinance.

3. Compliance with Rule 4

- 3.1 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not be put in effect.

- 3.2 In accordance with Rule 4(4) of The Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the proposition accompanying this policy letter is supported unanimously by the Committee *for* Home Affairs however Deputy Oliver was not present when the Policy Letter was considered.
- 3.3 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States and to develop and implement policies on matters relating to its purpose, including: crime prevention; law enforcement, including policing and customs.
- 3.4 Also in accordance with Rule 4(5), the Committee consulted with the Policy and Finance Committee in Alderney and the Policy and Finance Committee in Sark. Both Committees agree with the proposals to amend the Bailiwick's criminal justice framework.

Yours faithfully

M M Lowe
President

M P Leadbeater
Vice-President

V S Oliver
J C S F Smithies
P R Le Pelley