

CAYMAN ISLANDS



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**A BILL FOR 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**

THE JUSTICE PROTECTION (AMENDMENT) BILL, 2016

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to increase the efficiency and effectiveness of the Justice Protection Programme in the Cayman Islands by merging the Justice Protection Investigative Agency and the Justice Protection Protective Agency and transferring to the Cabinet powers previously exercisable by the Governor in Cabinet, as a consequence of the Cayman Islands Constitution Order, 2009, except with respect to appointments of persons to the Centre or the Agency under the Justice Protection Programme.

The Bill also clarifies rights and responsibilities of various parties to agreements under the Justice Protection programme in addition to making changes to the memorandum of agreements between jurisdictions that are parties to the programme.

Clause 1 of the Bill contains the short title of the legislation and the commencement date which provides for this Law to come into force at the same time that the principal Law comes into force (by Commencement Order).

Clause 2 amends section 2 of the principal Law, by deleting various definitions that are no longer needed for the purposes of the legislation, amending definitions and inserting new ones, where necessary, such as, the definitions of “Justice Protection Investigative and Protective Agency” and “Crown Counsel”.

Clause 3 amends section 3 of the principal Law by allowing for the establishment of the Justice Protection Administrative Centre (“the Centre”) under the Office of the Director of Public Prosecutions (“the Office of the DPP”). The clause also provides for the Justice Protection Investigative Agency and the Justice Protection Protective Agency to be merged into one agency to be known as the Justice Protection Investigative and Protective Agency (“the JPIP Agency”).

Clause 4 of the Bill amends section 4 of the principal Law to make provision for the Director of Public Prosecutions (“the DPP”) to appoint the officers of the Centre, including the Director of the Centre, who shall be a person holding public office in the Office of the DPP (instead of in the Attorney General’s Chambers), and to appoint other persons as the DPP (instead of the Attorney General) considers necessary to provide services to the Centre.

Clause 4 makes provision for the Centre to make determinations in section 4(3)(d) after consultation with the newly merged JPIP Agency and the DPP (instead of the Attorney General). Clause 4 also provides for reference to the

Investigative Agency and the Protective Agency in section 4(4)(b) and (c), to be replaced with a new section 4(4)(b) with reference to the new Justice Protection Investigative and Protective Agency. Also, reference to “Crown Prosecutor” in section 4(4)(a) will be replaced with “Crown Counsel” as a result of the substitution of the word “Crown Counsel” for the word “Crown Prosecutor” in the interpretation section.

Clause 5 amends section 5 of the principal Law to make provision for “Crown Counsel” (as newly defined) to consult the DPP in respect of the necessity of securing a witness whose testimony is essential to the prosecution of one of the offences listed in Schedule 2 before it is determined that a witness is in need of protection in order to secure the witness’s testimony to aid in the prosecution of serious crime. Similarly, provision is made for “Crown Counsel” to consult with the Attorney General in respect of securing a witness for the purpose of providing essential testimony in respect of civil matters.

Clause 6 repeals and substitutes section 6 of the principal Law to provide for the protection of witnesses in civil proceedings, in addition to the protection already provided to witnesses in criminal proceedings.

Clause 7 amends section 7 of the principal Law to require a person who wants to participate in the Justice Protection Programme to disclose details as to restrictions preventing that person from entering any jurisdiction (for example, restrictions that are a result of a criminal conviction).

Clause 8 makes minor amendments to section 8 of the principal Law by clarifying that the application that is to be completed in the prescribed form by the prospective applicant is in relation to the applicant’s inclusion in the Justice Protection Programme.

Clause 9 of the Bill provides for the repeal and substitution of Part IV of the principal Law while clause 10 provides for the repeal only of Part V of the principal Law. By virtue of these clauses, the powers and duties formerly conferred on the Justice Protection Investigative Agency and the Justice Protection Protective Agency are transferred to, and are exercisable by, the Justice Protection Investigative and Protective Agency, or the JPIP Agency, formed under the new Part IV.

Clause 11 amends section 11 of the principal Law to provide that the Centre’s preparation of the Memorandum of Understanding will no longer be subject to the approval of the Solicitor General as provided for under the principal Law. Clause 11 further provides that any Memorandum of Understanding must be signed by a prospective participant in the presence of one witness (instead of two

witnesses as stated in the principal Law), who may be the prospective participant's attorney-at-law.

Clause 11 also makes provision for the DPP (instead of the Attorney General) to be responsible for matters pertaining to the Memorandum of Understanding under subsections (4) and (5), such as authorizing the counter-signatory to the Memorandum of Understanding and consulting with the Centre with respect to any variation of the MOU on application of the applicant or with his/her consent.

Clause 12 repeals and substitutes Part VII (section 12) of the principal Law, thereby enabling a memorandum of agreement executed between the Cayman Islands and another territory, with a view to giving effect to the purposes of the principal Law, to form the basis of cooperation between the Cayman Islands and that territory in relation to the objectives outlined in the agreement. Consequently, the Memorandum of Agreement prescribed in Schedule 4 is removed from the principal Law.

Clauses 13 and 14 amend sections 17 and 18 of the principal Law to enable a participant whose protection has been terminated or whose former identity is to be restored, to apply to the DPP (instead of to the Attorney General) for a review of the relevant decision made by the Director of the Centre.

Clause 15 amends section 20 of the principal Law by replacing the reference to section 12(2) (under Part VII), with a reference to section 12, following the re-numbering of provisions which occurred as a consequence of the repeal and substitution of Part VII.

Clauses 16 and 17 amend sections 21 and 23 by providing for consequential amendments as a result of the consolidation of the Investigative and Protective Agencies into one single JPIP Agency.

Clause 18 amends section 24 of the principal Law to provide that, where a participant becomes a witness in criminal proceedings, any criminal record of the participant must be disclosed to the DPP, among other persons.

Clause 19 amends section 26 of the principal Law to require the Centre to submit annual reports of its operations to the Cabinet (instead of to the Board of Management as stated under the principal Law) through the Attorney General.

Clause 20 amends section 27(2)(c) of the principal Law by replacing the reference to section 12(2), with a reference to section 12, to properly reflect the re-numbering of sections that occurred following the repeal and substitution of Part VII (also see clause 15).

Clause 21 of the Bill amends Schedule 1 to the principal Law to specify that a prospective participant in the Justice Protection Programme can be a person designated in writing by the Commissioner of Police (instead of by the Attorney General).

Clause 22 amends Schedule 2 of the principal Law to specify additional offences which may give rise to protection under the Justice Protection Programme. These additional offences include, offences of homicide, assaults endangering life and health, other serious assaults, arson, criminal damage to property, and robbery.

Clause 23 repeals Schedule 4 of the principal Law thereby removing the prescribed Memorandum of Agreement under that Schedule.

Clause 24 amends Schedule 5 by removing reference to the Cayman Islands in the list of territories that may participate in the Justice Protection Programme for the purposes of the relocation of participants under the Programme.

Clause 25 amends Schedule 6 of the principal Law to specify that the DPP (instead of the Attorney General as stated in the principal Law) would certify a person's participation in the Justice Protection Programme by signing the Justice Protection Programme Certificate.

Clause 26 amends miscellaneous provisions of the principal Law by providing for substitutions of various words, such as changing "Governor" (meaning Governor in Cabinet) to "Cabinet", enabling the Cabinet to perform the functions and duties previously exercisable by the Governor in Cabinet under the principal Law; recognizing the consolidation of the two Justice Protection Agencies to form the new Justice Protection Investigative and Protective Agency; and changing the word "order" to "Order" wherever it occurs in reference to Orders made by the Cabinet.

THE JUSTICE PROTECTION (AMENDMENT) BILL, 2015

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 2 of the Justice Protection Law, 2008 - interpretation
3. Amendment of section 3 - establishment of Justice Protection Programme
4. Amendment of section 4 - constitution, functions and powers of Justice Protection Administrative Centre
5. Amendment of section 5 - Crown Prosecutor to submit application
6. Repeal and substitution of section 6 - cases to be considered for protection
7. Amendment of section 7 - disclosure of certain information to Centre
8. Amendment of section 8 - inclusion of prospective participant in Programme
9. Repeal and substitution of Part IV - constitution, functions and powers of Justice Protection Investigative Agency
10. Repeal of Part V - constitution, functions and powers of Justice Protection Protective Agency
11. Amendment of section 11 - Memorandum of Understanding
12. Repeal and substitution of Part VII - Memorandum of Agreement
13. Amendment of section 17 - cessation of protection and assistance
14. Amendment of section 18 - restoration of former identity
15. Amendment of section 20 - external enforcement of Programme
16. Amendment of section 21 - officers protected from suit in respect of decisions made under this Law
17. Amendment of section 23 - officers not required to disclose information
18. Amendment of section 24 - requirement where participant becomes a witness in criminal proceedings
19. Amendment of section 26 - annual reports
20. Amendment of section 27 - regulations
21. Amendment of Schedule 1 - prospective participants in the Justice Protection Programme
22. Amendment of Schedule 2 - offences which may give rise to protection under the Justice Protection Programme
23. Repeal of Schedule 4 - Memorandum of Agreement establishing a Justice Protection Programme
24. Amendment of Schedule 5 - territories that may participate in the Justice Protection Programme
25. Amendment of Schedule 6 - Justice Protection Programme certificate
26. Amendment of miscellaneous provisions - substitutions of various words

CAYMAN ISLANDS

A BILL FOR 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 -
- (a) by repealing subsection (1) and substituting the following subsection -

Amendment of section 4
- constitution, functions
and powers of Justice
Protection
Administrative Centre

“ (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 -
- (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 -”.
- Amendment of section 5
- Crown Prosecutor to
submit application
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 |

- 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;
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 _____ day of _____, 2016.

Speaker.

Clerk of the Legislative Assembly.