

# **STATES OF JERSEY**

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## **DRAFT PROCEEDS OF CRIME (CASH SEIZURE) (JERSEY) LAW 200**

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**Lodged au Greffe on 24th September 2007  
by the Minister for Home Affairs**

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**STATES GREFFE**





Jersey

## **DRAFT PROCEEDS OF CRIME (CASH SEIZURE) (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 Proceeds of Crime (Cash Seizure) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard**

# REPORT

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## Introduction

1. The draft Law introduces new provisions allowing for the search, seizure, detention and forfeiture cash. The draft Law will repeal and replace the provisions on cash seizure currently contained in Articles 31-36 of the Drug Trafficking Offences (Jersey) Law 1988 and Article 27 and Schedule 4 of the Terrorist (Jersey) Law 2002 and provide a single legislative basis for the search, seizure, detention and civil forfeiture of cash suspected of representing the proceeds of crime or being intended for use in, or obtained in the course of unlawful (criminal) activity.
2. The Law has been drafted in furtherance of the States Strategic Plan 2006-2011, which tasks Home Affairs, at paragraph 3.2.6, with introducing civil asset recovery legislation to target local criminals by 2008. It is thought that the provisions of the draft Law will act as deterrent to those individuals who believe that crime pays and will also assist in upholding the reputation of the Island by providing a legal process through which cash that has been obtained as a result of criminal activity can be forfeited to the state.
3. The draft Law is intended to implement part of Special Recommendation IX of the Financial Action Task Force on Money Laundering. The remainder of the requirements in Special Recommendation IX, concerned with the physical cross-border transportation of currency and bearer negotiable instruments, will be implemented by the Draft Customs and Excise (Amendment No. 5) (Jersey) Law 200. Jersey will be assessed against the 40 Recommendations and 9 Special Recommendations of the FATF by the International Monetary Fund next year. Special Recommendation IX provides that competent authorities should have the power to stop or restrain cash (including currency or bearer negotiable instruments) that are suspected of being related to money laundering or terrorist financing. Jersey's legislation currently fails to meet this element of Special Recommendation IX because police and customs officers do not have the power to stop or restrain cash suspected of being related to money laundering, only cash reasonably suspected of being the proceeds of drug trafficking when that cash is being imported to or exported from the Island and cash suspected of being related to terrorist financing. It is considered that the draft Law will also remedy operational difficulties currently being experienced by officers under the existing legislative provisions.
4. The draft Law will allow the forfeiture of cash so long as the Court is satisfied to the civil standard of proof, the balance of probabilities, that the cash is tainted. As is the case with the current legislative provisions, the provisions of the draft Law are exercisable regardless of whether any criminal proceedings for particular offences have or are taking place. The draft Law is therefore also one of the efforts taken in conjunction with the Law Officers' Department to expand powers in relation to civil forfeiture in pursuance with the Criminal Justice Policy.

## Problems experienced under the existing legislative provisions

5. Article 31(1) of the Drug trafficking Offences (Jersey) Law 1988 states the following—

*“31 Seizure and detention of drug trafficking money*

*(1) A police officer may seize and, in accordance with this Article, detain any money which is imported into or exported from Jersey if the police officer has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.”*
6. Operating under Article 31(1) of the Drug Trafficking Law, an officer who suspects that cash is the proceeds of drug trafficking can only seize that cash if the cash is being imported or exported into the Island. This effectively means that cash seizure can only take place at the ports where such a suspicion arises and not elsewhere in the Island because Article 31(1) only allows for the detention of cash being imported or exported into the Island.
7. This has in the past meant that police and customs officers have been unable to seize large amounts of cash elsewhere in the Island even when they have been suspicious that the cash could in fact be the proceeds of drug trafficking because the cash was not at the time being imported to or exported from the

Island.

8. To give an example, imagine a police officer comes across £100,000 in the backseat of a car whilst carrying out a routine road check. The police officer then asks the driver of the car why he has that amount of money in his backseat. The driver is unable to offer a legitimate explanation and the officer has reason to suspect that the money in the boot is the proceeds of drug trafficking. Currently the police officer is unable to seize the cash because the current remit of Article 31(1) is such that he has no power to do so. This is unless of course there is some other evidence of an offence, in which case the cash could be seized as evidence of that offence.
9. Furthermore, if the officer in question suspects that money has resulted from some other criminal activity, other than drug trafficking, then the officer currently has no statutory power under which to seize the money. This is because there are currently no provisions concerned with cash seizure and detention in the Proceeds of Crime (Jersey) Law 1999.
10. The Law Officers have advised that no deficiency currently exists between Special Recommendation IX and the cash seizure, detention and forfeiture provisions relating to terrorist financing, currently contained in Article 27 and Schedule 4 of the Terrorism (Jersey) Law 2002.

### **The need for a separate standalone law**

11. Because of the adequacy of the provisions contained in the Terrorism (Jersey) Law 2002, consideration was given to inserting separate and sufficient cash seizure, detention and forfeiture provisions in the existing Drug Trafficking Offences (Jersey) Law 1989 and the Proceeds of Crime (Jersey) Law 1991, and leaving the current provisions in the Terrorism (Jersey) Law 2002 as they stand, as opposed to implementing a separate cash seizure Law. It was thought, however, that further difficulties could be experienced by the authorities if that approach were taken and also that individuals may seek to play one piece of legislation off against another so as to avoid the forfeiture of the cash in question.
12. Those potential difficulties are best illustrated by reference to the example set out above. Assuming a police officer finds £100,000 in the backseat of a car, that there is no legitimate explanation for the cash given by the driver of the vehicle and that provisions have been implemented under both the Proceeds of Crime and Drug Trafficking Laws, the police officer is then faced with having to reach a view as to whether the cash represents the proceeds of drug trafficking or the proceeds of some other crime. If the officer is faced with silence on the part of the car driver, the question arises as to what evidence will be admissible to prove the reasonable grounds for suspicion that the money represents either the proceeds of drug trafficking or the proceeds of crime. It is obviously important for the officer to know under which statutory provisions he is proceeding. At this stage the officer may suspect the money is the proceeds of some criminal conduct but he may not know whether that conduct relates to drug trafficking or some other crime. By having a standalone cash seizure law this potential problem is removed because it removes the requirement for the police to make a decision as to whether to seize the cash under the drug trafficking provisions or the proceeds of crime provisions at a stage when the evidence may be such that an officer cannot confidently make that distinction.
13. Secondly it is thought that difficulties could arise in relation to the civil forfeiture of cash. Under the existing legislation civil forfeiture of cash can take place regardless of whether any criminal proceedings for particular offences have or are taking place. The same is true under the draft Law. If such civil proceedings were brought, with separate provisions in place under the Drug Trafficking, Proceeds of Crime or Terrorism Laws, it would be essential to identify under which statute the forfeiture of cash is taking place. It may be difficult for the police to prove even to the civil standard that the cash represents either the proceeds of crime or the proceeds of drug trafficking. Instead the draft Law provides that the Royal Court shall, on the application of the Attorney General, make a forfeiture order forfeiting cash which has already been detained, if the Court is satisfied, on the balance of probabilities, that the cash is "tainted cash". "Tainted cash" is defined in the draft Law as "tainted property", with "tainted property" being defined as property that is –
  - (a) used in, or intended to be used in, unlawful conduct; or
  - (b) obtained in the course of, from the proceeds of, or in connection with, unlawful conduct.
14. If the individual in whose possession the cash was found is able to satisfy the court that the cash which has been seized and detained is actually from a legitimate source then no such order would be made by the Court.

### **Application of forfeited cash**

15. Article 9(4) of the draft Law provides that any cash that is forfeited under the Law shall be paid into a special fund, within the meaning of the Public Finances (Jersey) Law 2005, as designated by an Order made by the Minister for Treasury and Resources.
16. It has been agreed with the Minister for Treasury and Resources that the money forfeited under this Law will go into a new special fund to be established under the Civil Asset Recovery (International Co-operation) (Jersey) Law 200-. That fund being the Civil Asset Recovery Fund. Essentially forfeited cash will be directed into that Fund and at the end of the year any money retained in that Fund will be transferred to the Consolidated Fund and will accordingly form part of the States' budgetary process for the following year. It is not possible to expressly refer to the Civil Asset Recovery Fund in the draft Law because the Civil Asset Recovery (International Co-operation) (Jersey) Law 200- under which the new special fund is to be established has not yet been passed by the States.

### **Financial/manpower implications**

It is not possible to predict the resource implications of the proposed new 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 20th September 2007 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 Proceeds of Crime (Cash Seizure) (Jersey) Law 200- are compatible with the Convention Rights.

## Explanatory Note

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This Law establishes a scheme to enable the search for and the seizure, detention and forfeiture of, tainted cash.

*Article 1* contains definitions, including a definition of “unlawful conduct”, which is defined as the commission of –

- (a) an offence against a law of Jersey; or
- (b) an offence against a law of a country or territory outside Jersey, that, if it had been committed in Jersey, would have been an offence against a law of Jersey.

*Article 2* contains a definition of “tainted cash”.

“Tainted cash” is defined in the Law to be cash that is used in, or intended to be used in, or obtained in the course of, from the proceeds of, or in connection with, unlawful conduct. It also includes certain other cash related to such cash.

*Article 3* grants to “authorized officers” that is, any police officer, customs officer or immigration officer, powers to search for tainted cash in certain circumstances.

A search may be made if the officer is lawfully on premises and has reasonable grounds for suspecting there is tainted cash on the premises.

An authorized officer may also, if he or she has reasonable grounds for suspecting that a person is carrying tainted cash require the person, or a person who is in the company of the person, to do any or all of the following –

- (a) bring to a stop a vehicle that the person is driving and permit the authorized officer to search the vehicle and any article in the vehicle;
- (b) permit the authorized officer to search a vehicle in which the person is or has been situated and any article in the vehicle;
- (c) permit a search by the authorized officer of any article of which the person has possession;
- (d) permit the authorized officer to break open any container;
- (e) remove his or her outer coat, jacket, gloves or headgear so as to enable a search of the person to be conducted;
- (f) permit an authorized officer of the same sex as the person to search the person,

and to remain in the officer’s detention for as long as is necessary to complete such a search.

*Article 4* enables an authorized officer to seize cash that he or she has reasonable grounds for suspecting is tainted cash. A receipt is required to be given in relation to seized cash.

*Article 5* permits seized cash to be detained for a period, of up to 48 hours, during which the officer continues to have reasonable grounds to suspect the cash is tainted cash.

*Article 6* enables the Attorney General, or a person authorized by him or her, to apply to the Bailiff for a cash detention order to be made. Such an order may be made if the Bailiff is satisfied –

- (a) that there are reasonable grounds for suspecting that the cash is tainted cash; and
- (b) that the continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to bringing (in Jersey or elsewhere) proceedings against any person for an offence in relation to the cash.

Such an order may remain in force for only 3 months, but multiple orders may be made in relation to the same cash, as long as the maximum period that the cash may be held is less than 2 years.

*Article 7* requires money held under a cash detention order to be placed into an interest-bearing account, unless it is needed to be used as evidence in a court matter or is being dealt with for the purposes of being forensically examined.

*Article 8* enables a person from whom, or from whose premises, cash was seized under this Law to apply to the Bailiff for the release of the cash. The Bailiff may release the cash if he or she thinks that the grounds set out above in relation to *Article 6* are no longer satisfied. An authorized officer may also release the cash if he or she is

satisfied that those grounds are no longer satisfied. However, cash must not be released if an application for a forfeiture order is made under Article 9, or if proceedings for an offence to which the cash relates have commenced, and have not been concluded.

*Article 9* enables the Attorney General to apply to the Royal Court for the forfeiture of cash seized under the Law. Unless the person against whom the order would be made satisfies the Court that the cash is not tainted cash, the Court shall order its forfeiture. The proceedings are civil proceedings and, accordingly the burden of proof applicable to them is ‘the balance of probabilities’.

Cash that is forfeited under a forfeiture order shall be paid into a special fund, within the meaning of the Public Finances (Jersey) Law 2005, that is designated by an Order made by the Minister for Treasury and Resources.

*Article 10* entitles any person who is a party to proceedings in which a forfeiture order is made (apart from the Attorney General) to appeal to the Court of Appeal. That Court may authorize the release of all or part of the cash which is ordered to be forfeited to enable the appellant to pay his or her legal costs of the appeal.

*Article 11* enables a person who claims that cash that has been seized belongs to them to apply to the Bailiff (if proceedings have begun under Article 6), or to the Royal Court, for the release of the cash to the person. The cash may be released if the Bailiff or the Court is satisfied that –

- (a) the applicant was deprived of the cash claimed, or of property which it represents, by unlawful conduct;
- (b) the cash or property the applicant was deprived of was not, immediately before he or she was deprived of it, obtained by or in return for unlawful conduct and nor did it then represent such cash or property; and
- (c) the cash claimed belongs, or the property that it represents belonged, to him or her.

*Article 12* enables a person to obtain an order from the Royal Court for compensation if –

- (a) the person has suffered loss as a result of the detention of cash under this Law;
- (b) having regard to all the circumstances, the Court considers it appropriate to make such an order; and
- (c) there has been, in relation to the seizure or detention of the cash under this Law, some serious default on the part of another person who has conducted a prosecution, investigation or proceedings for the purposes of the Law, unless the default would not have prevented the prosecution or proceedings being instigated or continuing.

The compensation would be paid for out of the consolidated fund.

*Article 13* makes it an offence to obstruct an officer exercising his or her powers of search and seizure under this Law. The penalty is imprisonment for up to 6 months and/or an unlimited fine.

*Article 14* contains a statement that the powers specified in the Law are in addition to, and do not reduce, any powers given under another enactment.

*Article 15* makes it clear that proceedings under the Law are civil in nature and enables the Royal Court to make rules of court in relation to this Law.

*Article 16* amends the Misuse of Drugs (Jersey) Law 1978 consequentially upon the enactment of this Law.

*Article 17* amends the Drug Trafficking Offences (Jersey) Law 1988 to repeal provisions for the seizure, detention and forfeiture of money which is the proceeds of, or intended for use in, drug trafficking which are replaced by this Law.

*Article 18* amends the Proceeds of Crime (Jersey) Law 1999 (the “1999 Law”). The amendments have 2 purposes. Firstly to replace cross references to provisions of the Drug Trafficking Offences (Jersey) Law 1988 which are repealed and replaced by this Law.

Secondly to enable the making of confiscation orders and *saisies judiciaires* under the 1999 Law in relation to terrorist cash and to make supplementary provision as to the interaction of such proceedings under the 1999 Law and of forfeiture in criminal proceedings under the Terrorism (Jersey) Law 2002 (the “2002 Law”), in particular –

- (a) to have the effect that property is not realisable property for the purposes of the 1999 Law if a forfeiture order has been made in relation to it in criminal proceedings under the 2002 Law;
- (b) to require the Court, when making a confiscation order under the 1999 Law, to have regard to any forfeiture order made in criminal proceedings under the 2002 Law;
- (c) to remove the restriction preventing the States, by Regulations, amending Schedule 1 so as to add terrorist offences;



- (d) to require a court, before making a forfeiture order in criminal proceedings under the 2002 Law, to have regard to any confiscation order made under the 1999 Law;
- (e) to remove the exclusion from Schedule 1 of the 1999 Law for offences under the 2002 Law relating to the raising, use, possession, funding and money laundering of, terrorist property, Schedule 1 describes offences for which confiscation orders may be made. Bringing these offences under the 2002 Law within the range of offences for which confiscation orders and *saisies judiciaires* may be made under the 1999 Law also has the consequence that any of those offences constitutes ‘criminal conduct’ for all of the purposes of the 1999 Law.

Article 19 amends the Terrorism (Jersey) Law 2002 to repeal provisions for the seizure, detention and civil forfeiture of terrorist cash which are replaced by this Law.

Article 20 amends the Public Finances (Jersey) Law 2005 so as clarify the operation of that Law in relation to special funds established in a Law or designated in an enactment as a special fund.

Article 21 specifies the name by which the Law may be cited and provides for the Law to come into force 7 days after it is registered.





Jersey

# DRAFT PROCEEDS OF CRIME (CASH SEIZURE) (JERSEY) LAW 200

## Arrangement

### Article

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<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Meaning of “tainted cash”</u>
<u>3</u>	<u>Searches for cash</u>
<u>4</u>	<u>Seizure of cash</u>
<u>5</u>	<u>Seized cash may be detained initially for 48 hours</u>
<u>6</u>	<u>Orders authorizing detention of cash for longer than 48 hours</u>
<u>7</u>	<u>Payment of detained cash into an account</u>
<u>8</u>	<u>Release of detained cash</u>
<u>9</u>	<u>Forfeiture of seized cash</u>
<u>10</u>	<u>Appeal against forfeiture</u>
<u>11</u>	<u>Victims</u>
<u>12</u>	<u>Compensation</u>
<u>13</u>	<u>Offence of obstructing authorized officer</u>
<u>14</u>	<u>Law does not derogate from other powers</u>
<u>15</u>	<u>Proceedings and rules of court</u>
<u>16</u>	<u>Misuse of Drugs (Jersey) Law 1978 amended</u>
<u>17</u>	<u>Drug Trafficking Offences (Jersey) Law 1988 amended</u>
<u>18</u>	<u>Proceeds of Crime (Jersey) Law 1999 amended</u>
<u>19</u>	<u>Terrorism (Jersey) Law 2002 amended</u>
<u>20</u>	<u>Public Finances (Jersey) Law 2005 amended</u>
<u>21</u>	<u>Citation and commencement</u>





Jersey

## **DRAFT PROCEEDS OF CRIME (CASH SEIZURE) (JERSEY) LAW 200**

**A LAW** to provide for the search for, and the seizure, detention and forfeiture of, cash that is used in, or intended to be used in, or obtained in the course of, from the proceeds of, or in connection with, the commission of an offence against a law of a country or territory, including Jersey, and to amend the provisions of the Proceeds of Crime (Jersey) Law 1999 regarding the making of confiscation orders and *saisies judiciaires*.

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*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 –

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### **1 Interpretation**

(1) In this Law, unless the context otherwise requires –

“authorized officer” means any police officer, customs officer or immigration officer;

“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,
  - (iii) 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 (2);
- (f) a forged or counterfeit version of any instrument or currency mentioned in sub-paragraph (a) to (e) of this definition;

“cash detention order” means an order made under Article 6(2);

“customs officer” means the Agent of the Impôts and any other officer appointed pursuant to

Article 4 of the Customs and Excise (Jersey) Law 1999<sup>[1]</sup>;

“forfeiture order” means an order made under Article 9(2);

“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971 of the United Kingdom, as extended to Jersey by the Immigration (Jersey) Order 1993<sup>[2]</sup>;

“Minister” means the Minister for Home Affairs;

“property” means all property whether movable or immovable, vested or contingent and whether situated in Jersey or elsewhere;

“tainted cash” has the meaning assigned to it by Article 2;

“unlawful conduct” means the commission of –

- (a) an offence against a law of Jersey; or
- (b) an offence against a law of a country or territory outside Jersey, that, if it had been committed in Jersey, would have been an offence against a law of Jersey;

“vehicle” includes vessels, aircraft and hovercraft.

- (2) The Minister may, by Order, prescribe types of monetary instruments for the purposes of the definition of “cash” in paragraph (1).
- (3) For the purposes of Articles 5 and 7, if any part of a period of 48 hours to which one of those Articles relates includes part or all of a day that is –
  - (a) a Saturday or a Sunday;
  - (b) Christmas Day or Good Friday; or
  - (c) a bank holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951<sup>[3]</sup>,the period shall be calculated without taking into account so much of the period as occurs during such a day.

## 2 Meaning of “tainted cash”

- (1) Subject to this Article, in this Law –
  - “tainted cash” is cash that is tainted property;
  - “tainted property” is property that is –
    - (a) used in, or intended to be used in, unlawful conduct; or
    - (b) obtained in the course of, from the proceeds of, or in connection with, unlawful conduct.
- (2) Property that is held by a person to whom it was disposed after it became tainted property remains tainted property if it was disposed of to the person by –
  - (a) a person who –
    - (i) used the property in, or intended the property to be used in, unlawful conduct, or
    - (ii) obtained the property in the course of, from the proceeds of, or in connection with, unlawful conduct; or
  - (b) a person to whom the property was, after it became tainted property, disposed by a person to whom sub-paragraph (a) or this sub-paragraph applies.
- (3) If a person enters into a transaction by which –
  - (a) the person disposes of tainted property (including property which is tainted property by virtue of this paragraph or paragraph (4) or (5)); and
  - (b) the person obtains other property in place of it,

the other property shall be tainted property.

- (4) If a person's tainted property is mixed with other property (whether his or her property or another's), the portion of the mixed property which is attributable to the tainted property shall be tainted property.
- (5) Without limiting the generality of the expression "mixed with other property", for the purposes of paragraph (4), tainted property shall be mixed with other property if it is used—
  - (a) to increase funds held in a bank account;
  - (b) in part payment for the acquisition of an asset;
  - (c) for the restoration or improvement of land; or
  - (d) for the purpose of merging or extinguishing interests in land.
- (6) If a person who has tainted property obtains further property consisting of profits accruing in respect of the tainted property, the further property shall be tainted property.
- (7) If a person grants an interest in property of his or hers which is tainted property, the question whether the interest is also tainted property is to be determined in the same manner as it is on any other disposal of tainted property and accordingly, on the person's granting an interest in the property (the "property in question") –
  - (a) where the property in question is tainted property, the interest is also to be treated as tainted property;
  - (b) where the property in question is, if held by him or her, tainted property, the interest is also to be treated as tainted property when held by him or her.
- (8) If –
  - (a) a person disposes of tainted property; and
  - (b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was tainted property,the property shall cease to be tainted property.
- (9) If –
  - (a) in pursuance of a judgment in civil proceedings (whether in Jersey or elsewhere), the respondent or defendant makes a payment to the claimant or plaintiff or the claimant or plaintiff otherwise obtains tainted property from the respondent or defendant;
  - (b) the claimant or plaintiff's claim is based on the respondent or defendant's unlawful conduct; and
  - (c) apart from this paragraph, the sum received by the claimant or plaintiff would be tainted property,the property shall cease to be tainted property.
- (10) If –
  - (a) a payment is made to a person in pursuance of a compensation order made under Article 2 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994<sup>[4]</sup> or any like order made under any other enactment; and
  - (b) apart from this paragraph, the sum received would be tainted property,the property shall cease to be tainted property.
- (11) Where –
  - (a) a person enters into a transaction to which paragraph (3) applies; and
  - (b) the disposal is one to which paragraph (8) applies,paragraphs (8), (9) and (10) do not affect the question whether (by virtue of paragraph (3)) any

property obtained on the transaction in place of the property disposed of shall be tainted property.

- (12) If tainted property is forfeited under this or any other Law, the property shall cease to be tainted property.
- (13) Property that is disposed of in pursuance of an enactment shall cease to be tainted property if –
  - (a) the enactment is prescribed in an Order made by the Minister for the purposes of this paragraph; and
  - (b) the property is of a class prescribed in an Order made by the Minister for the purposes of this paragraph.

### **3 Searches for cash**

- (1) An authorized officer –
  - (a) who is lawfully on any premises; and
  - (b) who has reasonable grounds for suspecting that there is on the premises cash that is tainted cash,  
  
may search the premises for cash and may, for the purposes of such a search, break open and search any container found on the premises.
- (2) An authorized officer who has reasonable grounds for suspecting that a person is carrying tainted cash (including carrying it in any vehicle) may require the person, or a person who is in the company of the person, to do any or all of the following –
  - (a) bring to a stop a vehicle that the person is driving and permit the authorized officer to search the vehicle and any article in the vehicle;
  - (b) permit the authorized officer to search a vehicle in which the person is or has been situated and any article in the vehicle;
  - (c) permit a search by the authorized officer of any article of which the person has possession;
  - (d) permit the authorized officer to break open any container;
  - (e) remove his or her outer coat, jacket, gloves or headgear so as to enable a search of the person to be conducted;
  - (f) permit an authorized officer of the same sex as the person to search the person,  
  
and to remain in the officer's detention for as long as is necessary to complete such a search.
- (3) The powers conferred by this Article –
  - (a) are exercisable only so far as is reasonably required for the purposes of finding tainted cash; and
  - (b) are in addition to any power otherwise conferred.

### **4 Seizure of cash**

- (1) An authorized officer may seize any cash if he or she has reasonable grounds for suspecting that it is tainted cash.
- (2) An authorized officer may also seize cash, part of which he or she has reasonable grounds for suspecting to be tainted cash, if it is not reasonably practicable to seize only that part.
- (3) If an authorized officer seizes cash under this Article, he or she shall provide to the person who appears to have had possession of the cash immediately before the seizure, or on whose premises the seized cash was found, a receipt specifying the amount, denominations and currency of the cash.

### **5 Seized cash may be detained initially for 48 hours**



Cash seized under this Law may be detained, initially, for a period of up to 48 hours, if the authorized officer continues during that period to have reasonable grounds for his or her suspicion under Article 4 that part or all of the cash is tainted cash.

## **6 Orders authorizing detention of cash for longer than 48 hours**

- (1) The Attorney General, or, with the consent of the Attorney General, an authorized officer, may apply to the Bailiff for an order to be made under paragraph (2) in relation to cash seized under this Law.
- (2) The Bailiff may, after receiving an application under paragraph (1), make an order (a“cash detention order”) authorizing the detention, for a period specified in the order, of the cash to which the application relates.
- (3) The Bailiff may only make a cash detention order in relation to cash if he or she is satisfied –
  - (a) that there are reasonable grounds for suspecting that the cash is tainted cash; and
  - (b) that the continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to bringing (in Jersey or elsewhere) proceedings against any person for an offence –
    - (i) in which the cash was used or intended to be used, or
    - (ii) in which, or from the proceeds of which, or in connection with which, the tainted cash was obtained.
- (4) More than one application may be made under paragraph (1) in relation to cash seized under this Law.
- (5) An application may only be made under paragraph (1) before the expiry of the authority for detention of the cash, whether detention is authorized under Article 5 or by a cash detention order.
- (6) A cash detention order –
  - (a) may only authorize the detention of the cash for a period not exceeding 3 months, beginning with the date of the order;
  - (b) shall not authorize the detention of the cash for an aggregate period of more than 2 years beginning with the date of the first cash detention order made in relation to it.
- (7) A cash detention order shall provide for notice to be given to persons affected by it.

## **7 Payment of detained cash into an account**

- (1) If cash is detained under this Law for more than 48 hours, it shall be held in an interest-bearing account and the interest accruing on it shall be added to it on its forfeiture or release.
- (2) If cash is seized under Article 4(2), the authorized officer shall, on paying it into the account, release so much of the cash then held in the account as is not tainted cash.
- (3) Paragraph (1) does not apply if the cash–
  - (a) is required as evidence of an offence or evidence in proceedings under this Law; or
  - (b) is being dealt with for the purposes of being forensically examined.

## **8 Release of detained cash**

- (1) This Article applies while any cash is detained under Article 5 or 6.
- (2) A person from whom, or from whose premises, cash was seized and detained under this Law may apply to the Bailiff for a direction under paragraph (3) to be made in relation to all or any part of the cash.

- (3) The Bailiff may, after an application is made by a person under paragraph (2), direct the release to the person of the whole or any part of the cash to which the application relates, if the Bailiff is satisfied that the conditions in Article 6(3) for the detention of cash are not, or are no longer, met in relation to the cash to be released.
- (4) An authorized officer may, with the consent of the Attorney General, release the whole or any part of the cash if satisfied that the detention of the cash to be released is no longer justified.
- (5) Cash shall not be released pursuant to paragraph (3) or (4) –
  - (a) where an application for a forfeiture order has been made in relation to the cash, until any proceedings in pursuance of the application, including any proceedings on appeal, are concluded;
  - (b) where proceedings are started, in Jersey or elsewhere, against any person for an offence in which the cash was used or intended to be used or in which, from the proceeds of which or in connection with which, the cash was obtained, until those proceedings are concluded.
- (6) For the purposes of paragraph (5)(b), proceedings are concluded against any person for an offence when –
  - (a) the prosecution is discontinued;
  - (b) the jury, if any, is discharged without a finding;
  - (c) the person is acquitted;
  - (d) following the person’s conviction, the time within which an application for leave to appeal, or an appeal, against the conviction expires (disregarding any power to grant an application after that time has expired);
  - (e) following the person’s conviction, his or her application for leave to appeal, or appeal, against the conviction is withdrawn or is determined by a court without any further right of appeal.

## **9 Forfeiture of seized cash**

- (1) The Attorney General may apply to the Royal Court for an order to be made under paragraph (2) in relation to any cash that has been seized and detained under this Law.
- (2) The Royal Court shall, if it receives an application under paragraph (1) in relation to any cash seized and detained under this Law, make an order (a “forfeiture order”) forfeiting the cash, unless the person against whom the order would be made satisfies the court that the cash is not tainted cash.
- (3) Proceedings under this Article are civil proceedings.
- (4) An order may be made under this Article whether or not proceedings are brought against any person for an offence with which the cash in question is connected.
- (5) Any cash that is forfeited under a forfeiture order shall be paid into a special fund, within the meaning of the Public Finances (Jersey) Law 2005<sup>51</sup>, that is designated by an Order made by the Minister for Treasury and Resources.

## **10 Appeal against forfeiture**

- (1) Any party to proceedings in which a forfeiture order is made (other than the Attorney General) may appeal to the Court of Appeal against the making of the order.
- (2) The Court of Appeal, on an application by an appellant, may order the release of so much of the money to which the forfeiture order relates as it considers appropriate to enable the appellant to meet legal expenses in connect with the appeal.
- (3) The Court of Appeal, on hearing an appeal under this Article, may make such order as it considers appropriate.

## 11 Victims

- (1) A person who claims that any cash detained under this Law, or any part of it, belongs to him or her may apply for the cash or part to be released to him or her under this Article.
- (2) The application may be made in the course of proceedings under Article 6 or 9 or at any other time before the cash is forfeited pursuant to a forfeiture order.
- (3) An application made in the course of proceedings under Article 6 shall be made to the Bailiff.
- (4) An application made other than in the course of proceedings under Article 6 shall be made to the Royal Court.
- (5) If it appears to the Bailiff or Royal Court that –
  - (a) the applicant was deprived of the cash claimed, or of property which it represents, by unlawful conduct;
  - (b) the cash or property the applicant was deprived of was not, immediately before he or she was deprived of it, obtained by or in return for unlawful conduct and nor did it then represent cash or property obtained by or in return for unlawful conduct; and
  - (c) the cash claimed belongs, or the property which the case represents belonged, to him or her,the Bailiff or Court may order the cash to be released to the applicant (and, where the application is made in the course of proceedings under Article 9, shall do so instead of making a forfeiture order).

## 12 Compensation

- (1) If no forfeiture order is made in respect of any cash detained under this Law, the person to whom the cash belongs may make an application to the Royal Court for compensation.
- (2) The Royal Court may, after receiving an application under paragraph (1) from a person, order compensation to be paid to the person, if –
  - (a) the Court is satisfied that the person has suffered loss as a result of the detention of cash under this Law;
  - (b) having regard to all the circumstances, the Court considers it appropriate to make such an order; and
  - (c) there has been, in relation to the seizure or detention of the cash under this Law, some serious default on the part of another person who –
    - (i) seized or detained the cash,
    - (ii) applied for an order under Article 6 or 9 in relation to the cash,
    - (iii) investigated the origin or derivation of the cash, or
    - (iv) prosecuted the person for an offence in which the tainted cash was used or intended to be used, or in which, from the proceeds of which, or in connection with which, the tainted cash was obtained.
- (3) The Court shall not order compensation to be paid in any case where it appears to the Court that the application under Article 6 or 9, or the prosecution for an offence, would have been instituted or continued even if the serious default had not occurred.
- (4) The amount of compensation to be paid under paragraph (2) shall be the amount the Court thinks reasonable, having regard to the loss suffered, the amount of any interest paid under this Law and any other relevant circumstances.
- (5) Compensation ordered to be paid under this Article shall be paid out of the consolidated fund.
- (6) If a forfeiture order is made in respect only of a part of any cash detained under this Law, this Article has effect in relation to the other part.

- (7) A person to whom cash detained under Article 5 or 6 belongs may not make an application under this Article if an order for the release to the person of all or part of the cash has been made under Article 11.

### **13 Offence of obstructing authorized officer**

A person who, without reasonable excuse, obstructs an authorized officer in the lawful exercise of the powers conferred on the officer by this Law shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.

### **14 Law does not derogate from other powers**

The powers specified in this Law are in addition to, and not in derogation of, any powers given under any other enactment.

### **15 Proceedings and rules of court**

- (1) Proceedings under this Law (apart from Article 13) are civil proceedings.
- (2) The power to make Rules of Court under the Royal Court (Jersey) Law 1948<sup>[6]</sup> shall include a power to make Rules for the purposes of this Law and proceedings under this Law.

### **16 Misuse of Drugs (Jersey) Law 1978 amended**

In the Misuse of Drugs (Jersey) Law 1978<sup>[7]</sup>, for Article 7(5) there shall be substituted the following paragraph –

- “(5) No information obtained pursuant to an Order shall be disclosed except for the purposes of criminal proceedings or of proceedings under –
- (a) the provisions of the Drug Trafficking Offences (Jersey) Law 1988<sup>[8]</sup> relating to the confiscation of the proceeds of drug trafficking; or
- (b) the Proceeds of Crime (Cash Seizure) (Jersey) Law 200-.”.

### **17 Drug Trafficking Offences (Jersey) Law 1988 amended**

In the Drug Trafficking Offences (Jersey) Law 1988<sup>[9]</sup>, Articles 31 to 36 (inclusive) shall be repealed.

### **18 Proceeds of Crime (Jersey) Law 1999 amended**

- (1) In this Article, a reference to an Article or Schedule by number only is a reference to the Article or Schedule of that number in the Proceeds of Crime (Jersey) Law 1999<sup>[10]</sup>.
- (2) For Article 2(2) there shall be substituted the following paragraph –
- “(2) However, property is not realisable property if an order under Article 29 of the Misuse of Drugs (Jersey) Law 1978<sup>[11]</sup>, Article 26 of the Terrorism (Jersey) Law 2002<sup>[12]</sup> or Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 200 is in force in respect of the property.”.
- (3) For Article 3(5)(a)(iii) there shall be substituted the following clause –
- “(iii) making any forfeiture order under Article 29 of the Misuse of Drugs

(Jersey) Law 1978, Article 26 of the Terrorism (Jersey) Law 2002 or Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 200-; and”.

- (4) In Article 3(9), the words following “drug trafficking offence” to the end of the paragraph shall be deleted.
- (5) For Article 10(1)(a)(iii) there shall be substituted the following clause –
  - “(iii) making any forfeiture order under Article 29 of the Misuse of Drugs (Jersey) Law 1979, Article 26 of the Terrorism (Jersey) Law 2002 or Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 200; and”.
- (6) In Schedule 1, for the words “but not being -” to the end of the Schedule there shall be substituted the words “but not being a drug trafficking offence”.

## **19 Terrorism (Jersey) Law 2002 amended**

In the Terrorism (Jersey) Law 2002<sup>[13]</sup>, Article 27 and Schedule 4 shall be repealed.

## **20 Public Finances (Jersey) Law 2005 amended**

In the Public Finances (Jersey) Law 2005<sup>[14]</sup> –

- (a) in Article 1(1), for the definition “special fund” there shall be substituted the following definition –
  - “ ‘special fund’ means –
  - (a) a fund established under Article 3(3); and
  - (b) a fund declared by any enactment to be a special fund for the purposes of this Law;”;
- (b) in Article 3(4), after the words “a special fund” there shall be inserted the words “(apart from a special fund established in, or declared to be a special fund by, any enactment)”.

## **21 Citation and commencement**

This Law may be cited as the Proceeds of Crime (Cash Seizure) (Jersey) Law 200 and shall come into force 7 days after it is registered.

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<a href="#">[1]</a>	<i>chapter 24.660</i>
<a href="#">[2]</a>	<i>chapter 21.700</i>
<a href="#">[3]</a>	<i>chapter 15.560</i>
<a href="#">[4]</a>	<i>chapter 08.200</i>
<a href="#">[5]</a>	<i>chapter 24.900</i>
<a href="#">[6]</a>	<i>chapter 07.770</i>
<a href="#">[7]</a>	<i>chapter 08.680</i>
<a href="#">[8]</a>	<i>chapter 08.580</i>
<a href="#">[9]</a>	<i>chapter 08.580</i>
<a href="#">[10]</a>	<i>chapter 08.780</i>
<a href="#">[11]</a>	<i>chapter 08.680</i>
<a href="#">[12]</a>	<i>chapter 17.860</i>
<a href="#">[13]</a>	<i>chapter 17.860</i>
<a href="#">[14]</a>	<i>chapter 24.900</i>