

STATES OF JERSEY

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DRAFT CUSTOMS AND EXCISE (AMENDMENT No. 6, (JERSEY) LAW 200

**Lodged au Greffe on 7th April 2008
by the Minister for Home Affairs**

STATES GREFFE



Jersey

DRAFT CUSTOMS AND EXCISE (AMENDMENT No. 6)(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 Customs and Excise (Amendment No. 6, (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

REPORT

1. The purpose of this draft Law is to amend the Customs and Excise (Jersey) Law 1999 by inserting new provisions designed to implement, in part, Special Recommendation IX on Terror Financing of the Financial Action Task Force (“FATF”).
2. The new provisions will cover the cross-border elements of the requirements of Special Recommendation IX; other elements, relating to seizures of cash suspected of being related to criminal activity within the Island will be implemented by means of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008 (L.11/2008), which was adopted by the States at the end of 2007 and registered in the Royal Court on 22nd February 2008.
3. As States Members know, the Government of Jersey has decided, as a matter of policy, to implement the 40 Recommendations and 9 Special Recommendations of the FATF.
4. Special Recommendation IX requires that –
 - “Countries should have measures in place to detect the physical cross-border transportation of currency and bearer negotiable instruments, including a declaration system or other disclosure obligation.*
 - Countries should ensure that their competent authorities have the legal authority to stop or restrain currency or bearer negotiable instruments that are suspected to be related to terrorist financing or money laundering, or that are falsely declared or disclosed.*
 - Countries should ensure that effective, proportionate and dissuasive sanctions are available to deal with persons who make false declaration(s) or disclosure(s). In cases where the currency or bearer negotiable instruments are related to terrorist financing or money laundering, countries should also adopt measures, including legislative ones consistent with Recommendation 3 and Special Recommendation III, which would enable the confiscation of such currency or instruments.”*
5. As the FATF Best practice guide on Special Recommendation IX says at paragraphs 3 and 4–
 3. *Reporting by intelligence and law enforcement indicates that cash smuggling is one of the major methods used by terrorist financiers, money launderers and organised crime figures to move money in support of their activities. Over many years, FATF typologies exercises have repeatedly highlighted the key role that cash couriers often play in money laundering operations. However, in recent years, evidence has emerged that cash couriers also play a significant role in the international financing of terrorism.*
 4. *Cash couriers use a variety of methods to smuggle cash; however, a preferred method is the use of commercial airlines for the following reasons: (1) the passenger (courier) can stay close to his money during transport, (2) many foreign destinations can be quickly reached; and (3) little preplanning is required. Land border crossings also offer advantages to the cash courier, including the ability to conceal the currency in the courier’s vehicle. Another leading method of cash smuggling is through the mail.”*
6. The Special Recommendation permits the use of, either, a customs declaration system or a disclosure system as the means of implementation.
7. In essence, a declaration system would require everyone making a physical cross-border transportation of currency or negotiable instruments over the maximum threshold to make a declaration to the customs authorities.
8. This type of system is thought to be resource intensive, when compared to a disclosure system. It has, therefore, been decided to introduce a disclosure system for personal imports/exports of currency.
9. A disclosure system requires all persons making a physical cross-border transportation of currency or bearer negotiable instruments to make a truthful disclosure to customs on request.
10. Hence, the provisions of the new Part 5A of the Customs and Excise Law would empower a customs officer to require any person entering or leaving Jersey to disclose any “cash” in an amount over the

prescribed limit of £10,000, to produce his or her baggage for inspection and to answer questions about such cash. Failure to make a disclosure, making a false disclosure and failure to produce the luggage will be a criminal offence and will result in rendering any cash concerned liable to forfeiture.

11. The new Part 5A would also give Customs Officers powers to search persons and ships and aircraft for cash. It will also make provision as to imports or exports of cash by post.
12. If a Customs officer suspects, from the information he receives as a result of a request for disclosure or inspection of baggage etc., that any cash may be “tainted” (i.e. related to terrorism or money laundering), he may use the powers under the Cash Seizure Law to detain it and the provisions of that Law as to seizure and forfeiture will apply.

Financial and manpower implications

It is not possible to predict the resource implications of the proposed amending 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 2nd April 2008 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 Customs and Excise (Amendment No. 6, (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This Law inserts a new Part into the Customs and Excise (Jersey) Law 1999.

The Part will help ensure that “tainted cash” is not brought into or taken out of Jersey.

It will ensure, in particular, that cash is not brought in or taken out for money laundering or terrorist activities.

In brief, tainted cash is cash that is used in, or intended to be used in, unlawful conduct or obtained in the course of, from the proceeds of, or in connection with, unlawful conduct.

If cash in transit is thought to be tainted cash it will be possible, for example, to seize it under the proposed Proceeds of Crime (Cash Seizure) (Jersey) Law 2008.

Article 1 – inserts the new Part into the Law –

Proposed new Article 37A– provides definitions for certain terms used in the Part. In particular it gives a wide meaning to “cash”.

Proposed new Article 37B– give a customs officer the general power to require a person exporting or importing goods to disclose if the goods consist of or contain cash in excess of the prescribed amount.

Proposed new Article 37C– gives a customs officer specific powers in respect of individuals entering or leaving Jersey.

Proposed new Article 37D– sets out the offences in respect of disclosures.

Proposed new Article 37E– makes special provision in respect of postal packets.

Proposed new Article 37F– allows a customs officer to search a ship or aircraft for cash.

Proposed new Article 37G– specifically authorises a customs officer to ask question designed to determine if cash is tainted cash (and therefore liable to be seized under the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008).

Article 2– provides the citation of the Law and also provides that it is to come into force 7 days after it is registered.



Jersey

DRAFT CUSTOMS AND EXCISE (AMENDMENT No. 6)(JERSEY) LAW 200

A LAW to amend further the Customs and Excise (Jersey) Law 1999.

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 –

1 New Part 5A of the Customs and Excise (Jersey) Law 1999

Immediately after Article 37 of the Customs and Excise (Jersey) Law 1999^[1] there is inserted the following Part –

“PART 5A

IMPORTATION AND EXPORTATION OF CASH

37A Interpretation – Part 5A

- (1) In this Part, unless a contrary intention appears –
- ‘cash’ means –
- (a) bearer-negotiable instruments including monetary instruments in bearer form (such as travellers cheques);
 - (b) negotiable instruments (including cheques, promissory notes and money orders) that are –
 - (i) in bearer form,
 - (ii) endorsed without restriction,
 - (ii) made out to a fictitious payee, or
 - (iv) otherwise in such form that title to them passes upon delivery;
 - (c) incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee's name omitted;
 - (d) currency (banknotes and coins that are in circulation, whether in Jersey or elsewhere, as a medium of exchange);
 - (e) a monetary instrument of a type prescribed under paragraph (3)(a);

- (f) a forged or counterfeit version of any instrument or currency mentioned in subparagraphs (a) to (e) of this definition;

‘disclosure’ means a disclosure a person is required to make under Article 37B or Article 37C(1) and includes any answer the person gives to a question asked by an officer under this Part;

‘prescribed amount’, in respect of cash that is being imported or exported, means –

- (a) £10,000; but
- (b) if a lesser amount is prescribed under paragraph (3)(b), that amount.

- (2) Where cash consists of a forged or counterfeit version of any instrument or currency, it shall be taken, for the purposes of this Part, to have the value it would have had were it genuine.
- (3) The Minister may prescribe –
 - (a) any type of monetary instrument to be cash for the purposes of the definition of ‘cash’ in paragraph (1); and
 - (b) any amount less than £10,000 for the purposes of the definition ‘prescribed amount’ in paragraph (1).

37B Officer may require disclosure of cash

An officer may require a person who is exporting or importing goods –

- (a) to disclose if the goods consist of or include cash with a value in excess of the prescribed amount; and
- (b) to answer questions in respect of any such cash.

37C Persons entering and leaving Jersey

- (1) An officer may require a person entering or leaving Jersey –
 - (a) to disclose the value of any cash –
 - (i) contained in his or her baggage, or
 - (ii) carried with the person;
 - (b) to answer question in respect of any such cash; and
 - (c) to produce his or her baggage for inspection by the officer.
- (2) A person who, when required to produce his or her baggage, refuses or fails to do so, is guilty of an offence and is liable to a fine of –
 - (a) level 3 on the standard scale; or
 - (b) an amount equal to 3 times the value of the cash not disclosed, whichever is the higher.
- (3) Where an officer reasonably suspect that a person entering or leaving Jersey is carrying cash with a value in excess of the proscribed amount, the officer may –
 - (a) where the officer is of the same sex as the person, search the person; or
 - (b) request an officer of the same sex as the person to do so.
- (4) A person who is to be searched may require to be taken before a Jurat of the Royal Court or a superior of the officer who must –
 - (a) consider the grounds for the officer’s suspicion; and
 - (b) direct whether the search is to take place.

37D Offences in respect of disclosures

- (1) A person who, when required to make a disclosure refuses to do so is guilty of an offence and is liable to imprisonment for 2 years and a fine.
- (2) A person who, when required to make a disclosure makes a disclosure, orally or in writing, that is untrue in a material particular is guilty of an offence and is liable –
 - (a) if the statement was made knowingly or recklessly, to imprisonment for 2 years and a fine; or
 - (b) in any other case, to a fine of level 4 on the standard scale.

37E Postal packet

- (1) This Article applies where an officer reasonably suspects that a postal packet imported into or posted for export from Jersey contains cash with a value in excess of the prescribed amount.
- (2) The proper postal officer must comply with any direction of the officer –
 - (a) to produce the packet to the officer; and
 - (b) to open it to permit its contents to be examined by the officer.

37F Cash on ships and aircraft

- (1) This Article applies where an officer reasonably suspects that there is on board –
 - (a) a ship lying within the territorial sea adjacent to Jersey; or
 - (b) an aircraft at any place within the territory of Jersey,cash with a value in excess of the prescribed amount.
- (2) The officer may search the ship or aircraft.

36G Questions and information

- (1) The questions that an officer may ask under this Part in respect of cash include questions about its origin and its intended use.
- (2) An officer may require evidence to be produced to the officer's satisfaction in support of any information provided under this Part.
- (3) The Agent of the Impôts may issue directions in respect of the questions that an officer may ask under this Part and the manner in which answers are to be recorded.”.

2 Citation and commencement

- (1) This Law may be cited as the Customs and Excise (Amendment No. 6) (Jersey) Law 200.
- (2) It shall come into force 7 days after it is registered.

