

CAYMAN ISLANDS



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THE JUSTICE PROTECTION (AMENDMENT) LAW, 2016

(LAW 12 OF 2016)

THE JUSTICE PROTECTION (AMENDMENT) LAW, 2016

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CAYMAN ISLANDS

Law 12 of 2016.

I Assent

Helen Kilpatrick

Governor.

17th June, 2016

A LAW TO AMEND THE JUSTICE PROTECTION LAW, 2008 (LAW 16 OF 2008) TO MAKE PROVISION FOR INCREASED EFFICIENCY AND EFFECTIVENESS OF THE IMPLEMENTATION OF THE WITNESS PROTECTION PROGRAMME IN THE CAYMAN ISLANDS, BY MERGING SOME AGENCIES; TRANSFERRING TO THE CABINET POWERS PREVIOUSLY EXERCISABLE BY THE GOVERNOR IN CABINET, AS A CONSEQUENCE OF THE CAYMAN ISLANDS CONSTITUTION ORDER, 2009; CLARIFYING RIGHTS AND RESPONSIBILITIES OF VARIOUS PARTIES TO AGREEMENTS UNDER THE PROGRAMME; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Justice Protection (Amendment) Law, 2016. Short title and commencement

(2) This Law comes into force immediately after the Justice Protection Law, 2008 comes into force. (Law 16 of 2008)

2. The Justice Protection Law, 2008, in this Law referred to as the “principal Law”, is amended in section 2 as follows - Amendment of section 2 of the Justice Protection Law, 2008 - interpretation

(a) by deleting the definitions of the words “Board of Management”, “Crown Prosecutor”, “Governor”, “Investigative Agency”,

- “Justice Protection Investigative Agency”, “Justice Protection Protective Agency”, “Police Force” and “Protective Agency”;
- (b) in the definition of the words “Commissioner of Police” or “Commissioner” by deleting the words “Police Law (2006 Revision)” and substituting the words “Police Law (2014 Revision)”; and
 - (c) by inserting in the appropriate alphabetical sequence, the following definitions -

““Crown Counsel” means -

- (a) a person holding public office in the Office of the Director of Public Prosecutions and any other person instructed by or on behalf of the Director of Public Prosecutions to appear for the Director of Public Prosecutions in any criminal cause or matter; or
- (b) a person holding public office in the Portfolio of Legal Affairs and any other person instructed by or on behalf of the Attorney General to appear for the Attorney General in any civil cause or matter;

“Justice Protection Investigative and Protective Agency” or “JPIP Agency” means the unit established under section 3(2)(b);

“Police Service” means the Royal Cayman Islands Police Service referred to in section 3 of the Police Law (2014 Revision);”.

Amendment of section 3
- establishment of
Justice Protection
Programme

3. The principal Law is amended in section 3 as follows -

- (a) in subsection (1) by deleting the words “The Attorney-General” and substituting the words “The Attorney General”; and
- (b) by repealing subsection (2) and substituting the following subsection -

“ (2) For the purposes of administering the Programme, the following units are established -

- (a) in the Office of the Director of Public Prosecutions, a Justice Protection Administrative Centre; and
- (b) in the Police Service, a Justice Protection Investigative and Protective Agency.”.

4. The principal Law is amended in section 4 as follows -
- Amendment of section 4
- constitution, functions
and powers of Justice
Protection
Administrative Centre
- (a) by repealing subsection (1) and substituting the following subsection -
- “ (1) The Director of Public Prosecutions shall appoint the following persons as officers of the Centre -
- (a) a person holding public office in the Office of the Director of Public Prosecutions (who shall be appointed as the Director of the Centre); and
- (b) such other persons as the Director of Public Prosecutions may consider necessary to provide services to the Centre.”;
- (b) in subsection (3) -
- (i) in paragraph (d), by deleting the words “after consultation with the Investigative Agency and the Attorney-General” and substituting the words “after consultation with the JPIP Agency and the Director of Public Prosecutions”; and
- (ii) in paragraph (g), by deleting the words “Investigative Agency or the Protective Agency” and substituting the words “JPIP Agency”; and
- (c) in subsection (4), by repealing paragraphs (a), (b) and (c), and substituting the following paragraphs -
- “ (a) Crown Counsel; and
- (b) the JPIP Agency.”.
5. The principal Law is amended in section 5 -
- Amendment of section 5
- Crown Prosecutor to
submit application
- (a) in the marginal note thereto, by deleting the words “Crown Prosecutor” and substituting the words “Crown Counsel”;
- (b) in subsection (1), by deleting the words “Crown Prosecutor” and substituting the words “Crown Counsel”; and
- (c) in subsection (2), by deleting the words “after a Crown Prosecutor has -” and substituting the words “after a Crown Counsel has consulted with the Director of Public Prosecutions in respect of any criminal matter, or with the Attorney General in respect of any civil matter, and has -”.
6. The principal Law is amended by repealing section 6 and substituting the following section -
- Repeal and substitution
of section 6 - cases to be
considered for protection
- “Cases to be considered for protection
6. The Centre may offer, in relation to a participant, protection, or assistance, or both, under the Programme, in respect of -
- (a) criminal proceedings for the offences set out in Schedule 2; and
- Schedule 2

- (b) such civil proceedings as it thinks necessary.”.
- Amendment of section 7 - disclosure of certain information to Centre
7. The principal Law is amended in section 7(2) by inserting after paragraph (d) the following paragraph -
- “(da) details as to whether the prospective participant is prevented from entering any jurisdiction (as a result of a criminal conviction, court order, or otherwise);”.
- Amendment of section 8 - inclusion of prospective participant in Programme
8. The principal Law is amended in section 8 as follows -
- (a) in paragraph (a), by inserting after the word “included” the words “in the Programme”; and
- (b) in paragraph (b), by deleting the word “programme” and substituting the word “Programme”.
- Repeal and substitution of Part IV - constitution, functions and powers of Justice Protection Investigative Agency
9. The principal Law is amended by repealing Part IV and substituting the following Part -
- “PART IV - THE JUSTICE PROTECTION INVESTIGATIVE AND PROTECTIVE AGENCY**
- Constitution, functions and powers of Justice Protection Investigative Agency
9. (1) The Justice Protection and Investigative Agency shall be comprised of -
- (a) the Commissioner; and
- (b) such other persons holding office in the Police Service as the Commissioner, may consider necessary to provide services to the JPIP Agency.
- (2) In relation to the possible inclusion of a prospective participant in the Programme, the JPIP Agency -
- (a) shall conduct investigations and submit to the Centre, the application referred to in section 8(a), which shall be accompanied by the following documents prepared by the JPIP Agency -
- (i) an assessment of that application;
- (ii) a threat assessment including a prison report where the prospective participant is in prison; and
- (iii) a risk assessment;
- (b) shall provide protection for the prospective participant in the period prior to the determination referred to in section 4(4); and
- (c) may, in a case of an emergency, apply to the Centre for provisional entry into the

Programme by the prospective participant prior to the determination referred to in paragraph (b).

(3) For the purposes of this Law, the JPIP Agency shall -

- (a) prepare and submit a report to the Centre on the suitability of a prospective participant for entry into the Programme and for that purpose -
 - (i) shall interview a prospective participant with a view to establishing the prospective participant's suitability for entry into the Programme;
 - (ii) shall examine the threat assessments and risk assessments submitted to the Centre pursuant to subsection (2)(a); and
 - (iii) may require a prospective participant or a participant, to undergo, for the purpose of determining the physical and mental health of the prospective participant or the participant, medical tests or examinations and psychological or psychiatric evaluations and to authorise the results to be made available to the JPIP Agency;
- (b) provide protection to participants and persons accorded provisional entry pursuant to subsection (2)(c);
- (c) assist with the relocation of participants where necessary; and
- (d) carry out periodic reviews of threat assessments and risk assessments.

(4) The JPIP Agency shall exercise its functions under this or any other Law acting alone or through a person designated by the JPIP Agency to act on its behalf, and shall be deemed to be acting in an administrative capacity.

(5) Subject to this Law, the JPIP Agency has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this or any other Law.

(6) The Cabinet may make rules governing the procedure of the JPIP Agency but, subject to any such rules and to subsection (1), the JPIP Agency shall have power to regulate its own procedure.”.

Repeal of Part V - constitution, functions and powers of Justice Protection Protective Agency

10. The principal Law is amended by repealing Part V.

Amendment of section 11 - Memorandum of Understanding

11. The principal Law is amended in section 11 as follows -

(a) in subsection (1), by deleting the words “The Centre shall, subject to the approval of the Solicitor General, prepare a Memorandum of Understanding” and substituting the words “The Centre shall prepare a Memorandum of Understanding”;

(b) by repealing subsection (3) and substituting the following subsection -

“ (3) The Memorandum of Understanding shall be signed -

(a) by the prospective participant; or

(b) where the circumstances so require, by the person referred to in section 8(c)(i) or (ii),

in the presence of one witness, who may be the participant’s attorney-at-law.”; and

(c) in subsections (4) and (5), by deleting the words “the Attorney-General” wherever they appear and substituting the words “the Director of Public Prosecutions”.

Repeal and substitution of Part VII - Memorandum of Agreement

12. The principal Law is amended by repealing Part VII and substituting the following Part -

“PART VII - AGREEMENT WITH DESIGNATED AND OTHER TERRITORIES

Agreement with designated and other territories

12. (1) If a memorandum of agreement is executed between the Cayman Islands and any of the designated territories with a view to giving effect to the purposes of this Law -

(a) it shall form the basis of cooperation between the Cayman Islands and the designated territory in relation to the objectives outlined in the agreement; and

(b) this Law shall apply to the implementation of the agreement or other arrangement with

such modification as may be considered necessary or expedient and any such modification thereto shall be effected by Order made by the Cabinet.

(2) Subsection (3) and section 29(2) apply where, in any exceptional circumstance, it is considered expedient for the Cayman Islands to enter into a memorandum of agreement or any other scheme of arrangement with a country or territory that is not a designated territory, for the purposes of -

- (a) receiving assistance from or rendering assistance to that country or territory in relation to the relocation of a participant;
- (b) establishing a system of cooperation for the treatment and security of a participant of the Cayman Islands; or
- (c) exchanging such information as may be necessary for the administration of justice in the Cayman Islands as it relates to any specified witness.

(3) This Law shall apply in the implementation of any memorandum of agreement or other scheme of arrangement entered into pursuant to subsection (2) with such modification as may, by an Order made by the Cabinet, be considered necessary or expedient.”.

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| 13. The principal Law is amended in section 17(3), (4) and (5) by deleting the words “the Attorney-General” wherever they appear and substituting the words “the Director of Public Prosecutions”. | Amendment of section 17 - cessation of protection and assistance |
| 14. The principal Law is amended in section 18(3) and (4) by deleting the words “the Attorney-General” wherever they appear and substituting the words “the Director of Public Prosecutions”. | Amendment of section 18 - restoration of former identity |
| 15. The principal Law is amended in section 20 by deleting the words “to section 12(2),” and substituting the words “to section 12,”. | Amendment of section 20 - external enforcement of Programme |
| 16. The principal Law is amended in section 21 by deleting the words “Centre, the Investigative Agency or the Protective Agency” and substituting the words “Centre and the JPIP Agency”. | Amendment of section 21 - officers protected from suit in respect of decisions made under this Law |

The Justice Protection (Amendment) Law, 2016

- Amendment of section 23 - officers not required to disclose information
17. The principal Law is amended in section 23 as follows -
- (a) in subsection (1), by deleting the words “Centre, the Investigative Agency or the Protective Agency” wherever they appear and substituting the words “Centre or the JPIP Agency”;
 - (b) in subsection (1)(b)(ii) by inserting after the words “this Law” the words “, and orders accordingly”; and
 - (c) in subsections (2) and (4) by deleting the words “the Attorney-General” wherever they appear and substituting the words “the Director of Public Prosecutions”.
- Amendment of section 24 - requirement where participant becomes a witness in criminal proceedings
18. The principal Law is amended in section 24(2) by deleting the words “the prosecutor” and substituting the words “the Crown Counsel”.
- Amendment of section 26 - annual reports
19. The principal Law is amended in section 26 by repealing subsection (1) and substituting the following subsection -
- “ (1) Subject to subsection (2), the Centre shall submit to the Cabinet, through the Attorney General, the annual reports on the general operation, performance and effectiveness of the Programme.”.
- Amendment of section 27 - regulations
20. The principal Law is amended in section 27(2) by repealing paragraph (c) and substituting the following paragraph -
- “(c) facilitating the relocation of participants within the Cayman Islands and to and from a designated territory pursuant to any agreement or scheme of arrangement entered into pursuant to section 12;”.
- Amendment of Schedule 1 – prospective participants in the Justice Protection Programme
21. The principal Law is amended in Schedule 1 by deleting the words “the Attorney-General” and substituting the words “the Commissioner of Police”.
- Amendment of Schedule 2 - offences which may give rise to protection under the Justice Protection Programme
22. The principal Law is amended in Schedule 2 by inserting, in the appropriate alphabetical sequence, the following items -
- “Arson and related offences;
Assaults endangering life and health, and other serious assaults;
Corruption offences;
Criminal damage to property and related offences;
Homicide;
Robbery;”.
- Repeal of Schedule 4 - Memorandum of Agreement establishing a Justice Protection Programme
23. The principal Law is amended by repealing Schedule 4.

24. The principal Law is amended in Schedule 5 by deleting the words “Cayman Islands”.
- Amendment of Schedule 5 - territories that may participate in the Justice Protection Programme
25. The principal Law is amended in Schedule 6 by deleting the words “the Attorney-General” wherever they appear and substituting the words “the Director of Public Prosecutions”.
- Amendment of Schedule 6 - Justice Protection Programme Certificate
26. The principal Law is amended as follows -
- Amendment of miscellaneous provisions - substitutions of various words
- (a) by deleting the word “Governor” -
 - (i) wherever it appears in sections 1(2), 4(9), 20, 27(1) and (2) and 29(1) and 29(2) and substituting the word “Cabinet”;
 - (ii) in section 2, in paragraph (d) of the definition of the words “approved authority” and “authority”, and substituting the word “Cabinet”; and
 - (ii) where it first appears in section 28 by substituting the word “Cabinet” and where it second appears in section 28, by substituting the words “Cabinet in consultation with the Attorney General”; and
 - (b) by deleting the word “order” in sections 1(2), 20, 28 and 29(1) and (2), and substituting the word “Order”.

Passed by the Legislative Assembly the 6th day of May, 2016.

Julianna O’Connor-Connolly
Speaker.

Zena Merren-Chin
Clerk of the Legislative Assembly.