



Policy & Resources Committee

INFORMATION NOTICE ON CANNABIS CULTIVATION AND PRODUCTION IN OTHER JURISDICTIONS

10 June 2020

The cultivation and production of cannabis for recreational purposes is now lawful in a number of countries. In light of this, the Policy & Resources Committee (the Committee) has been asked to provide information to representatives of the finance sector in Guernsey¹ on whether Guernsey's anti-money laundering legislation applies to the proceeds of the lawful cultivation and production of cannabis for recreational purposes in these countries. The Committee is also mindful of the fact that this issue may be of interest to others who are not involved in the finance sector.

This issue has not been subject to a court ruling. Like all issues of statutory interpretation, it is a matter that can only be decided conclusively by the courts. However, this notice, which should not be considered to be, or as replacing, legal advice, can outline the overall shape of the legal framework as it presently stands at a high level for ease of reference.

As a starting point it should be stressed that the cultivation of cannabis for recreational purposes in Guernsey itself is currently unlawful under the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 (MODL) unless it is licensed by the Committee *for* Health & Social Care. Therefore, any profits generated by unlicensed activity in Guernsey would constitute the proceeds of crime under Guernsey's anti-money laundering legislation.

Different considerations apply to the proceeds derived from the cultivation and production of cannabis lawfully in another jurisdiction. Two parts of the legal framework in Guernsey are relevant to whether or not such proceeds constitute the proceeds of crime for the purposes of anti-money laundering legislation, namely the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (POCL) and the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (DTL).

The DTL sets out a framework for dealing with the proceeds of drug trafficking. Drug-trafficking is defined by reference to lists of activity comprising specific-drug related offences; this is activity which contravenes the MODL or is illegal under a corresponding law in another jurisdiction. The effect of this is that, where drug-related conduct outside Guernsey generates proceeds, those proceeds only fall within the scope of the DTL if the conduct that generated

¹ Guernsey for the purposes of this Notice means the Bailiwick of Guernsey

them is unlawful in the jurisdiction where it took place (subject to some limited exemptions not relevant to cannabis). This test of requiring an offence to have been committed in both jurisdictions is known as dual criminality.

The POCL applies to all types of criminal conduct except for conduct covered by the definition of drug trafficking or a drug trafficking offence in the DTL, which is expressly excluded. It does not impose dual criminality. Therefore, the treatment of proceeds of foreign activity is different under the POCL as, unlike the DTL, the POCL does not require the activity that generated the proceeds to be unlawful in the jurisdiction in which it occurs.

In this regard, the DTL and the POCL can be considered as separate legal frameworks. The Committee has received advice from the Law Officers Chambers indicating that the exclusion of drug-related activity from the POCL is wide enough to include all forms of such activity. On that basis, such activity would not be subject to the dual criminality test, which means in turn that the proceeds of the cultivation and/or production of cannabis for recreational purposes which is lawful where it occurs would not be captured by Guernsey's anti-money laundering legislation.