



LAW OFFICERS OF
THE CROWN

GUIDANCE ON PROSECUTION RELATED TO CANNABIS CULTIVATION AND PRODUCTION IN OTHER JURISDICTIONS

This guidance is issued by HM Procureur as the prosecuting authority within the Bailiwick. It does not constitute legal advice. Anyone who has concerns about any of the matters covered in this guidance should obtain independent legal advice.

BACKGROUND

In June 2020 the States of Guernsey Policy & Resources Committee issued an information notice on cannabis cultivation and production in other jurisdictions. This reflected advice from the Law Officers that the money laundering offences in the Bailiwick's legal framework do not apply to the proceeds of cultivation or production of cannabis that is lawful where it occurs. Since then, it has come to the attention of the Bailiwick authorities that the finance industry and others are concerned about circumstances where a business relationship or transaction involves an unidentified link to cannabis cultivation and production in a place where that is unlawful. This guidance is issued to provide clarification of what this means for the purposes of a criminal prosecution. It may be revoked or amended at any time.

THE MONEY LAUNDERING OFFENCES

The range of activity covered by the money laundering offences under the Bailiwick's legal framework is wide, and effectively includes any form of dealing with property. However, no offence will be committed unless the person dealing with property also has the requisite mental element for committing a money laundering offence. This is actual knowledge or suspicion that the property in question is the proceeds of cultivation or production of cannabis that is unlawful where it occurs (and for some money laundering offences, namely those relating to the acquisition, use or possession of property, suspicion alone will not suffice and actual knowledge is required). As with any type of offence, each case turns on its own facts and the question of whether a person actually had the necessary knowledge or suspicion in any given case is a question to be determined on the basis of all the evidence in that case. This includes actual knowledge or suspicion that can be inferred from the surrounding circumstances.

PROSECUTION

For the avoidance of doubt, it is confirmed that where a business relationship or transaction involves the proceeds of cultivation or production of cannabis that has only occurred in places where that is lawful, no money laundering prosecution will be brought in respect of the business relationship or transaction in question.

Where it transpires that a business relationship or transaction has links to the cultivation or production of cannabis in a place where that is not lawful, no money laundering prosecution will be brought in respect of that business relationship or transaction prosecution if the evidence (including the surrounding circumstances) indicates that the Bailiwick parties concerned did not have actual knowledge or suspicion of that link.

However, it is important to be aware that a lack of knowledge or suspicion may be attributable to a failure to comply with the applicable due diligence measures in relation to a business relationship or transaction. Failure to comply with these measures is itself a criminal offence. The question of whether that offence has been committed in relation to a particular business relationship or transaction will be determined on the basis of all the facts. This includes whether or not there has been compliance with any rules, guidance, notices or instructions issued by the Guernsey Financial Services Commission, such as the Handbook on Countering Financial Crime and Terrorist Financing.¹



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¹ In the case of eCasinos, there are corresponding due diligence measures under Alderney legislation that are subject to related guidance etc. from the Alderney Gambling Control Commission.