

**DRAFT CRIME AND SECURITY (JERSEY) LAW 200-**

---

**Lodged au Greffe on 12th November 2002  
by the Home Affairs Committee**

---



**STATES OF JERSEY**

**STATES GREFFE**

150

2002

P.210

Price code: D

## **European Convention on Human Rights**

The President of the Home Affairs Committee has made the following statement -

In the view of the Home Affairs Committee the provisions of the Draft Crime and Security (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Deputy A.J. Layzell of St. Brelade**

## REPORT

The draft Crime and Security (Jersey) Law 200- contains a number of disparate measures which are equivalent to provisions contained in the Anti-Terrorism, Crime and Security Act 2001, (“the ATCS Act”) which are not directly or wholly concerned with terrorism. A decision was made at an early stage in the preparation of the new Terrorism (Jersey) Law 2002, which was to be based on the Terrorism Act 2000, including amendments of that Act made by the ATCS Act, that it would be more appropriate for these provisions to be contained in a separate Law.

The substantive provisions of the draft Law fall into two categories: weapons of mass destruction (Part 2) and the power to make freezing orders (Part 3).

### **PART 2 - Weapons of Mass Destruction**

Article 2 creates a number of new offences relating to nuclear explosions, to nuclear weapon development and threatening the use of a nuclear weapon. A “nuclear weapon” for this purpose, includes a nuclear explosive device that is not intended to use as a weapon (see Article 1(1)).

The Article would prohibit, in addition to acts done in the Island, acts done outside it which are done by Island persons (see Article 1(1) for the definition of this expression).

Clearly, all the activities covered by this Article are of the utmost gravity, and hence are to be visited by a maximum punishment of life imprisonment. Note that a Court may, in addition to sentencing a person to imprisonment for a term less than life imprisonment, also impose an unlimited fine, under Article 5 of the Criminal Justice (Jersey) Law 1957.

Article 3 sets out defences to some of these offences of lack of knowledge that a particular thing was a nuclear weapon or of having informed, or attempted to inform, the States of Jersey Police Force as soon as practicable after discovering that an object was a nuclear weapon.

These defences, to a certain extent, shift the burden of proof onto the defendant. The first defence gives the defendant what lawyers refer to as the “evidential burden”. This means that the defendant has only to raise an issue as to whether he knew of the nature of the object. Any evidence which the defence produces on this will be sufficient to pass the burden of proof back to the prosecution to disprove, beyond a reasonable doubt, his lack of knowledge or suspicion.

The second defence, on the other hand, shifts the “persuasive” burden of proof to the defence; that is, the defence must produce not just some evidence in support of the defence, but sufficient evidence to show, on the balance of probabilities, that the defence is true.

Reverse burdens of proof can be incompatible with the European Convention on Human Rights (ECHR), as being contrary to the presumption of innocence. However, the Convention jurisprudence recognises that in some instances, it is permissible to require the defence to prove something as part of his defence.

Whether the placing of a burden on the Defendant will be compatible with the ECHR depends on the nature of the burden, and whether it is reasonable, in all the circumstances to expect the defence to discharge it. In the case of defences which require the defendant to produce evidence or prove something that only he could know, such as his state of mind, or some action that he alone could show he took, it is generally reasonable to impose some responsibility on him to prove or at least produce some evidence of his own.

Thus, in the case of the first defence, the defendant is only required to produce some evidence of his state of knowledge; and in the second, where his state of knowledge is not relevant, but his motives might be highly relevant, he is required to show that he did take appropriate steps to inform the police as soon as he suspected or knew that he was dealing with a nuclear weapon. It would be very difficult, for the prosecutor to prove conclusively that the defendant did not take steps to inform the police.

The Committee therefore believes that these provisions are compatible with the Conventions rights. It is also the case that these provisions are, in all material respects, identical to provisions in the ATCS Act, in respect of which the Home Secretary issued a statement of compatibility with the Convention Rights.

Article 4 would create new offences of assisting or inducing certain weapons-related acts overseas. It will become an offence for an Island person to do, outside the Island, things which assist a foreigner to do an act which would be an offence in the Island under Article 2 of this draft Law (nuclear weapons), or under the U.K. legislation controlling biological and chemical weapons, which applies to the Island. Once again, the gravity of these offences calls for the ultimate sanction of life

imprisonment.

Article 5 creates new offences related to the use of noxious things to cause harm or intimidate. There is no definition of a 'noxious thing' in the draft Law, so the expression will have its ordinary meaning.

Clearly it will include such things as mass destruction weapons, but it could also include less dangerous things which are 'noxious' (i.e. poisonous or harmful to health).

It will become an offence for a person to use or to threaten to use a noxious thing to cause various kinds of serious harm, in a manner designed to influence the government or to intimidate the public.

These are serious offences, not necessarily connected with political terrorism, and will carry a very substantial maximum penalty of 14 years imprisonment and an unlimited fine.

Article 6 would create a new power to obtain a search warrant for evidence of an offence under the preceding Article. The warrant may only be granted by the Bailiff and it will be an offence to obstruct a police officer who is executing a search warrant. The maximum penalty for this offence will be 2 years imprisonment and an unlimited fine.

Article 7 would amend Article 1 of the Criminal Hoaxes (Jersey) Law 2000, under which it is an offence for a person to place or send any article intending to make 'another person' believe it is likely to explode or ignite and thereby cause injury or damage to property. The amendments will make it an offence to do such things not only where the other person is in the Island but also where the other person is overseas, and extends the range of the offence to cover hoaxes which are related to a 'serious risk to human health'.

The amendments would also similarly extend the offence of communicating false information in connection with such a hoax. The penalty for the offences under the 2000 Law is a maximum term of 7 years imprisonment and an unlimited fine.

### **PART 3 - Freezing Orders**

This part contains measures which would replace measures in the Emergency Laws (Re-enactments and Repeals) Act 1964, which enabled the U.K. Treasury to make orders freezing the assets of foreign Governments and residents which or who threaten the economic life of the U.K. or the Channel Islands or the Isle of Man.

The 1964 Act was repealed, without savings in respect of the Island, by the ATCS Act, which introduced new provisions of a similar nature, though rather wider and more streamlined in effect, which apply only to threats to the U.K. economy, or threats to the life or property of a U.K. resident or a U.K. national.

The powers made in the 1964 Act have rarely been used, in respect of the Island, and probably few people in the Island even knew that they existed, but their repeal does leave a gap in the measures available to the Island and, indeed, the U.K. to protect the interests of the Island or Islanders in time of need.

Part 3 of the Law will fill this gap by empowering the Policy and Resources Committee to make an Order freezing the assets of foreign governments of residents to counter any threat to the Island's economy or Island residents.

The provisions will allow the Island authorities to impose sanctions against foreign Governments in cases of urgency, even before the United Nations or the European Union has agreed on a course of action, where such unilateral sanctions are appropriate.

Article 8 would give the Policy and Resources Committee power to make a freezing order if two conditions are satisfied -

- (a) there must be a reasonable belief that action threatening the Island's economy or the life or property of Island residents has taken place or is about to take place;
- (b) the persons taking the action must be resident outside the Island or the Government of a country outside the Island.

Article 9 would set out (with the Schedule of the Law) what a freezing order may or must contain. It will prohibit everyone in the Island, and people outside the Island who are U.K. nationals (see Article 1(2) for the meaning of this term) and Island companies or limited liability partnerships, from making funds available to, or for the benefit of, a person or persons specified in the Order. The Order may specify persons taking the action referred to in Article 8 and any person who has provided or is likely to provide assistance, directly or indirectly to those persons. The specification may be by name or by

description of persons set out in the Order. Where a person is specified by description, the description must be such that a reasonable person would know whether he fell within it.

The Schedule would specify a series of measures that must or may be included in a freezing order.

The Order must define what ‘funds’ means for the purpose of the Order (paragraph 2) and define the meaning of ‘making funds available’ for the benefit of a person (paragraph 8). Several of the types of activity which may be included in this definition are listed (paragraph 3(2)).

The freezing order must contain provision for licensing funds to be made available, subject to conditions. A fee may be charged for the issue of a licence. Detailed provision as to the content of the licences is set out (paragraph 4). Such licences will be issued to cover personal expenditure of a person subject to the freezing order, or his family for (for example) essential medical expenses or maintenance payments.

A freezing order may include requirements to provide information or documents reasonably needed to establish whether an offence under the order has been committed. The order may specify that the requirements will not be subject to confidentiality restrictions, but legally privileged information or documents will be excluded (paragraph 5).

A freezing order may also require persons to disclose information if -

- (a) the person required to produce it is specified in the order;
- (b) the person knows or suspects that a person specified in the order is a customer of his; and
- (c) the information came to him in the course of the business of a financial institution (as defined in the Proceeds of Crime (Jersey) Law 1999).

Similar provisions to those mentioned above relating to confidentiality and legally privileged information may be applied to information provided under such a requirement (paragraph 6)

A freezing order may include provision for offences (paragraph 7). It could include provision that it would be an offence for a person to fail to comply with a freezing order or facilitate a breach of the order by another person. But a person will not be guilty if he did not know, and had no reason to suspect, that the person to whom the funds were made available was a person specified in the freezing order. It will be noted that this paragraph would create a special defence of lack of knowledge or suspicion of that the person to whom funds were made available was a person specified in the freezing order. This, again, is a “reverse burden” provision. As with the second defence in Article 3(2), the defendant bears the persuasive burden but, again, the evidence required relates to his own state of knowledge and the comments made above in relation to that defence apply equally to this provision.

The maximum penalty for the offences is 2 years imprisonment and a fine.

The Order could also include provision making it an offence to fail to produce information, or a document, as required by the order. Also, it could be made an offence to give false information, either in response to a requirement, or in an application for a licence, under the order. The maximum penalty for such an offence is 6 months imprisonment or a fine not exceeding level 6 in the standard scale.

Provision may be made in a freezing order for payment of compensation to anyone who suffers loss as a result of the order, or the granting or refusal of a licence. The entitlement to compensation may be made subject to a requirement that the claimant acted reasonably (for example by investigating his loss) (paragraph 9).

Finally, the Schedule requires that a freezing order must provide that if a person specified in the order as having their funds frozen, so requests, the Policy and Resources Committee must give the person a written statement of the reason why he has been specified.

Returning to Part 3 of the draft Law, Article 10 would require the Policy and Resources Committee to keep a freezing order under review. The order lapses after 2 years. The order is subject to the Subordinate Legislation (Jersey) Law 1960, and so may be the subject of a proposition for its annulment by the States, at any time (see Article 13(12)).

Article 11 would provide that a freezing order will bind the Crown (but not the Queen in her personal capacity), but that the Crown will not be liable for a criminal offence for contravention of a freezing order.

## **Resources and Manpower**

The draft Law has no implications for the financial or manpower resources of the States, though some additional manpower reserves may be required in the Policy and Resources Department if a freezing order is made.

## **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee 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). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 24th October 2002 the Home Affairs Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Home Affairs Committee the provisions of the Draft Crime and Security (Jersey) Law 200- are compatible with the Convention Rights.

## **Explanatory Note**

### *PART 1*

#### INTRODUCTORY

*Article 1* is the interpretation provision.

### *PART 2*

#### WEAPONS OF MASS DESTRUCTION

*Article 2* creates a new offence of causing a nuclear weapon explosion, of developing, producing, having or transferring a nuclear weapon or of engaging in military preparations for the use of nuclear weapons. The offence extends to acts done outside the Island by U.K. nationals resident in the Island or by companies or limited liability partnerships established in the Island. The penalty is life imprisonment. There is an exception for acts specified by Regulations made by the States.

*Article 3* creates 2 defences to an offence under Article 2. The first is that the accused did not know or have reason to believe the object was a nuclear weapon. The burden of proof for the defence is reduced. It need only produce sufficient evidence of the defence to raise an issue. Once that is done, the prosecution must prove the contrary beyond reasonable doubt. The second defence is that the accused took steps to notify a States' police officer of the nuclear weapon as soon as possible.

*Article 4* extends the offence of aiding, abetting counselling, procuring or inciting the commission of offences relating to nuclear, biological or chemical weapons to cases where the act which would constitute the offence relating to such weapons is done outside the Island by a person unconnected with the Island. It further extends the offence of aiding, abetting etc. the commission of such offences to cases where the act of aiding, abetting etc. is done by a U.K. national.

*Article 5* creates new offences of using or threatening to use any noxious thing which would result in serious violence or damage to property or a risk to public health or cause the public to fear for their safety so as to place pressure upon the States or any government or intimidate the public of any place. The penalty is imprisonment for up to 14 years and/or an unlimited fine.

*Article 6* creates a new power for the Bailiff to issue a warrant for the search of premises where an offence relating to nuclear, chemical or biological weapons or the use of noxious things to harm and intimidate is suspected. The police officer to whom the warrant is issued may take with him onto the premises such persons and equipment as appear necessary.

*Article 7* amends the Criminal Hoaxes (Jersey) Law 2000 so that it applies not only to hoaxes which create a fear of personal injury or damage to property but also to those which create a fear of a serious risk to human health. The person in whom the fear is created may be anywhere in the world. The penalty for the offence under that Law is imprisonment for up to 7 years and/or an unlimited fine.

### *PART 3*

#### FREEZING ORDERS

*Article 8* empowers the Policy and Resources Committee (the "Committee") to make freezing orders. An order may be made if 2 conditions are satisfied. Firstly, there must be an economic threat to the Island or action which would threaten the life or property of Island residents. Secondly, the threat must come from the government or a resident of another country or territory.

*Article 9* describes the effect and operation of a freezing order. It prohibits funds being made available to persons specified in the order, who are believed to have taken or assisted in the action threatening the Island. A freezing order must be complied with by everyone in the Island, by all United Kingdom nationals and by all companies and limited liability partnerships established in the Island, wherever they are. Further provision for freezing orders appears in the *Schedule*.

*Article 10* imposes a duty for the Committee to review freezing orders, which, in any event, cease to have effect after 2 years.

*Article 11* has the effect that a freezing order binds the Crown.

### *PART 4*

## CLOSING PROVISIONS

*Article 12* makes general provision requiring the consent of the Attorney General to prosecutions under the Law and providing for offences by aiders, abettors and bodies corporate.

*Article 13* empowers the Committee to amend the definition “financial institution”.

*Article 14* is the citation and commencement provision.

*The Schedule* contains further provision for the making of freezing orders.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.



**CRIME AND SECURITY (JERSEY) LAW 200-**

---

ARRANGEMENT OF ARTICLES

---

*PART 1*

INTRODUCTORY

1. Interpretation

*PART 2*

WEAPONS OF MASS DESTRUCTION

2. Use etc. of nuclear weapons
3. Defences for Article 2
4. Assisting or inducing certain weapons - related acts overseas
5. Use of noxious things to cause harm and intimidate
6. Powers of entry
7. Amendment of Criminal Hoaxes (Jersey) Law 2000

*PART 3*

FREEZING ORDERS

8. Power to make freezing order
9. Contents of order
10. Review and duration of freezing order
11. The Crown

*PART 4*

CLOSING PROVISIONS

12. Offences: general
13. Orders
14. Citation and commencement

Schedule - Freezing Orders

**CRIME AND SECURITY (JERSEY) LAW 200-**

---

**A LAW** to create new offences regarding the use of weapons of mass destruction and noxious things and confer powers of entry in relation thereto; to amend the Criminal Hoaxes (Jersey) Law 2000; and to confer a power to make orders freezing the assets of a person outside the Island engaged in acts detrimental to the economy or which threaten life or property; sanctioned by Order of Her Majesty in Council of the

---

*(Registered on the \_\_\_\_\_ day of \_\_\_\_\_ 200-)*

---

**STATES OF JERSEY**

---

The \_\_\_\_\_ day of \_\_\_\_\_ 200-

---

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

*PART 1*

INTRODUCTORY

ARTICLE 1

**Interpretation**

- (1) In this Law, unless the context otherwise requires -
- “Committee” means the Policy and Resources Committee;
  - “freezing order” means an Order made by the Committee under Article 8;
  - “Island person” means -
    - (a) a national of the United Kingdom who is ordinarily resident in the Island;
    - (b) a body incorporated under the laws of the Island;
    - (c) a limited liability partnership registered under the Limited Liability Partnerships (Jersey) Law 1997;<sup>[1]</sup>
  - “nuclear weapon” includes a nuclear explosive device that is not intended for use as a weapon;
  - “police officer” means an officer of the States of Jersey Police force or a member of the Honorary Police.
- (2) For the purposes of this Law a national of the United Kingdom is an individual who is -
- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas Citizen;
  - (b) a person who under the British Nationality Act 1981 of the United Kingdom Parliament is a British subject; or
  - (c) a British protected person within the meaning of that Act.
- (3) For the purposes of this Law, a reference to a resident of a country or territory outside the Island is -

- (a) an individual who is ordinarily resident in such a country or territory; or
- (b) a body incorporated under the law of such a country or territory.

(4) For the purposes of paragraph (3)(b) in its application to Part 3, a branch situated in a country or territory outside the Island of an Island company or limited liability partnership shall be treated as a body incorporated under the law of the country or territory where the branch is situated.

(5) In this Law a reference to a Part, Article or Schedule by number only, and without further identification, is a reference to the Part, Article or Schedule of that number in this Law.

(6) A reference in an Article or Schedule of this Law to a paragraph, sub-paragraph or clause by number or letter only and without further identification is a reference to the paragraph, sub-paragraph or clause of that number or letter in the Article or Schedule in which it appears.

(7) In this Law a reference to an enactment is a reference to that enactment as amended from time to time and includes a reference to that enactment as extended or applied under another enactment, including another provision of this Law.

- (8) For the purposes of paragraph (7), “enactment” includes an Act of the United Kingdom Parliament.

## *PART 2*

### WEAPONS OF MASS DESTRUCTION

#### ARTICLE 2

##### **Use etc. of nuclear weapons**

- (1) It shall be an offence for a person to -
  - (a) knowingly cause a nuclear weapon explosion;
  - (b) develop or produce, or participate in the development or production of, a nuclear weapon;
  - (c) have a nuclear weapon in his or her possession;
  - (d) participate in the transfer of a nuclear weapon; or
  - (e) engage in military preparations, or in preparations of a military nature, intending to use or threaten to use, a nuclear weapon.

- (2) Paragraph (1) is subject to any exception specified under paragraph (6) and to the defences in Article 3.

(3) For the purposes of paragraph (1)(b) a person participates in the development or production of a nuclear weapon if the person does any act which -

- (a) facilitates the development by another person of the capability to produce or use a nuclear weapon; or
- (b) facilitates the making by another person of a nuclear weapon,

knowing or having reason to believe that his or her act has (or will have) that effect.

- (4) For the purposes of paragraph (1)(d) a person participates in the transfer of a nuclear weapon if the person -

- (a) buys or otherwise acquires it or agrees with another person to do so;
- (b) sells or otherwise disposes of it or agrees with another person to do so; or
- (c) makes arrangements under which another person either acquires or disposes of it or agrees with a third person

to do so.

- (5) A person guilty of an offence under this Article shall be liable to imprisonment for life.
- (6) The States may by Regulations specify acts to which paragraph (1) does not apply.
- (7) This Article applies to acts done outside the Island, but only if they are done by an Island person.
- (8) Nothing in paragraph (7) affects any criminal liability arising otherwise than under that paragraph.

### ARTICLE 3

#### **Defences for Article 2**

(1) In proceedings for an offence under Article 2(1)(c) or (d) relating to an object it is a defence for the accused to show that he or she did not know and had no reason to believe that the object was a nuclear weapon and the accused shall be taken to have shown that fact if -

- (a) sufficient evidence is adduced to raise an issue with respect to it; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

(2) In proceedings for an offence under Article 2(1)(c) or (d) it shall also be a defence for the accused to show that he or she knew or believed that the object was a nuclear weapon but, as soon as reasonably practicable after the accused first knew or believed that fact, the accused took all reasonable steps to inform an officer of the States of Jersey Police Force of his or her knowledge or belief.

### ARTICLE 4

#### **Assisting or inducing certain weapons - related acts overseas**

(1) It shall be an offence for a person to aid, abet, counsel or procure or incite another person, who is not an Island person, to do a relevant act outside the Island.

(2) A relevant act is an act that, if done by an Island person, would be an offence under -

- (a) Article 2;
- (b) section 1 of the Biological Weapons Act 1974 as it is extended to the Island by Order in Council; or
- (c) section 2 of the Chemical Weapons Act 1996 as it is extended to the Island by Order in Council.

(3) A person accused of an offence under this Article in relation to a relevant act may raise any defence which would be open to a person accused of an offence mentioned in paragraph (2) in respect of that act.

- (4) A person guilty of an offence under this Article shall be liable to imprisonment for life.
- (5) This Article applies to acts done outside the Island, but only if they are done by an Island person.
- (6) Nothing in this Article affects any criminal liability arising apart from this Article.

### ARTICLE 5

#### **Use of noxious things to cause harm and intimidate**

(1) It shall be an offence for a person to take any action which -

- (a) involves the use of any noxious thing;
- (b) has or is likely to have an effect falling within paragraph (2); and

- (c) is designed -
  - (i) to influence the States of Jersey or the government of any other place or country, or
  - (ii) to intimidate the public or a section of the public of the Island or of any other place or country.
- (2) Action has an effect falling within this paragraph if it -
  - (a) causes serious violence against a person anywhere in the world;
  - (b) causes serious damage to property anywhere in the world;
  - (c) endangers human life or creates a serious risk to the health or safety of the public or a section of the public; or
  - (d) induces in members of the public the fear that the action is likely to endanger their lives or create a serious risk to their health or safety,

but any effect on the person taking the action is to be disregarded.

(3) It shall be an offence for a person to make a threat that he or she or another person will take any action which constitutes an offence under paragraph (1), intending, by the threat, to induce in any person, whether in the Island or elsewhere, the fear that the threat is likely to be carried out.

(4) For a person to be guilty of an offence under paragraph (3), it is not necessary for that person to have any particular person in mind.

(5) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.

## ARTICLE 6

### **Powers of entry**

(1) If the Bailiff is satisfied on information on oath that there are reasonable grounds for suspecting that evidence of the commission of an offence under Article 2, 4 or 5 is to be found on any premises, the Bailiff may issue a warrant authorizing a police officer to enter the premises, if necessary by force, at any time within one month from the date of issue of the warrant and to search the premises.

- (2) The powers of a police officer who enters premises under the authority of a warrant include power -
  - (a) to take with the officer such other persons and such equipment as appear to him or her to be necessary;
  - (b) to inspect, seize and retain any substance, equipment or document found on the premises;
  - (c) to require any document or other information which is held in electronic form and is accessible from the premises to be produced in a form -
    - (i) in which the officer can read and copy it, or
    - (ii) from which it can readily be produced in a form in which the officer can read and copy it;
  - (d) to copy any document which the officer has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of an offence under Article 2, 4 or 5.

(3) A police officer who enters premises under the authority of a warrant or by virtue of paragraph (2)(a) may search or cause to be searched any person on the premises who the officer has reasonable cause to believe may have in his or her possession any document or other thing which may be required as evidence for the purposes of proceedings in respect of an offence under Article 2, 4 or 5.

- (4) A police officer shall not search a person of the opposite sex.

- (5) It shall be an offence for a person to -
- (a) wilfully obstruct a police officer in the exercise of a power conferred by a warrant under this Article; or
  - (b) fail, without reasonable excuse, to comply with a reasonable request made by a police officer for the purpose of facilitating the exercise of such a power.

(6) A person guilty of an offence under paragraph (5) shall be liable to imprisonment for a term not exceeding 2 years or to a fine, or both.

## ARTICLE 7

### **Amendment of Criminal Hoaxes (Jersey) Law 2000**

In Article 1 of the Criminal Hoaxes (Jersey) Law 2000<sup>[2]</sup> -

- (a) in paragraph (1) -
  - (i) after the words “some other person” there shall be inserted the words “, whether in the Island or elsewhere,”;
  - (ii) after the words “damage to property” there shall be inserted the words “or create a serious risk to human health”;
- (b) in paragraph (2) -
  - (i) for the words “him or any other person” there shall be substituted the words “any person, whether in the Island or elsewhere,”;
  - (ii) after the words “damage to property” there shall be inserted the words “or create a serious risk to human health”.

## PART 3

### FREEZING ORDERS

## ARTICLE 8

### **Power to make freezing order**

- (1) The Committee may by Order make a freezing order if the following 2 conditions are satisfied.
- (2) The first condition is that the Committee believes that -
  - (a) action to the detriment of the Island’s economy (or part of it) has been or is likely to be taken by a person or persons; or
  - (b) action constituting a threat to the life or property of one or more individuals ordinarily resident in the Island, Island companies or limited liability partnerships has been or is likely to be taken by a person or persons.
- (3) If one person is believed to have taken or to be likely to take the action the second condition is that the person

is -

- (a) the government of a country or territory outside the Island; or
- (b) a resident of a country or territory outside the Island.

(4) If 2 or more persons are believed to have taken or to be likely to take the action the second condition is that each of them falls within sub-paragraph (a) or (b) of paragraph (3); and different persons may fall within different sub-paragraphs.

## ARTICLE 9

### **Contents of order**

- (1) A freezing order is an order which prohibits persons from making funds available to or for the benefit of a person or persons specified in the order.
- (2) The order must provide that these are the persons who are prohibited -
  - (a) all persons in the Island; and
  - (b) all persons elsewhere who are -
    - (i) nationals of the United Kingdom,
    - (ii) Island companies, or
    - (iii) limited liability partnerships.
- (3) The order may specify the following (and only the following) as the person or persons to whom or for whose benefit funds are not to be made available -
  - (a) the person or persons reasonably believed by the Committee to have taken or to be likely to take the action referred to in Article 8(2);
  - (b) any person the Committee reasonably believes has provided or is likely to provide assistance (directly or indirectly) to that person or any of those persons.
- (4) A person may be specified under paragraph (3) by -
  - (a) being named in the order; or
  - (b) falling within a description of persons set out in the order.
- (5) The description must be such that a reasonable person would know whether he or she fell within it.
- (6) Funds are financial assets and economic benefits of any kind.
- (7) A freezing order -
  - (a) may make different provision for different purposes;
  - (b) may include supplementary, incidental, saving or transitional provisions.
- (8) The Schedule contains further provisions about the contents of freezing orders but nothing in the Schedule affects the generality of paragraph (1).

## ARTICLE 10

### **Review and duration of freezing order**

- (1) The Committee shall keep a freezing order under review.
- (2) A freezing order shall cease to have effect at the end of the period of 2 years beginning with the day on which it is made.

## ARTICLE 11

### **The Crown**

- (1) A freezing order binds the Crown, subject to the following provisions of this Article.

(2) No contravention by the Crown of a provision of a freezing order makes the Crown criminally liable but the Royal Court may, on the application of a person appearing to the Court to have an interest, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Nothing in this Article affects Her Majesty in her private capacity.

#### *PART 4*

### CLOSING PROVISIONS

#### ARTICLE 12

##### **Offences: general**

(1) Proceedings for an offence under this Law or included in a freezing order shall not be instituted except by or with the consent of the Attorney General.

(2) Any person who aids, abets, counsels or procures the commission of an offence under this Law or included in a freezing order shall also be guilty of the offence and liable in the same manner as a principal offender to the penalty provided for that offence.

(3) Where an offence under this Law committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

(a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or

(b) any person purporting to act in any such capacity,

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

(4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

#### ARTICLE 13

##### **Orders**

(1) The Committee may by Order amend the definition "financial institution" in the Schedule.

(2) The Subordinate Legislation (Jersey) Law 1960<sup>[3]</sup> shall apply to Orders made under this Law.

#### ARTICLE 14

##### **Citation and commencement**

This Law may be cited as Crime and Security (Jersey) Law 200- and shall come into force on the seventh day following its registration.



## *SCHEDULE*

### **(Article 9(8))**

## **FREEZING ORDERS**

### **Interpretation of Schedule**

1.-(1) In this Schedule, “financial institution” means a person carrying on any business described in the Second Schedule to the Proceeds of Crime (Jersey) Law 1999.<sup>[4]</sup>

(2) In this Schedule, a reference to a person specified in a freezing order as a person to whom or for whose benefit funds are not to be made available are to be read in accordance with Article 9(4).

### **Funds**

2. A freezing order shall include provision that funds include gold, cash, deposits, securities (such as stocks, shares and debentures) and such other matters as the order may specify.

### **Making funds available**

3.-(1) A freezing order shall include provision as to the meaning (in relation to funds) of making available to or for the benefit of a person.

- (2) In particular, an order may provide that the expression includes -
- (a) allowing a person to withdraw from an account;
  - (b) honouring a cheque payable to a person;
  - (c) crediting a person’s account with interest;
  - (d) releasing documents of title (such as share certificates) held on a person’s behalf;
  - (e) making available the proceeds of realisation of a person’s property;
  - (f) making a payment to or for a person’s benefit under a contract;
  - (g) making a payment to or for a person’s benefit under any enactment (such as the enactments relating to social security);
  - (h) such other acts as the order may specify.

### **Licences**

4.-(1) A freezing order shall include

- (a) provision for the granting of licences authorizing funds to be made available;
  - (b) provision that a prohibition under the order is not to apply if funds are made available in accordance with a licence.
- (2) In particular, an order may provide -
- (a) that a licence may be granted generally or to a specified person or persons or description of persons;
  - (b) that a licence may authorize funds to be made available to or for the benefit of persons generally or a specified person or persons or any description of persons;
  - (c) that a licence may authorize funds to be made available generally or for specified purposes;

- (d) that a licence may be granted in relation to funds generally or to funds of a specified description;
- (e) for a licence to be granted in pursuance of an application or without an application being made;
- (f) for the form and manner in which applications for licences are to be made;
- (g) for licences to be granted by the Committee or a person authorized by the Committee;
- (h) for the form in which licences are to be granted;
- (i) for licences to be granted subject to conditions;
- (j) for licences to be of a defined or indefinite duration;
- (k) for the charging of a fee to cover the administrative costs of granting a licence;
- (l) for the variation and revocation of licences.

### **Information and documents**

5.-(1) A freezing order may include provision that a person-

- (a) must provide information if required to do so and if it is reasonably needed for the purpose of ascertaining whether an offence under the order has been committed;
  - (b) must produce a document if required to do so and if it is reasonably needed for that purpose.
- (2) In particular, an order may include -
- (a) provision that a requirement to provide information or to produce a document may be made by the Committee or a person authorized by the Committee;
  - (b) provision that information must be provided, and a document must be produced, within a reasonable period specified in the order and at a place specified by the person requiring it;
  - (c) provision that the provision of information is not to be taken to breach any restriction on the disclosure of information (however imposed);
  - (d) provision restricting the use to which information or a document may be put and the circumstances in which it may be disclosed;
  - (e) provision that a requirement to provide information or produce a document does not apply to privileged information or a privileged document;
  - (f) provision that information is privileged if the person would be entitled to refuse to provide it on grounds of legal professional privilege in proceedings in the Royal Court;
  - (g) provision that a document is privileged if the person would be entitled to refuse to produce it on grounds of legal professional privilege in proceedings in the Royal Court;
  - (h) provision that information or a document held with the intention of furthering a criminal purpose is not privileged.

### **Disclosure of information**

6.-(1) A freezing order may include provision requiring a person to disclose information as mentioned below if the following 3 conditions are satisfied.

(2) The first condition is that the person required to disclose is specified or falls within a description specified in the order.

(3) The second condition is that the person required to disclose knows or suspects, or has grounds for knowing or suspecting, that a person specified in the freezing order as a person to whom or for whose benefit funds are not to be made available -

- (a) is a customer of the person required to disclose or has been a customer of the person required to disclose at any time since the freezing order came into force; or
- (b) is a person with whom the person required to disclose has dealings in the course of his or her business or has had such dealings at any time since the freezing order came into force.

(4) The third condition is that the information -

- (a) on which the knowledge or suspicion of the person required to disclose is based; or
- (b) which gives grounds for that person's knowledge or suspicion,

came to that person in the course of the business of a financial institution.

(5) The freezing order may require the person required to disclose to make a disclosure to the Committee of that information as soon as practicable after it comes to that person.

(6) The freezing order may include -

- (a) provision that the disclosure of information is not to be taken to breach any restriction on the disclosure of information (however imposed);
- (b) provision restricting the use to which information may be put and the circumstances in which it may be disclosed by the Committee;
- (c) provision that the requirement to disclose information does not apply to privileged information;
- (d) provision that information is privileged if the person would be entitled to refuse to disclose it on grounds of legal professional privilege in proceedings in the Royal Court;
- (e) provision that information held with the intention of furthering a criminal purpose is not privileged.

### **Offences**

7.-(1) A freezing order may include any of the provisions set out in this paragraph.

(2) A person commits an offence if the person fails to comply with a prohibition imposed by the order.

(3) A person commits an offence if the person engages in an activity knowing or intending that it will enable or facilitate the commission by another person of an offence under a provision included under sub-paragraph (2).

(4) A person commits an offence if the person -

- (a) fails without reasonable excuse to provide information, or to produce a document, in response to a requirement made under the order;
- (b) provides information, or produces a document, which the person knows is false in a material particular in response to such a requirement or with a view to obtaining a licence under the order;
- (c) recklessly provides information, or produces a document, which is false in a material particular in response to such a requirement or with a view to obtaining a licence under the order; or
- (d) fails without reasonable excuse to disclose information as required by a provision included under paragraph 6.

(5) A person does not commit an offence under a provision included under sub-paragraph (2) or (3) if the person proves that he or she did not know and had no reason to suppose that the person to whom or for whose benefit funds were

made available, or were to be made available, was the person (or one of the persons) specified in the freezing order as a person to whom or for whose benefit funds are not to be made available.

(6) A person guilty of an offence under a provision included under sub-paragraph (2) or (3) shall be liable to imprisonment for a term not exceeding 2 years or to a fine, or both.

(7) A person guilty of an offence under a provision included under sub-paragraph (4) shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 4 on the standard scale, <sup>[5]</sup> or both.

#### **Offences by bodies corporate etc.**

**8.**-(1) A freezing order may include the provisions set out in this paragraph.

(2) If an offence under the order is committed by a limited liability partnership or body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in any such capacity,

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

(3) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

#### **Compensation**

**9.**-(1) A freezing order may include provision for the award of compensation to or on behalf of a person on the grounds that the person has suffered loss as a result of -

- (a) the order;
  - (b) the fact that a licence has not been granted under the order;
  - (c) the fact that a licence under the order has been granted on particular terms rather than others;
  - (d) the fact that a licence under the order has been varied or revoked.
- (2) In particular, the order may include -
- (a) provision about the person who may make a claim for an award;
  - (b) provision about the person to whom a claim for an award is to be made (which may include provision that it is to be made to the Royal Court);
  - (c) provision for the procedure for making and deciding a claim;
  - (d) provision that no compensation is to be awarded unless the claimant has behaved reasonably (which may include provision requiring the claimant to mitigate his or her loss, for instance by applying for a licence);
  - (e) provision that compensation must be awarded in specified circumstances or may be awarded in specified circumstances (which may include provision that the circumstances involve negligence or other fault);
  - (f) provision about the amount that may be awarded;
  - (g) provision for any compensation awarded to be paid out of the annual income of the States;
  - (h) provision about how compensation is to be paid (which may include provision for payment to a person other

than the claimant).

### **Committee's duty to give reasons**

**10.** A freezing order shall include the provision that if -

- (a) a person is specified in the order as a person to whom or for whose benefit funds are not to be made available; and
- (b) that person makes a written request to the Committee to state the reason why he or she is so specified,

as soon as is practicable the Committee must give the person the reason in writing.

---

[1] Volume 1996-1997, page 503, Volume 1998, page 277, Volume 1999, page 527 and R&O 9232.

[2] Volume 2000, page 17.

[3] Tome VIII, page 849 and Volume 2001, pages 3 and 4.

[4] Volume 1999, page 194.

[5] Volume 1992-1993, page 437.