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STATES OF JERSEY

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Report

Last year, the States approved the Protection of Children (Amendment No. 2) (Jersey) Law 1999 to empower the Royal Court to order the forfeiture of indecent photographs or pseudo-photographs of children seized in proceedings for an offence under the Protection of Children (Jersey) Law 1994. This remedied a deficiency in the power of the Royal Court to deprive offenders of property used, or intended for use, for purposes of an offence under the 1994 Law. The amendment was brought forward urgently so that the Royal Court could have the same power as the Magistrate to order the forfeiture of indecent photographs or pseudo-photographs of children.

The deficiency of the powers of the Royal Court in relation to the Protection of Children (Jersey) Law 1994 arose from the absence of a general power to order forfeiture of property or goods used in furtherance of crime. There is no clearly identifiable jurisdiction in the Royal Court or the Magistrate's Court to deprive offenders of such property or goods. There are specific powers in statutes such as the Misuse of Drugs (Jersey) Law 1978 to order the forfeiture of anything used for drug-related offences and for it either to be destroyed or to be dealt with as the Court may order. The Court has similar powers under the Customs and Excise (Jersey) Law 1999. But, apart from specific statutory provisions, there is nothing which generally covers the tools of a criminal's trade e.g. a skeleton key or a jemmy. Neither is there a discretion to order, in appropriate cases, the forfeiture of a motor vehicle used in connection with an offence not otherwise covered by existing statutory provisions. Similarly, radio apparatus, if not caught by existing statutory provisions, may not be forfeited even though it may have been a vital tool in the commission of the offence.

In the United Kingdom, there has been a power of forfeiture since the Prevention of Crimes Act 1871 and, more notably, since the enactment of section 23 of the Criminal Justice Act 1972. Those provisions were consolidated and extended in sections 43 and 43A of the Powers of Criminal Courts Act 1973, as amended by the Criminal Justice Act 1988.

This draft Law would confer similar powers on the Magistrate's Court and the Royal Court to order the forfeiture of property lawfully seized from an offender in his possession or under his control when apprehended for an offence (or when a summons in respect of it was issued) if the property was used for the purpose of committing or facilitating the commission of an offence or if it was intended to be used for that purpose.

The Court would have to have regard to the value of the property and to the likely financial and other effects on the offender of making the order. Forfeiture would not follow as a matter of course; the Court would have to look at all the circumstances of the case to determine whether or not it was fair and reasonable to deprive the offender of the property or goods involved. This would not, for example, result in the forfeiture of a motor vehicle driven by somebody with a modest excess of alcohol in his blood, but might be invoked where a motor vehicle was used as a 'get-away' vehicle from the scene of a burglary.

The draft Law would protect the rights of any person claiming ownership of any property or goods affected by such an order. The expression "property" would not include land or buildings. Provision would also be made as to the disposal of proceeds of forfeited property or goods and, in cases where a compensation order had been made, there would be protection against an offender in effect having to pay compensation twice over. Furthermore, provision would be made for rights of appeal against a forfeiture order.

This legislation is necessary to overcome a deficiency in the powers of criminal courts in appropriate cases to deprive offenders of property or goods which they have actually used (and could use again) in furtherance of criminal activities. The draft Law would ensure that forfeiture should not follow as a matter of course, but be ordered only in those cases where an order of forfeiture was fair given the nature and circumstances of the offence and in the overall interest of the community. Such powers (as stated above) already exist, for example, in relation to misuse of drugs offences and unlawful import/export of goods as well as in relation to pornographic material relating to children. The Committee cannot see why similar powers should not be exercisable in relation to other offences which may be of a similar or even more serious nature, nor why the Jersey courts should have lesser powers than courts in jurisdictions such as the United Kingdom.

Explanatory Note

The purpose of the draft Law is to empower a court, upon the conviction of an offender, to deprive an offender of any property used, or intended for use, for the purposes of the crime of which he has been convicted.

Article 1 deals with interpretation.

Article 2 states the above purpose and gives the court power to make an order to give effect to that purpose. The court may entertain a claim from any person who claims ownership of the property who did not consent to the offender having possession of the property or who did not know, or have reason to suspect, that the property was likely to be used for the purposes of a crime. The claimant has three months from the date of the forfeiture order, or the disposal of any appeal therefrom, to make his claim. Property does not include immoveable property.

Article 3 provides that where a person has suffered personal injury, loss or damage by the commission of the crime the proceeds of any property forfeited under *Article 2* may be used to compensate that person.

Article 4 is the citation provision.

**CRIMINAL JUSTICE (FORFEITURE ORDERS)
(JERSEY) LAW 200-**

A LAW to empower courts to deprive offenders of property utilized in furtherance of crime, and for connected purposes; 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 -

ARTICLE 1

Interpretation

(1) In this Law -

“compensation order” has the meaning given to it in the Criminal Justice (Compensation Orders) (Jersey) Law 1994;^[1]

“police” means the States of Jersey Police Force or the Honorary Police;

“property” does not include immovable property.

(2) A reference in this Law to an Article by number only and without further identification is a reference to the Article of that number in this Law.

(3) A reference in an Article to a paragraph, by number only and without further identification, is a reference to the paragraph of that number in the Article of this Law.

(4) A reference in this Law to an enactment is a reference to that enactment as amended from time to time.

ARTICLE 2

Power to deprive offender of property used, or intended for use, for purposes of crime

(1) Subject to the following provisions of this Article, where a person is convicted of an offence and -

(a) the court by or before which he is convicted is satisfied that any property which has been lawfully seized from him or which was in his possession or under his control at the time when he was apprehended for the offence or when a summons in respect of it was issued -

(i) has been used for the purpose of committing, or facilitating the commission of, any offence, or

(ii) was intended by him to be used for that purpose; or

(b) the offence, or an offence which the court has taken into consideration in determining his sentence, consists of unlawful possession of property which -

(i) has been lawfully seized from him, or

- (ii) was in his possession or under his control at the time when he was apprehended for the offence of which he has been convicted or when a summons in respect of that offence was issued,

the court may make an order under this Article in respect of that property, and may do so whether or not it also deals with the offender in respect of the offence in any other way.

(2) In considering whether to make such an order in respect of any property a court shall have regard -

- (a) to the value of the property; and
- (b) to the likely financial and other effects on the offender of the making of the order (taken together with any other order that the court contemplates making).

(3) Facilitating the commission of an offence shall be taken for the purposes of this Article to include the taking of any steps after the offence has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

(4) An order under this Article shall operate to deprive the offender of his rights, if any, in the property to which it relates, and the property shall, if not already in their possession, be taken into the possession of the police.

(5) Where any property has come into the possession of the police by virtue of paragraph (4) the court that made the order under paragraph (1) may, on application by a claimant of the property, make an order for the delivery of the property to the person appearing to the court to be the owner thereof.

(6) No application under paragraph (5) -

- (a) shall be made after the expiration of three months from the date on which the order under paragraph (1) in respect of the property was made or three months from the date on which any appeal from that order was disposed of; and
- (b) shall succeed unless the claimant satisfies the court either that he had not consented to the offender having possession of the property or, where an order is made under paragraph (1)(a), that he did not know, and had no reason to suspect, that the property was likely to be used for the purpose mentioned in that paragraph.

(7) Property in the possession of the police by virtue of paragraph (4) and not subject to an order under paragraph (5) or Article 3 shall be disposed of in accordance with the Police Force (Disposal of Property) (Jersey) Regulations 1975.^[2]

ARTICLE 3

Application of proceeds of forfeited property

(1) Where a court makes an order under Article 2 in a case where -

- (a) the offender has been convicted of an offence which has resulted in a person suffering personal injury, loss or damage; or
- (b) any such offence is taken into consideration by the court in determining sentence,

the court may also make an order that any proceeds which arise from the disposal of the property and which do not exceed a sum specified by the court shall be paid to that person.

(2) The court may only make an order under this Article if it is satisfied that but for the inadequacy of the means of the offender it would have made a compensation order under which the offender would have been required to pay compensation of an amount not less than the specified amount.

(3) An order under this Article has no effect before the end of a period of three months after it is made or three months after any appeal from that order is disposed of or if a successful application under Article 2(5) is made.

ARTICLE 4

Citation

This Law may be cited as the Criminal Justice (Forfeiture Orders) (Jersey) Law 200-.

^[1] Volume 1994-1995, page 15.

^[2] R & O 6196.