

PROJET DE LOI

ENTITLED

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is

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No. VIII of 1999 (Ordres en Conseil Vol. XXXIX, p. 137); as amended by the Government of Alderney (Amendment) Law, 2000 (No. I of 2000, Ordres en Conseil Vol. XL, p. 15); the Proceeds of Crime and Drug Trafficking (Bailiwick of Guernsey) (Amendment) Law, 2004 (No. II of 2005); the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007 (No. XV of 2007); the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011 (No. ** of 2011); the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 1999 (No. XXVIII of 1999, Recueil d'Ordonnances Tome XXVIII, p. 266); the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002 (No. XII of 2002, Recueil d'Ordonnances Tome XXIX, p. 112); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007 (No. XLVII of 2007, Recueil d'Ordonnances Tome XXXII, p. 666); the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2008 (No. XXXVII of 2008); the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010 (No. XVI of 2010); the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010 (No. XXXIV of 2010); the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 (G.S.I. No. 33 of 2007); the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008 (G.S.I. No. 48 of 2008); the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008 (G.S.I. No. 73 of 2008); the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010 (G.S.I. No. 12 of 2010). This Law is modified by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999 (No. XXXIII of 1999, Recueil d'Ordonnances Tome XXVIII, p. 274). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Criminal Justice (Proceeds of Crime) (Designation of Competent Authorities) Regulations, 2003 (G.S.I. No. 29 of 2003); the Criminal Justice (Proceeds of Crime) (Designation of Competent Authorities) Regulations, 2004 (G.S.I. No. 12 of 2004); the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 (G.S.I. No. 49 of 2008).

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accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

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The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

THE STATES, in pursuance of their Resolution of the 1st day of August, 1997^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

CONFISCATION ORDERS, RESTRAINT ORDERS & CHARGING ORDERS

Meaning of "criminal conduct".

1. (1) [Subject to section 44A, in this Law] "**criminal conduct**" means any conduct, other than drug trafficking –

- (a) which constitutes a criminal offence under the laws of the Bailiwick which may be tried on indictment, or
- (b) which would constitute such an offence if it were to take place in the Bailiwick.

(2) In subsection (1) "**drug trafficking**" means any conduct

^a Article XXII of Billet d'État No. XVI of 1997.

covered by the definition of "**drug trafficking**" or "**drug trafficking offence**" in the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 and the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992^b.

NOTES

In section 1, the words in square brackets in subsection (1) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 2, with effect from 3rd December, 2007.

The following cases have referred to this Law:

Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and Government of Republic of Indonesia 2007–08 GLR 73;

Fidelity Management Limited v. Royal Bank of Canada (Channel Islands) Limited 2007–08 GLR N-14;

McCarthy v. Law Officers of the Crown 2007–08 GLR 414;

Garnet Investments Limited v The Chief Officers FIS, Customs & Excise, Immigration and Nationality Service (2011) (Unreported, Royal Court, 15th February) (Guernsey Judgment No 5/2011);

Chief Officer of Customs etc v Garnet Investments (2011) (Unreported, Court of Appeal, 6th July) (Guernsey Judgment No. 19/2011).

The Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 and the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992 have both since been repealed by the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, section 74, Schedule 5, with effect from 1st December, 2000, subject to the transitional provisions in section 73 of, and Schedule 4 to, the 2000 Law.

Confiscation orders

Confiscation orders.

2. (1) Where a defendant appears before the Royal Court ("**the Court**") to be sentenced in respect of one or more offences committed after the commencement of this Law (and has not previously been sentenced or otherwise

^b Ordres en Conseil Vol. XXXI, p. 109; and Order in Council No. V of 1992.

dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), then, if Her Majesty's Procureur in writing asks the Court to proceed under this section, it shall act as follows.

(2) The Court shall firstly determine whether the defendant has benefited from criminal conduct.

(3) For the purposes of this Law, a person has benefited from criminal conduct if he has [(whether before or after the commencement of this Law and whether directly or indirectly) acquired or obtained property (including, for the avoidance of doubt, any interest, dividend or other form of income or accrued value deriving directly, or indirectly, from that property)] as a result of or in connection with his or any other person's criminal conduct; and if he has derived a pecuniary advantage as a result of or in connection with criminal conduct, he is to be treated as if he had obtained instead a sum of money equal to the value of the pecuniary advantage.

(4) Subject to subsection (6), if the Court determines that the defendant has so benefited, it shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 5 the amount to be recovered in his case by virtue of this section.

(5) The Court shall then, in respect of the offence or offences concerned –

(a) order the defendant to pay that amount,

(b) take account of the order before –

- (i) imposing any fine on him,
 - (ii) making any order involving any payment by him, other than an order under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990^c (compensation orders),
 - (iii) making an order under section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^d (forfeiture orders),
- (c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) If, in a case falling within subsection (4), the Court is satisfied that a victim of any relevant criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct –

- (a) the Court shall have a power, instead of a duty, to make an order under this section,
- (b) section 5 shall not apply for determining the amount to be recovered in that case by virtue of this section, and
- (c) where the Court makes an order in exercise of that

^c Ordres en Conseil Vol. XXXII, p. 77.

^d Ordres en Conseil Vol. XXIV, p. 273.

power, the sum required to be paid under that order shall be of such an amount, not exceeding the amount that would (but for paragraph (b)) apply by virtue of section 5, as the Court thinks fit.

(7) No enactment restricting the power of the Court dealing with an offender in a particular way from dealing with him also in any other way shall, by reason only of the making of an order under this section, restrict the Court from dealing with an offender in any way the Court considers appropriate in respect of an offence.

(8) The standard of proof required to determine any question arising under this Law as to –

- (a) whether a person has benefited from criminal conduct, or
- (b) the amount to be recovered in his case by virtue of this section,

shall be that applicable in civil proceedings [(that is to say, a balance of probabilities)].

(9) Where –

- (a) the Court makes both a confiscation order and an order for the payment of compensation under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990 against the same person in the same proceedings, and

- (b) it appears to the Court that he will not have sufficient means to satisfy both the orders in full,

it shall direct that so much of the compensation as will not in its opinion be recoverable because of the insufficiency of his means shall be paid out of any sums recovered under the confiscation order.

(10) In this Law "**confiscation order**" means an order under this section and includes such an order made by virtue of section 13, 14 or 19.

NOTES

In section 2,

the words in square brackets in subsection (3) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(2), with effect from 28th July, 2010;

the words in square brackets in subsection (8) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 3, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 2 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 1, with effect from 1st January, 2000.

Postponed determinations.

3. (1) Where the Court is acting under section 2 but considers that it requires further information before –

- (a) determining whether the defendant has benefited from

criminal conduct, or

- (b) determining the amount to be recovered in his case by virtue of that section,

it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the Court shall not specify a period under subsection (1) which –

- (a) by itself, or
- (b) where there have been one or more previous postponements under subsection (1) or (4), when taken together with the earlier specified period or periods,

exceeds six months beginning with the date of conviction.

(4) Where the defendant appeals against the conviction, the Court may, on that account –

- (a) postpone making either or both of the determinations mentioned in subsection (1) for such period as it may specify, or
- (b) where it has already exercised its powers under this

section to postpone, extend the specified period.

(5) A postponement or extension under subsection (1) or (4) may be made –

(a) on application by the defendant or Her Majesty's Procureur, or

(b) by the Court of its own motion.

(6) Unless the Court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.

(7) Where the Court exercises its power under subsection (1) or (4), it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the relevant offence or any of the relevant offences.

(8) Where the Court has so proceeded, section 2 shall have effect as if –

(a) in subsection (4), the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted, and

(b) in subsection (5)(c), after the word "determining", there were inserted "in relation to any offence in respect of which he has not been sentenced or

otherwise dealt with".

(9) In sentencing, or otherwise dealing with, the defendant in respect of the relevant offence or any of the relevant offences at any time during the specified period, the Court shall not –

- (a) impose any fine on him, or
- (b) make any such order as is mentioned in section 2(5)(b)(ii) or (iii).

(10) Where the Court has sentenced the defendant under subsection (7) during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making an order as mentioned in section 2(5)(b)(ii) or (iii).

(11) In this section –

"the date of conviction" means –

- (a) the date on which the defendant was convicted, or
- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions, and

"the relevant offence" means the offence in respect of which the defendant appears (as mentioned in section 2(1)) before the Court.

NOTE

In its application to external confiscation orders, section 3 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 2, with effect from 1st January, 2000.

Assessing the proceeds of criminal conduct.

4. (1) For the purposes of this Law –

- (a) any property obtained by a person at any time (whether before or after the commencement of this Law) as a result of or in connection with criminal conduct carried on by him or another person are his proceeds of criminal conduct, and
- (b) the value of his proceeds of criminal conduct is the aggregate of the values of the property.

(2) Subject to subsections (4) and (5), the Court shall for the purpose –

- (a) of determining whether the defendant has benefited from criminal conduct, and
- (b) if he has, of assessing the value of his proceeds of criminal conduct,

make the required assumptions.

- (3) The required assumptions are –
- (a) that any property appearing to the Court –
 - (i) to have been held by the defendant at any time since his conviction, or
 - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

was received by him, at the earliest time at which he appears to the Court to have held it, as a result of or in connection with criminal conduct carried on by him,

- (b) that any expenditure of his since the beginning of that period was met out of payments received by him as a result of or in connection with criminal conduct carried on by him, and
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as a result of or in connection with criminal conduct, he received the property free of any other interest in it.

- (4) The Court shall not make any required assumption in relation to any particular property or expenditure if –

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- (a) that assumption is shown to be incorrect in the defendant's case, or
- (b) the Court is satisfied that there would be a serious risk of injustice in the defendant's case if the assumption were to be made,

and, where by virtue of this subsection the Court does not make one or more of the required assumptions, it shall state its reasons.

(5) For the purpose of assessing the value of the defendant's proceeds of criminal conduct in a case where a confiscation order has previously been made against him, the Court shall leave out of account any of his proceeds of criminal conduct that are shown to the Court to have been taken into account in determining the amount to be recovered under that previous order.

[(6) For the purposes of subsection (4)(a) a required assumption is not shown to be incorrect in the defendant's case in relation to any property or expenditure by reason of it being shown that –

- (a) the property was received by him as a result of or in connection with drug trafficking carried on by him or another person or, as the case may be,
- (b) the expenditure was met out of payments received by him as a result of or in connection with drug trafficking carried on by him or another person.

(7) In this section "**drug trafficking**" has the meaning given by section 1(2).]

NOTES

In section 4, subsection (6) and subsection (7) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 4, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 4 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 2, with effect from 1st January, 2000.

Amount to be recovered under a confiscation order.

5. (1) Subject to section 2(6)(b) and to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Court assesses to be the value of the defendant's proceeds of criminal conduct.

(2) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by reason of the acceptance of an allegation made in a statement given under section 11 or made in the giving of information under section 12, or otherwise) the Court may issue a certificate giving the Court's opinions as to the matters concerned, and shall do so if satisfied as mentioned in subsection (3).

(3) If the Court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of his proceeds of criminal conduct, the amount to be recovered in the defendant's case under the confiscation order shall be –

(a) the amount appearing to the Court to be the amount

that might be so realised, or

- (b) a nominal amount, where it appears to the Court (on the information available to it at the time) that the amount that might be so realised is nil.

NOTE

In its application to external confiscation orders, section 5 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 2, with effect from 1st January, 2000.

Meaning of "amount that might be realised" and "realisable property".

6. (1) For the purposes of this Law the amount that might be realised at the time the confiscation order is made against the defendant is –

- (a) the total of the values at that time of all the realisable property held by the defendant, less
- (b) where there are obligations having priority at that time, the total amount payable in pursuance of such obligations,

together with the total of the values at that time of all gifts caught by this Law.

(2) In this Law "**realisable property**" means, subject to subsection (3) –

- (a) any property held by the defendant, and

- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law.

(3) Property is not realisable property if there is in force in respect of it an order under any of the following enactments, namely –

- (a) section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^e,
- (b) section 11(2), (3) or (4) of the Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990^f.

(4) For the purposes of subsection (1), an obligation has priority at any time if it is an obligation of the defendant –

- (a) to pay an amount due in respect of a fine, or any other order of a court, imposed or made on conviction of an offence, where the fine was imposed or the order was made before the confiscation order, or
- (b) to pay any sum which, if the defendant's affairs had been declared to be in a state of désastre, would be included among the preferred debts (within the meaning of section 1 of the Preferred Debts

^e Ordres en Conseil Vol. XXIV, p. 273.

^f Ordres en Conseil Vol. XXXII, p. 236.

(Guernsey) Law, 1983^g; and for the purposes of the said section 1 the relevant date shall be the date of the confiscation order.

NOTES

In its application to external confiscation orders, section 6 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 3, with effect from 1st January, 2000.

The Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990 has since been repealed by the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, section 2, with effect from 15th July, 2002, subject to the transitional provisions in section 81 of the 2002 Law.

Value of property.

7. (1) Subject to the following provisions of this section and to section 8, for the purposes of this Law the value of property (other than cash) in relation to any person holding the property is the market value of the property, except that, where any other person holds an interest in the property, the value is –

- (a) the market value of the first mentioned person's beneficial interest in the property, less
- (b) the amount required to discharge any encumbrance (other than a charging order) on that interest.

(2) Subject to section 8(2), references in this Law to the value at any time (referred to in subsection (3) as "**the material time**") of a gift caught by

^g Ordres en Conseil Vol. XXVIII, p. 184; No. VII of 1992; No. III of 1993 and No. IX of 1998.

this Law or of any property obtained by a person as a result of or in connection with criminal conduct are references to –

- (a) the value of the gift or property to the recipient when he received or obtained it, adjusted to take account of subsequent changes in the value of money, or
- (b) where subsection (3) applies, the value therein mentioned,

whichever is the greater.

(3) Subject to section 8(2), if at the material time the recipient holds –

- (a) the property which he received or obtained (not being cash), or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received or obtained,

the value referred to in subsection (2)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received or obtained, but disregarding in either case any charging order made under this Law.

Gifts caught by this Law.

8. (1) A gift (including a gift made before the commencement of

this Law) is caught by this Law if –

- (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him, or
 - (b) it was made by the defendant at any time and was a gift of property –
 - (i) received by the defendant in connection with criminal conduct carried on by him or another person, or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.
- (2) For the purposes of this Law –
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant, and
 - (b) in those circumstances, the provisions of subsection (1) and of section 7 shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the

difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

NOTE

In its application to external confiscation orders, section 8 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 4, with effect from 1st January, 2000.

Procedure for enforcing confiscation orders.

9. (1) Subject to subsections (2) and (3), where the Court orders the defendant to pay any amount under section 2, the Court may, if it thinks fit, order the defendant to be imprisoned in default of payment of the amount.

(2) When exercising its powers under subsection (1) the Court may in respect of a confiscation order of an amount in Column 1 below impose a term of imprisonment not exceeding the maximum period set out opposite that amount in Column 2—

Column 1	Column 2
AMOUNT OF CONFISCATION ORDER	MAXIMUM PERIOD
An amount not exceeding £200	7 days

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An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding £10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years;

and the States may by Ordinance amend the amounts and periods set out in the

above table.

(3) The Court may, in its discretion, defer such imprisonment on such terms as it thinks fit.

(4) Where an order of imprisonment is made under this section, it shall cease to have effect on payment of the full amount ordered to be paid under section 2.

(5) Where an order of imprisonment is made under this section and payment is made of part of the amount ordered under section 2, the term of imprisonment to be served as a result of the order under this section shall be reduced in proportion to the amount paid.

(6) A term of imprisonment imposed under this section in default of payment shall be served consecutively to any term of imprisonment which the defendant may be liable to serve in respect of any offence or offences.

(7) The reference in subsection (6) to any term of imprisonment which the defendant is liable to serve in respect of any offence or offences is a reference to the term of imprisonment or youth detention (as the case may be) which he is liable to serve in respect of the offence or offences; and for the purposes of this subsection –

- (a) consecutive terms and terms which are wholly or partly concurrent are treated as a single term, and
- (b) the Court shall disregard any sentence which is suspended under section 1 of the Criminal Justice (Power to Suspend Sentence) (Bailiwick of Guernsey)

Law, 1972^h and which has not been activated at the time when a term of imprisonment is imposed under this section.

(8) Where the defendant serves a term of imprisonment imposed under this section without satisfying the amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

(9) This section applies in relation to confiscation orders made by the Criminal Division of the Court of Appeal in the same way as it applies to such orders made by the Court, and references in this section to the Court shall be construed accordingly.

NOTE

In its application to external confiscation orders, section 9 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Interest on sums unpaid under confiscation orders.

10. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person shall be liable to pay interest on that sum for the period in which it remains unpaid; and the amount of interest shall for the purposes of enforcement be treated as part of the amount to be recovered under the confiscation order.

^h Ordres en Conseil Vol. XXIII, p. 344.

(2) The Court may, on the application of Her Majesty's Procureur, increase the term of imprisonment fixed in respect of the confiscation order under section 9(1) where subsection (1) applies and interest has accrued.

(3) The rate of interest under subsection (1) is that for the time being applying to a judgment debt under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985ⁱ.

NOTE

In its application to external confiscation orders, section 10 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Statements relating to criminal conduct.

11. (1) Where Her Majesty's Procureur asks the Court to proceed under section 2, he shall give the Court, within such period as it may direct, a statement of matters which he considers relevant in connection with –

- (a) determining whether the defendant has benefited from criminal conduct, or
- (b) assessing the value of his proceeds of criminal conduct.

(2) In this section such a statement is referred to as a "**prosecutor's statement**".

ⁱ Ordres en Conseil Vol. XXIX, p. 133; amended by Order of the Royal Court No. I of 1996.

(3) Where Her Majesty's Procureur has given a prosecutor's statement –

(a) he may at any time give the Court a further such statement, and

(b) the Court may at any time require him to give it a further such statement, within such period as it may direct.

(4) Where any prosecutor's statement has been given and the Court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant –

(a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement, and

(b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely.

(5) Where the Court has given a direction or made a requirement under this section it may at any time vary it by giving or making a further direction or requirement.

(6) Where the defendant accepts to any extent any allegation in any prosecutor's statement, the Court may, for the purposes of –

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- (a) determining whether the defendant has benefited from criminal conduct, or
- (b) assessing the value of his proceeds of criminal conduct,

treat his acceptance as conclusive of the matters to which it relates.

(7) If the defendant fails in any respect to comply with a requirement under subsection (4) he may be treated for the purposes of this section as accepting every allegation in the prosecutor's statement in question apart from –

- (a) any allegation in respect of which he has complied with the requirement, and
- (b) any allegation that he has benefited from criminal conduct or that any property was received or obtained by him as a result of or in connection with criminal conduct carried on by him or another person.

(8) Where –

- (a) there is given to the Court by the defendant a statement as to matters relevant to determining the amount that might be realised at the time the confiscation order is made, and
- (b) Her Majesty's Procureur accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance by Her Majesty's Procureur as conclusive of the matters to which it relates.

(9) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in such manner as the Court may direct.

(10) No acceptance by the defendant under this section that any property was received or obtained by him as a result of or in connection with criminal conduct carried on by him or another person shall be admissible in evidence in any proceedings for an offence.

NOTE

In its application to external confiscation orders, section 11 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Provision of information by defendant.

12. (1) This section applies where Her Majesty's Procureur has asked the Court to proceed under section 2.

(2) For the purpose of obtaining information to assist it in carrying out its functions, the Court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under subsection (2) may require all, or any specified part, of the required information to be given to the Court in such manner, and for such date, as may be specified in the order.

(4) If the defendant fails without reasonable excuse (proof whereof shall lie on him) to comply with any order under this section, the Court may draw such inference from that failure as it considers appropriate.

(5) Where Her Majesty's Procureur accepts to any extent any allegation made by the defendant in giving to the Court information required by an order under this section, the Court may treat that acceptance as conclusive of the matters to which it relates.

(6) For the purposes of this section, an allegation may be accepted in such manner as the Court may direct.

NOTE

In its application to external confiscation orders, section 12 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Further proceedings in connection with confiscation orders

Reconsideration of case where Court has not proceeded under section 2.

13. (1) This section applies where the defendant has appeared before the Court to be sentenced in respect of one or more offences but the Court has not proceeded under section 2.

(2) If Her Majesty's Procureur has evidence –

(a) which was not available to him when the defendant

appeared to be sentenced (and accordingly it was not considered by the Court), but

(b) which Her Majesty's Procureur believes would have led the Court to determine that the defendant had benefited from criminal conduct if –

(i) Her Majesty's Procureur had asked the Court to proceed under section 2, and

(ii) the evidence had been considered by the Court,

he may apply to the Court for it to consider the evidence.

(3) The Court shall proceed under section 2 if, having considered the evidence, it is satisfied that it is appropriate to do so.

(4) In considering whether it is appropriate to proceed under section 2, the Court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under section 2, the Court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

(6) In considering the circumstances of any case the Court shall have regard, in particular, to the amount of any fine or fines imposed on the defendant in respect of the offence or offences in question.

(7) Where the Court is proceeding under section 2 by virtue of

this section, subsection (4) of that section shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted.

(8) The Court may take into account any property received or obtained by the defendant on or after the date of conviction, but only if Her Majesty's Procureur shows that it was received or obtained by the defendant as a result of or in connection with criminal conduct carried on by the defendant or another person on or before that date.

(9) In considering under this section any evidence which relates to any property to which subsection (8) applies, the Court shall not make the assumptions which would otherwise be required by section 4.

(10) No application shall be entertained by the Court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(11) Sections 11 and 12 shall apply where Her Majesty's Procureur makes an application under this section as they apply where Her Majesty's Procureur asks the Court to proceed under section 2.

(12) In this section "**the date of conviction**" means –

- (a) the date on which the defendant was convicted, or
- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

NOTE

In its application to external confiscation orders, section 13 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Re-assessment of whether defendant has benefited from criminal conduct.

14. (1) This section applies where the Court has made a determination under section 2(2) ("**the section 2(2) determination**") that the defendant has not benefited from criminal conduct.

(2) If Her Majesty's Procureur has evidence –

- (a) which was not considered by the Court in making the section 2(2) determination, but
- (b) which Her Majesty's Procureur believes would have led the Court to determine that the defendant had benefited from criminal conduct if it had been considered by the Court,

he may apply to the Court for it to consider that evidence.

(3) If, having considered the evidence, the Court is satisfied that it would have determined that the defendant had benefited from criminal conduct if that evidence had been available to it, the Court –

- (a) shall make –

- (i) a fresh determination under section 2(2), and
 - (ii) a determination under section 2(4) of the amount to be recovered by virtue of section 2, and
- (b) may make a confiscation order.

(4) Where the Court is proceeding under section 2 by virtue of this section, section 2(4) shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted.

(5) The Court may take into account any property received or obtained by the defendant on or after the date of the section 2(2) determination, but only if Her Majesty's Procureur shows that it was received or obtained by the defendant as a result of or in connection with criminal conduct carried on by the defendant or another person on or before that date.

(6) In considering under this section any evidence which relates to any property to which subsection (5) applies, the Court shall not make the assumptions which would otherwise be required by section 4.

(7) No application shall be entertained by the Court under this section if it is made after the end of the period of 6 years beginning with the date of conviction; and in this subsection "**the date of conviction**" has the same meaning as in section 13.

(8) Sections 11 and 12 shall apply where Her Majesty's

Procureur makes an application under this section as they apply where Her Majesty's Procureur asks the Court to proceed under section 2.

NOTE

In its application to external confiscation orders, section 14 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Revised assessment of the proceeds of criminal conduct.

15. (1) This section applies where the Court has made a determination under section 2(4) of the amount to be recovered in a particular case by virtue of that section ("**the current section 2(4) determination**").

(2) Where Her Majesty's Procureur is of the opinion that the real value of the defendant's proceeds of criminal conduct was greater than their assessed value, he may apply to the Court for the evidence on which he has formed his opinion to be considered by the Court.

(3) Sections 11 and 12 shall apply where Her Majesty's Procureur makes such an application as they apply where he asks the Court to proceed under section 2, but subject (in the case of section 11) to subsection (9)(a).

(4) If, having considered the evidence, the Court is satisfied that the real value of the defendant's proceeds of criminal conduct is greater than their assessed value (whether because the real value at the time of the current section 2(4) determination was higher than was thought or because the value of the proceeds in question has subsequently increased), the Court shall make a fresh determination under section 2(4) of the amount to be recovered by virtue of that section.

(5) In subsections (2) and (4) –

"**assessed value**" means the value of the defendant's proceeds of criminal conduct as assessed by the Court in accordance with section 5(1), and

"**real value**" means the value of the defendant's proceeds of criminal conduct which took place –

- (a) in the period by reference to which the current section 2(4) determination was made, or
- (b) in any earlier period.

(6) Where the Court is proceeding under section 2 by virtue of this section, section 2(4) shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted.

(7) Any determination under section 2(4) by virtue of this section shall be by reference to the amount that might be realized at the time when the determination is made.

(8) In the case of any determination under section 2(4) by virtue of this section, section 4(5) shall not apply in relation to any of the defendant's proceeds of criminal conduct taken into account in respect of the current section 2(4) determination.

(9) In relation to any such determination by virtue of this section –

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- (a) sections 5(2), 6(4) and 11(8)(a) shall have effect as if for "confiscation order" there were substituted "determination";
- (b) section 5(3) shall have effect as if for "confiscation order is made" there were substituted "determination is made"; and
- (c) section 6(1) shall have effect as if for "the confiscation order is made against the defendant" there were substituted "of the determination".

(10) The Court may take into account any property received or obtained by the defendant on or after the date of the current section 2(4) determination, but only if Her Majesty's Procureur shows that it was received or obtained by the defendant as a result of or in connection with criminal conduct carried on by the defendant or any person on or before that date.

(11) In considering under this section any evidence which relates to any property to which subsection (10) applies, the Court shall not make the assumptions which would otherwise be required by section 4.

(12) If, as a result of making the fresh determination required by subsection (4), the amount to be recovered exceeds the amount set by the current section 2(4) determination, the Court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current section 2(4) determination such greater amount as it thinks just in all the circumstances of the case.

(13) Where the Court varies a confiscation order under subsection (12), it may, if it thinks fit –

- (a) increase the term of imprisonment imposed in respect of the confiscation order, or vary any terms upon which such imprisonment was deferred, under section 9, or
- (b) where it had not previously made such an order of imprisonment, subject to section 9, order the defendant to be imprisoned until the substituted amount is paid.

(14) The Court shall not entertain an application under this section if it is made more than six years after the date of conviction; and in this subsection "**the date of conviction**" has the same meaning as in section 13.

NOTE

In its application to external confiscation orders, section 15 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Increase in realisable property.

16. (1) This section applies where, by virtue of section 5(3), the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of criminal conduct.

(2) If, on an application made in accordance with subsection (3),

the Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount to be recovered under the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased), the Court shall issue a certificate to that effect, giving the Court's reasons.

(3) An application under subsection (2) may be made either by Her Majesty's Procureur or Her Majesty's Sheriff appointed as receiver in relation to the realisable property of the person in question under section 26 or 29 or in pursuance of a charging order.

(4) Where a certificate has been issued under subsection (2), Her Majesty's Procureur may apply to the Court for an increase in the amount to be recovered under the confiscation order; and on that application the Court may –

- (a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1)) as appears to the Court to be appropriate having regard to the amount now shown to be realisable, and
- (b) increase the term of imprisonment imposed in respect of the confiscation order, or vary any terms on which such imprisonment was deferred, under section 9 or, where it had not previously made such an order of imprisonment, subject to section 9, order the defendant to be imprisoned until the substituted amount is paid.

NOTE

In its application to external confiscation orders, section 16 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Inadequacy of realisable property.

17. (1) If, on an application made in respect of a confiscation order by –

- (a) the defendant, or
- (b) Her Majesty's Sheriff appointed as receiver under section 26 or 29 or in pursuance of a charging order,

the Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the Court shall issue a certificate to that effect giving the Court's reasons.

(2) For the purposes of subsection (1) –

- (a) in the case of realisable property held by a person whose affairs have been declared to be in a state of désastre, the Court shall take into account the extent to which any property held by him would be included among the preferred debts (within the meaning of section 1 of the Preferred Debts (Guernsey) Law,

1983^j); and for the purposes of the said section 1 the relevant date shall be the date of the confiscation order, and

- (b) the Court may disregard any inadequacy in the realisable property which appears to it to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Law from any risk of realisation under this Law.

(3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the Court for an order reducing the amount to be recovered under the confiscation order.

(4) The Court, on an application under subsection (3) –

- (a) shall substitute for the amount to be recovered under the confiscation order such lesser amount as the Court thinks just in all the circumstances of the case, and
- (b) may substitute for the term of imprisonment imposed under section 9 in respect of the amount to be recovered under the confiscation order a shorter term in respect of the lesser amount, or vary any terms upon which such imprisonment was deferred.

^j Ordres en Conseil Vol. XXVIII, p. 184; No. VII of 1992; No. III of 1993 and No. IX of 1998.

- (5) Rules of Court may make provision –
- (a) for the giving of notice of any application under this section, and
 - (b) for any person appearing to the Court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the Court.

NOTE

In its application to external confiscation orders, section 17 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Compensation.

- 18.** (1) If proceedings are instituted against a person for any offence or offences and either –
- (a) the proceedings do not result in his conviction for any offence, or
 - (b) he is convicted of one or more offences but –
 - (i) the conviction or convictions concerned are quashed, or

- (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned,

the Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Court shall not order compensation to be paid in any case unless the Court is satisfied –

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned, and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court under sections 26 to 29.

(3) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(4) The amount of compensation to be paid under this section shall be such as the Court thinks just in all the circumstances of the case.

(5) Compensation payable under this section shall be paid by the States of Guernsey.

NOTE

In its application to external confiscation orders, section 18 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Confiscation orders where the defendant has absconded or died

Powers of the Court where the defendant has absconded or died.

19. (1) Subsection (2) applies where a person has been convicted of one or more offences.

(2) If Her Majesty's Procureur asks the Court to proceed under this section, it may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that he has died or absconded.

(3) Subsection (4) applies where proceedings for one or more offences have been instituted against a person but have not been concluded.

(4) If Her Majesty's Procureur asks the Court to proceed under this section, it may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that he has absconded.

(5) The power conferred by subsection (4) may not be exercised at any time within two years from the date on which, in the opinion of the Court, the defendant absconded.

(6) In any proceedings on an application under this section –

(a) section 4(2) shall not apply,

- (b) section 11 shall apply as it applies where Her Majesty's Procureur asks the Court to proceed under section 2, but with the omission of subsections (4), (6) and (7),
- (c) the Court shall not make a confiscation order against a person who has absconded unless it is satisfied that Her Majesty's Procureur has taken reasonable steps to contact him, and
- (d) any person appearing to the Court to be likely to be affected by the making of the confiscation order by the Court shall be entitled to appear before the Court and to make representations.

(7) Where the Court makes a confiscation order under this section against a person who has absconded, it may make such order as it thinks fit under section 9.

(8) Where the Court –

- (a) has been asked to proceed under this section in relation to a defendant who has absconded, but
- (b) has decided not to make a confiscation order against him,

section 14 shall not apply at any time while he remains an absconder.

(9) Where a confiscation order has been made in relation to any

defendant by virtue of this section, section 15 shall not apply at any time while he remains an absconder.

NOTE

In its application to external confiscation orders, section 19 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Effect of conviction where the Court has acted under section 19.

20. (1) Where, in the case of any defendant, the Court has made a confiscation order by virtue of section 19, the Court shall, in respect of the offence or offences concerned –

- (a) take account of the order before –
 - (i) imposing any fine on the defendant,
 - (ii) making any order involving any payment by him other than an order under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990^k,
 - (iii) making an order under section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^l, and

^k Ordres en Conseil Vol. XXXII, p. 77.

^l Ordres en Conseil Vol. XXIV, p. 273.

- (b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(2) Where the Court has made a confiscation order by virtue of section 19 and the defendant subsequently appears before a Court to be sentenced in respect of one or more of the offences concerned, section 2(1) shall not apply so far as his appearance is in respect of that offence or those offences.

NOTE

In its application to external confiscation orders, section 20 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Variation of confiscation orders made by virtue of section 19.

21. (1) This section applies where the Court has made a confiscation order by virtue of section 19(4), and the defendant has ceased to be an absconder.

- (2) If the defendant alleges that –
 - (a) the value of his proceeds of criminal conduct in the period by reference to which the determination in question was made ("**the original value**"), or
 - (b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, he may apply to the Court for it to consider his evidence.

(3) If, having considered that evidence, the Court is satisfied that the defendant's allegation is correct, it –

- (a) shall make a fresh determination under section 2(4),
and
- (b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) In the case of any determination under section 2(4) by virtue of this section, section 4(5) shall not apply in relation to any of the defendant's proceeds of criminal conduct taken into account in determining the original value.

(5) Where the Court varies a confiscation order under this section –

- (a) it may substitute for the term of imprisonment imposed under section 9 in respect of the amount to be recovered under the order a shorter term in respect of the lesser amount, or vary any terms upon which such imprisonment was deferred, and
- (b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant in accordance with section 24 if –

- (i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order, and
- (ii) having regard to all the circumstances of the case, the Court considers it to be appropriate.

(6) No application shall be entertained by the Court under this section if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.

NOTE

In its application to external confiscation orders, section 21 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Compensation, etc, where absconder is acquitted.

22. (1) This section applies where the Court has made a confiscation order by virtue of section 19(4), and the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.

(2) The Court shall cancel the confiscation order.

(3) The Court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 24 if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

NOTE

In its application to external confiscation orders, section 22 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Power to discharge confiscation order and order compensation where absconder returns.

23. (1) This section applies where –

- (a) the Court has made a confiscation order by virtue of section 19(4) in relation to an absconder,
- (b) the defendant has ceased to be an absconder, and
- (c) section 22 does not apply.

(2) The Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that –

- (a) there has been undue delay in continuing the proceedings in respect of which the power under section 19(4) was exercised, or
- (b) Her Majesty's Procureur does not intend to proceed with the prosecution.

(3) Where the Court cancels a confiscation order under this

section it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 24 if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

NOTE

In its application to external confiscation orders, section 23 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Provisions supplementary to sections 21, 22, and 23.

24. (1) Where the Court orders compensation to be paid under section 21, 22 or 23, the amount of that compensation shall be such as the Court considers just in all the circumstances of the case.

(2) Rules of Court may make provision –

(a) for the giving of notice of any application under section 21, 22 or 23, and

(b) for any person appearing to the Court to be likely to be affected by any exercise of its powers under any of those sections to be given an opportunity to make representations to the Court.

(3) Any payment of compensation under any of those sections shall be paid by the States of Guernsey.

(4) Where the Court cancels a confiscation order under section 22 or 23, it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

NOTE

In its application to external confiscation orders, section 24 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 5, with effect from 1st January, 2000.

Restraint orders and charging orders

Restraint orders and charging orders: general provisions.

25. (1) The powers conferred on the Court by sections 26(1), 27(1) and 28(1) are exercisable where –

- (a) proceedings have been instituted in the Bailiwick against the defendant for an offence or an application has been made by Her Majesty's Procureur in respect of the defendant under section 13, 14, 15, 16 or 19,
- (b) the proceedings have not, or the application has not, been concluded, and
- (c) the Court is satisfied that there is a reasonable cause to believe –
 - (i) in the case of an application under section 15 or 16, that the Court will be satisfied as

mentioned in section 15(4) or, as the case may be, 16(2), or

- (ii) in any other case, that the defendant has benefited from criminal conduct.

(2) The powers mentioned in subsection (1) are also exercisable where –

- (a) the Court is satisfied that a person is to be charged with an offence or that an application of a kind mentioned in subsection (1)(a) is to be made in respect of the defendant, and
- (b) the Court is also satisfied as mentioned in subsection (1)(c).

[(2A) The powers mentioned in subsection (1) are also exercisable where –

- (a) a criminal investigation has been started in the Bailiwick with regard to criminal conduct, and
- (b) there is reasonable cause to believe that the alleged offender has benefited from his criminal conduct.]

(3) The Court shall not exercise those powers by virtue of subsection (1) if it is satisfied –

- (a) that there has been undue delay in continuing the

proceedings or application in question, or

- (b) that Her Majesty's Procureur does not intend to proceed.

(4) For the purposes of sections 26, 27 and 28, at any time when those powers are exercisable before proceedings have been instituted –

- (a) references in this Law to the defendant shall be construed as references to the person referred to in subsection (2)(a),
- (b) references in this Law to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (2)(a) for an offence.

(5) A restraint order or a charging order –

- (a) may be made only on an application by Her Majesty's Procureur,
- (b) may be made on an ex parte application to the Bailiff in chambers,
- (c) shall provide for notice to be given to persons affected by the order, and
- (d) may be made subject to conditions, including, without prejudice to the generality of the foregoing, conditions

as to when the order is to become effective.

- (6) A restraint order or a charging order –
 - (a) may be discharged or varied in relation to any property, and
 - (b) shall be discharged –
 - (i) when proceedings for the offence or in relation to the application are concluded,
 - (ii) in the case of an order made by virtue of subsection (2), if the proposed proceedings are not instituted [in respect of the offence, or (as the case may be) if the application is not made,] within such time as the Court considers reasonable,
 - (iii) in the case of a charging order, if the amount the payment of which is secured by the order is lodged with Her Majesty's Greffier in Guernsey.

(7) An application for the discharge or variation of a restraint order or charging order may be made to the Court by any person affected by it.

(8) The powers of the Court under this section and under sections 26, 27 and 28 –

Consolidated text

- (a) to make, vary or discharge a restraint order or a charging order,
- (b) to appoint Her Majesty's Sheriff as receiver, and
- (c) to give directions,

may be exercised by the Bailiff in chambers, and any application to him may be made on an ex parte basis; and references to "**the Court**" in those provisions and in sections 31(1) and 33(2) shall be construed accordingly.

(9) In exceptional circumstances or in an emergency the power of the Court to make a restraint order or a charging order may be exercised –

- (a) in relation to realisable property situated in Alderney, securities of the States of Alderney, securities of an Alderney company, other securities registered in a register kept in Alderney, units of a collective investment scheme in connection with which registration is carried on in Alderney or a vessel registered in a register maintained in Alderney, by the Chairman of the Court of Alderney or, if he is absent or unable to act, by a Jurat of the Court of Alderney,
- (b) in relation to realisable property situated in Sark, securities of the Chief Pleas of Sark, other securities registered in a register kept in Sark, units of a collective investment scheme in connection with which registration is carried on in Sark or a vessel registered in a register maintained in Sark, by the Seneschal of

Sark or his deputy,

on an application made ex parte in chambers by Her Majesty's Procureur.

NOTES

In section 25,

subsection (2A) was inserted by the Proceeds of Crime and Drug Trafficking (Bailiwick of Guernsey) (Amendment) Law, 2004, section 2(1), with effect from 7th March, 2005;

the words in square brackets in paragraph (b)(ii) of subsection (6) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 5, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 25 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 6, with effect from 1st January, 2000.

Restraint orders.

26. (1) The Court may by order (in this Law referred to as a "**restraint order**") prohibit any person from dealing with any realisable property subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply –

- (a) to all realisable property held by a specified person, whether the property is described in the order or not, and
- (b) to realisable property held by a specified person, being

property transferred to him after the making of an order.

(3) This section shall not have effect in relation to any property which is for the time being the subject of a charging order under section 27 or 28.

(4) Where the Court has made a restraint order, it may at any time appoint Her Majesty's Sheriff as receiver –

- (a) to take possession of any realisable property, and
- (b) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court; and the Court may direct any person having possession of property in respect of which Her Majesty's Sheriff is appointed as receiver under this section to give possession of it to Her Majesty's Sheriff.

(5) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) –

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt, and
- (b) removing the property from the Bailiwick.

(6) Where a restraint order has been made, a police officer or

Her Majesty's Sheriff may seize any realisable property for the purpose of preventing its removal from the Bailiwick; and property so seized shall be dealt with in accordance with the directions of the Court.

NOTE

In its application to external confiscation orders, section 26 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 7, with effect from 1st January, 2000.

Realty charging orders.

27. (1) The Court may make a realty charging order in respect of realisable property consisting of real property situate in the Bailiwick securing the payment to the Crown –

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged, and
- (b) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Law, a realty charging order is an order made under this section, imposing on any such realisable property consisting of real property situate in the Bailiwick as may be specified in the order a charge for securing the payment of money to the Crown.

(3) A realty charging order shall forthwith be registered –

- (a) if the real property in respect of which it is made is in Guernsey, in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe in Guernsey,
- (b) if that real property is in Alderney, by noting it against the entry relating to the land concerned in the Alderney Land Register as if an application had been made under section 18(1) of the Alderney Land and Property, etc, Law, 1949^m and concurred in by the registered owner of the land as mentioned in section 18(2) of that Law,
- (c) if that real property is in Sark, at the Greffe in Sark as if it were a judgment debt ordered to be registered against the real property concerned by an Act of the Court of the Seneschal.

(4) A realty charging order shall have effect as a preliminary vesting order in favour of the Crown (with priority from the date of its registration); except that, notwithstanding any rules of court or rules of customary law to the contrary, the Crown shall remain entitled to levy execution upon, and to recover out of, the defendant's personal property all or any part of any amount which has been, or which may be, ordered to be paid by the defendant under a confiscation order.

NOTES

^m Ordres en Conseil Vol. XIV, p. 67; Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156; and No. VII of 1994.

In its application to external confiscation orders, section 27 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 8, with effect from 1st January, 2000.

In its application to external confiscation orders, the Law is modified by the insertion of section 27A in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 9, with effect from 1st January, 2000.

Personalty charging orders.

28. (1) The Court may make a personalty charging order in respect of any realisable property described in subsection (2) securing the payment to the Crown of any amount which has been, or which may be, ordered to be paid by the defendant under a confiscation order.

(2) The property referred to in subsection (1) is –

(a) any interest in real property (not itself being real property) situated in the Bailiwick,

(b) any interest in securities of –

(i) the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,

(ii) any Bailiwick company,

(iii) any body incorporated outside the Bailiwick, or any country or territory outside the Bailiwick, which are registered in a register kept in the

Bailiwick,

- (c) any interest in units of any collective investment scheme in connection with which registration is carried on in the Bailiwick,
 - (d) any interest in a vessel registered in a register maintained in the Bailiwick, and
 - (e) dividends or interest payable in respect of any property described in paragraph (b) or (c).
- (3) A personalty charging order shall have effect as follows –
- (a) to the extent that it relates to property within subsection (2)(a) or (d), as an absolute assignment to the Crown of the interest concerned, so as to be effectual in law to pass and transfer to the Crown the rights, remedies and powers specified in paragraphs (a), (b) and (c) of section 2(1) of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979ⁿ,
 - (b) to the extent that it relates to property within subsection (2)(b), (c) or (e), so as to create in favour of the Crown an interest in that property equivalent to a security interest within the meaning of the Security

ⁿ Ordres en Conseil Vol. XXVII, p. 132; Vol. XXXII, p. 324; and No. III of 1993.

Interests (Guernsey) Law, 1993^o, and with the same rights, remedies and effects as attach to a security interest created under that Law.

(4) The Committee may from time to time by regulations amend subsection (2); and any such regulations may make consequential amendments to section 25(9).

NOTE

In its application to external confiscation orders, section 28 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 10, with effect from 1st January, 2000.

Realisation of property

[Realisation of property.]

- 29.** (1) Where a confiscation order –
- (a) has been made under this Law,
 - (b) is not satisfied, and
 - (c) is not subject to appeal,

the Court may, on an application by Her Majesty's Procureur, exercise the powers conferred by subsections (2) to (6).

^o Order in Council No. III of 1993.

(2) The Court may appoint Her Majesty's Sheriff as receiver in respect of realisable property.

(3) The Court may empower Her Majesty's Sheriff as receiver appointed under subsection (2) or under section 26 –

(a) to enforce any charge imposed under section 27 or 28 on realisable property or on interest or dividends payable in respect of such property, and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 27 or 28, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

(4) The Court may order any person having possession of realisable property to give possession of it to Her Majesty's Sheriff as receiver.

(5) The Court may empower Her Majesty's Sheriff as receiver to realise any realisable property in such manner as the Court may direct.

(6) The Court may –

(a) order any person holding an interest in realisable property to make to Her Majesty's Sheriff as receiver such payment as the Court may direct in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this

Law, and

- (b) on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 27 or 28.

(8) The Court shall not in respect of any property exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding an interest in the property to make representations to the Court.

(9) The powers of the Court under this section may be exercised by the Bailiff in chambers sitting unaccompanied by the Jurats (and references to "the Court" shall be construed accordingly); and an application under this section may be made on an ex parte basis.]

NOTES

Section 29 was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 6, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 29 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 11, with effect from 1st January, 2000.

Application of proceeds of realisation and other sums.

- 30.** (1) Subject to subsection (2) –

- (a) the proceeds of a realisation of any property under this Law, and
- (b) any other sums, being property held by the defendant or the recipient of a gift caught by this Law, in the hands of Her Majesty's Sheriff pursuant to this Law,

shall, after such payments (if any) as the Court may direct have been made out of them, be applied on the defendant's behalf towards the satisfaction of the confiscation order in the same manner as if the confiscation order were a fine imposed by the Court.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of Her Majesty's Sheriff, he shall distribute those sums –

- (a) among such of those who held property which has been realised under this Law, and
- (b) in such proportions,

as the Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

NOTE

In its application to external confiscation orders, section 30 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 12, with effect from 1st January, 2000.

Exercise by Court or Sheriff of powers for realisation of property.

31. (1) The following provisions apply to the powers conferred on the Court by sections 26 to 30 and on Her Majesty's Sheriff when appointed as receiver under this Law.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available, for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case, the value for the time being of realisable property held by any person by means of the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, the power shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by or on behalf of the Crown or the States of Guernsey or Alderney or the Chief Pleas of Sark.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

NOTE

In its application to external confiscation orders, section 31 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 13, with effect from 1st January, 2000.

Insolvency of defendants

Affairs of a person in a state of désastre.

32. Where the affairs of a person who holds realisable property are declared in a state of désastre –

- (a) property for the time being subject to a restraint order, and
- (b) any proceeds of property realised by virtue of this Law for the time being in the hands of Her Majesty's Sheriff as receiver appointed under this Law,

shall be excluded from the person's estate for the purposes of those désastre proceedings.

Winding up of a company holding realisable property.

33. (1) Where realisable property is held by a Bailiwick company and an order for the winding up of the company has been made or a resolution has been passed by the company for its voluntary winding up, the functions of the liquidator or provisional liquidator shall not be exercisable in relation to –

- (a) property for the time being subject to a restraint order made before the relevant time, or

- (b) any proceeds of property realised by virtue of this Law for the time being in the hands of Her Majesty's Sheriff as receiver appointed under this Law.

(2) Where, in the case of a Bailiwick company, such an order has been made or such a resolution has been passed, the powers conferred on the Court by sections 26 to 30 or on Her Majesty's Sheriff as receiver appointed under this Law shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable –

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors, or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies (Guernsey) Law, 1994^P or the Companies (Alderney) Law, 1994^Q shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on any property which was subject to a restraint order at the relevant time.

^P Order in Council No. XXXIII of 1994; No. XIV of 1996.

^Q Order in Council No. XXXIV of 1994.

- (5) In this section "**the relevant time**" means –
- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up,
 - (b) where such an order has been made and, before the presentation of the application for the winding up of the company, such a resolution had been passed by the company, the time of the passing of the resolution, and
 - (c) in any other case where such an order had been made, the time of the making of the order.

NOTE

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

Restriction on the liability of Her Majesty's Sheriff

Restriction on the liability of Her Majesty's Sheriff.

34. Where Her Majesty's Sheriff as receiver appointed under this Law takes any action –

- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property, and
- (b) believing and having reasonable grounds for believing that he is entitled to take that action in relation to that property,

he shall not be liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by his negligence.

Enforcement of orders made outside the Bailiwick

Enforcement of external confiscation orders.

35. (1) The States may by Ordinance –

- [(a) direct, in relation to any country within the British Islands, or in relation to any other country –
 - designated by an Order in Council of Her Majesty under section 96 of the Criminal Justice Act 1988^r (and any such designation shall continue to have effect for the purposes of this Law, notwithstanding any repeal of section 96, until amended or revoked by Ordinance of the States), or

^r An Act of Parliament (1988 c. 33); the relevant Order in Council is the Criminal Justice Act 1988 (Designated Countries and Territories) Order 1991 (United Kingdom S.I. 1991/2873).

- designated by Ordinance of the States,

(any country so designated being referred to in this Law as a "**designated country**") that, subject to such modifications as may be specified, this Part of this Law (except sections 10 and 16) and Part III of this Law shall apply -]

(i) to orders which are made by courts in the designated country for purposes that appear to the States similar to those for which confiscation orders are made under this Law ("**external confiscation orders**"), and which are registered under section 36, and

(ii) to proceedings in which external confiscation orders may be made that have been instituted but not concluded in that country [or to a criminal investigation being conducted there concerning criminal conduct], and

(b) make -

(i) provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order,

(ii) provision as to evidence or proof of any matter for the purposes of this section and section 36,

and

- (iii) incidental, consequential and transitional provision, and

- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds arising out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such an extent as may be specified.

(2) An Ordinance under this section may make different provision in relation to different designated countries and for different cases or classes of circumstances; and a modification made by such an Ordinance may confer power on a person to exercise a discretion.

NOTES

In section 35,

the words in the first pair of square brackets in subsection (1) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 7, with effect from 3rd December, 2007;

the words in the second pair of square brackets in subsection (1) were substituted by the Proceeds of Crime and Drug Trafficking (Bailiwick of Guernsey) (Amendment) Law, 2004, section 2(2), with effect from 7th March, 2005.

In its application to external confiscation orders, section 35 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 14, with effect from 1st January, 2000.

The following Ordinances have been made under section 35:

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999;

Criminal Justice (Proceeds of Crime) (Enforcement of Overseas Confiscation Orders) (Amendment) Ordinance, 2002;

Proceeds of Crime and Drug Trafficking (Bailiwick of Guernsey) (Amendment) Ordinance, 2004;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) (Amendment) Ordinance, 2006;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) (Amendment) Ordinance, 2009.

[Designation of all countries on 28th July, 2010.]

35A. (1) With effect on and from the 28th July, 2010 any country which is not already a designated country under section 35(1) (including any country which comes into existence after that date) is designated for the purposes of this Law and any Ordinance or subordinate legislation made under this Law.

(2) Without prejudice to the generality of subsection (1), a country which is designated under that subsection is a designated country for the purposes of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999.]

NOTE

Section 35A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(3), with effect from 28th July, 2010.

Registration of external confiscation orders.

36. (1) On application made by Her Majesty's Procureur on behalf of

the government of a designated country, the Royal Court sitting as an Ordinary Court may register an external confiscation order made there if –

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal,
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them, and
- (c) it is of the opinion that enforcing the order in the Bailiwick would not be contrary to the interests of justice.

(2) In subsection (1) "**appeal**" includes –

- (a) any proceedings by way of discharging or setting aside a judgment, and
- (b) an application for a new trial or a stay of execution.

(3) The Royal Court sitting as an Ordinary Court shall cancel the registration of an external confiscation order if it appears to it that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving a term of imprisonment in default of payment or by any other means.

Interpretation of Part I

Interpretation of Part I.

37. (1) This section shall have effect for the interpretation of this Part of this Law.

(2) Proceedings for an offence are instituted in the Bailiwick when a person is charged with an offence against the laws of the Bailiwick; and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(3) Proceedings for an offence are concluded –

- (a) when the defendant is acquitted on all counts,
- (b) if he is convicted on one or more counts but the Court decides not to make a confiscation order against him, when it makes that decision, or
- (c) if a confiscation order is made against him in those proceedings, when the order is satisfied.

(4) An application under section 13, 14 or 19 is concluded –

- (a) if the Court decides not to make a confiscation order against the defendant, when it makes that decision, or
- (b) if a confiscation order is made against him as a result of that application, when the order is satisfied.

- (5) An application under section 15 or 16 is concluded –
- (a) if the Court decides not to vary the confiscation order in question, when it makes that decision, or
 - (b) if the Court varies the confiscation order as a result of the application, when the order is satisfied.
- (6) A confiscation order is satisfied when no amount is due under it.
- (7) For the purposes only of section 32, a confiscation order shall be deemed to be satisfied when the defendant in respect of whom it was made has served a term of imprisonment under section 9 without satisfying the amount due under the order.
- (8) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

NOTE

In its application to external confiscation orders, section 37 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 15, with effect from 1st January, 2000.

PART II

OFFENCES IN CONNECTION WITH THE PROCEEDS

OF CRIMINAL CONDUCT

Concealing or transferring proceeds of criminal conduct.

38. (1) A person is guilty of an offence if he –

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct, or
- (b) converts or transfers that property or removes it from the Bailiwick[

...].

(2) A person is guilty of an offence if, knowing or [suspecting] that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he –

- (a) conceals or disguises that property, or
- (b) converts or transfers that property or removes it from the Bailiwick[

...].

(3) In subsections (1) and (2) the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights in respect of it.

[(3A) Where a person discloses to a police officer a suspicion or

belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct or discloses to a police officer any matter on which such a suspicion or belief is based –

(a) if he does any act in relation to that property in contravention of subsection (2), he does not commit an offence under that subsection if –

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer (and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act), or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it, and

(b) the disclosure –

(i) shall not be treated as a breach of any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise, and

(ii) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(3B) For the purposes of this section, having possession of any

property shall be taken to be doing an act in relation to it.

(3C) In proceedings against a person for an offence under subsection (2), it is a defence to prove that –

- (a) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3A), but
- (b) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3A)(a).

(3D) In the case of a person who was in employment at the relevant time, subsections (3A) and (3C) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(3E) No police officer or other person shall be guilty of an offence under subsection (2) in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of such conduct.]

(4) A person guilty of an offence under this section is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both, or

- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years, a fine, or both.

(5) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

NOTES

In section 38,

the words omitted in square brackets in subsection (1) and in the second pair of square brackets in subsection (2) were repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, respectively section 1(a) and section 1(b)(ii), with effect from 24th March, 2010;

the word in the first pair of square brackets in subsection (2) was substituted, and subsection (3A), subsection (3B), subsection (3C), subsection (3D) and subsection (3E) were inserted, by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, respectively section 1(b)(i) and section 1(c), with effect from 24th March, 2010.

In its application to external confiscation orders, section 38 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

The following case has referred to section 38:

McCarthy v. Law Officers of the Crown 2007–08 GLR 414.

Assisting another person to retain the proceeds of criminal conduct.

39. (1) Subject to subsection (3), if a person enters into or is otherwise concerned in an arrangement whereby –

- (a) the retention or control by or on behalf of another

person (called in this Law "A") of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the Bailiwick, transfer to nominees or otherwise), or

- (b) A's proceeds of criminal conduct –
 - (i) are used to secure that funds are placed at A's disposal, or
 - (ii) are used for A's benefit to acquire property by way of investment,

knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, he is guilty of an offence.

(2) In this section, references to any person's proceeds of criminal conduct include a reference to any property which in whole or in part directly or indirectly represents in his hands his proceeds of criminal conduct.

(3) Where a person discloses to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a police officer any matter on which such a suspicion or belief is based –

- (a) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if –

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- (i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer (and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act), or
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it, and
- (b) the disclosure –
- (i) shall not be treated as a breach of any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise, and
 - (ii) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(4) In proceedings against a person for an offence under this section, it is a defence to prove –

- (a) that he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct,
- (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may

be, that by the arrangement any property was used as mentioned in subsection (1)(b), or

(c) that –

(i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement, but

(ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(a).

(5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(6) A person guilty of an offence under this section shall be liable –

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years, a fine, or both.

(7) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

NOTES

In its application to external confiscation orders, section 39 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

The following cases have referred to section 39:

Garnet Investments Limited v The Chief Officers FIS, Customs & Excise, Immigration and Nationality Service (2011) (Unreported, Royal Court, 15th February) (Guernsey Judgment No 5/2011);

Chief Officer of Customs etc v Garnet Investments (2011) (Unreported, Court of Appeal, 6th July) (Guernsey Judgment No. 19/2011).

Acquisition, possession or use of proceeds of criminal conduct.

40. (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, [the] proceeds of criminal conduct, he acquires or uses that property or has possession of it.

(2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

(3) For the purposes of subsection (2) –

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property, and

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- (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

[(4) The provision for any person of services or goods –

- (a) which are of assistance to him in criminal conduct, or
- (b) which the person providing the services or goods knows or suspects or has reasonable grounds to suspect may assist him in criminal conduct,

shall not be treated as consideration for the purposes of subsection (2).]

(5) Where a person discloses to a police officer a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct or discloses to a police officer any matter on which such a suspicion or belief is based –

- (a) if he does any act in relation to that property in contravention of subsection (1), he does not commit an offence under this section if –
 - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer (and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act), or

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(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it, and

(b) the disclosure –

(i) shall not be treated as a breach of any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise, and

(ii) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(6) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

(7) In proceedings against a person for an offence under this section, it is a defence to prove that –

(a) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (5), but

(b) there is reasonable excuse for his failure to make disclosure in accordance with subsection (5)(a).

(8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) shall have effect in relation to disclosures, and

intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(9) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of such conduct.

(10) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years, a fine, or both.

(11) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

NOTE

In section 40, subsection (4), and the word in square brackets in subsection (1), were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, respectively section 2(b) and section 2(a), with effect from 24th March, 2010.

In its application to external confiscation orders, section 40 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders)

Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

Tipping off.

41. (1) A person is guilty of an offence if –
- (a) he knows or suspects that a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering, and
 - [(b) he discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion.]
- (2) A person is guilty of an offence if –
- (a) he knows, or suspects that a disclosure ("**the disclosure**") has been [or will be] made to a police officer under section [38(3A),] 39 or 40, and
 - [(b) he discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion.]
- (3) A person is guilty of an offence if –
- (a) he knows or suspects that a disclosure of a kind mentioned in sections 39(5) or 40(8) ("**the disclosure**") has been made, and

[(b) he discloses to any other person information or any other matter about, or relating to, that knowledge or suspicion.]

[(3A) Nothing in subsections (1) to (3) makes it an offence for any person to disclose any information or other matter if the disclosure is for any of the purposes set out in subsection (3B).

(3B) The purposes are –

- (a) the prevention, detection, investigation or prosecution of criminal offences, whether in the Bailiwick or elsewhere,
- (b) the prevention, detection or investigation of conduct for which penalties other than criminal penalties are provided under the law of any part of the Bailiwick or of any country outside the Bailiwick,
- (c) the carrying out –
 - (i) by the Commission, or
 - (ii) by a body in another country which carries out any similar function to the Commission,of its functions,

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- (d) the carrying out of any functions of any intelligence service, or
- (e) the carrying out of any function which appears to the Home Department to be a function of a public nature and which it designates as such by order.]

(4) Nothing in subsections (1) to (3) makes it an offence for a professional legal adviser to disclose any information or other matter –

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or
- (b) to any person –
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purpose of those proceedings.

(5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) ...

(7) In this Law "**money laundering**" means doing any act –

- (a) which constitutes an offence under section 38, 39 or 40, or

- [(b) which constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), or
- (c) which constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or
- (d) which would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b) or (c) if done in the Bailiwick,

irrespective of the value of any property or the amount of any money involved.]

(8) For the purposes of subsection (7), having possession of any property shall be taken to be doing an act in relation to it.

(9) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct.

(10) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding [6 months], a fine not exceeding level 5 on the uniform scale, or both,
- (b) on conviction on indictment, to imprisonment for a

term not exceeding 5 years, a fine, or both.

(11) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

NOTES

In section 41,

paragraph (b) of subsection (1), paragraph (b) of subsection (2) and paragraph (b) of subsection (3) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(4)(a), with effect from 28th July, 2010;¹

the words in the first pair of square brackets in paragraph (a) of subsection (2) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 1, with effect from 26th November, 2008;

the word, figures, letters and parentheses in, first, the second pair of square brackets in paragraph (a) of subsection (2) and, second, square brackets in paragraph (a) of subsection (3) were, respectively, inserted and substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 3(b) and section 3(d), with effect from 24th March, 2010;

subsection (3A) and subsection (3B) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(4)(b), with effect from 28th July, 2010;

subsection (6) was repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(4)(c), with effect from 28th July, 2010;²

paragraph (b) of subsection (7) was substituted, and paragraphs (c), (d) and the words immediately thereafter were inserted, by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 8, with effect from 3rd December, 2007;

the word and figure in square brackets in paragraph (a) of subsection (10) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 9, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 41 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

Restrictions on disclosure under this Part.

42. (1) Information which is disclosed to a police officer –
- (a) under section 39,
 - (b) under section 40, or
 - (c) under any [regulation made under section 49 or 49A]
[or under any rule, instruction or guidance of the
Commission made under either of those sections],

shall not be disclosed by that police officer, or by any person who obtains the information directly or indirectly from him, unless its disclosure is permitted under section 43 or 44.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, a fine not exceeding [level 5] on the uniform scale or both.

(3) In proceedings against a person for an offence under this section, it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(4) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

(5) The States may by Ordinance amend or repeal this section or any provision hereof.

NOTES

In section 42,

the words in the first pair of square brackets in paragraph (c) of subsection (1) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 10, with effect from 3rd December, 2007;

the words in the second pair of square brackets in paragraph (c) of subsection (1) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 2, with effect from 3rd December, 2007;

the word and figure in square brackets in subsection (2) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 11, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 42 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

Disclosure for purposes within the Bailiwick.

43. (1) Section 42 does not prohibit the disclosure of information to a person in the Bailiwick for the purposes of the investigation of crime in the Bailiwick or for the purposes of criminal proceedings in the Bailiwick.

(2) Section 42 does not prohibit the disclosure of information, for other purposes in the Bailiwick, to –

(a) Her Majesty's Procureur,

- (b) the Commission,
- (c) a police officer, or
- (d) any other person who is for the time being authorised in writing by Her Majesty's Procureur to obtain that information.

(3) The States may by Ordinance amend or repeal this section or any provision hereof.

NOTE

In its application to external confiscation orders, section 43 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

Disclosure for purposes outside the Bailiwick.

- 44.** (1) Section 42 does not prohibit the disclosure of information if –
- (a) ...
 - (b) the information is disclosed –
 - (i) for the purposes of the investigation of crime outside the Bailiwick or for the purposes of criminal proceedings outside the Bailiwick, or

- (ii) to a competent authority outside the Bailiwick,

and the expression "**competent authority**" means any person or body, or any class or description of person or body, prescribed for the purposes of this section by regulations of the Committee.

(2) ...

(3) ...

(4) ...

[(2)] The States may by Ordinance amend or repeal this section or any provision hereof.

[[3)] In this section "**investigation**", in relation to crime, includes the prevention of crime and also includes the detection of crime.]

NOTES

In section 44,

paragraph (a) of subsection (1) was repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, section 1(a), with effect from 31st July, 2002;

subsection (2), subsection (3) and subsection (4) were repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, section 1(b), with effect from 31st July, 2002;

subsection (5) was renumbered as subsection (2) by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, section 1(c), with effect from 31st July, 2002;

subsection (6) (which was inserted by the Criminal Justice

(Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 1999, section 1, with effect from 24th November, 1999) was renumbered as subsection (3) by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2002, section 1(c), with effect from 31st July, 2002.

In its application to external confiscation orders, section 44 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

In accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Designation of Competent Authorities) Regulations, 2003, section 1, Schedule, the following shall be competent authorities for the purpose of subsection (1)(b)(ii), with effect from 5th November, 2003:

the Criminal Assets Bureau established by an Act of Parliament of the Republic of Ireland entitled the Criminal Assets Bureau Act 1996;

the Assets Recovery Agency established by an Act of Parliament of the United Kingdom entitled the Proceeds of Crime Act 2002.

In accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Designation of Competent Authorities) Regulations, 2004, regulation 1, Schedule, the following shall be a competent authority for the purpose of subsection (1)(b)(ii), with effect from 17th March, 2004:

the Civil Recovery Unit of the Scottish Executive.

[Interpretation of Part II

Interpretation of Part II.

44A. (1) This section has effect for the interpretation of this Part of this Law.

(2) For the purposes only of this Part of this Law, "**criminal conduct**" includes drug trafficking within the meaning of section 1(2).]

NOTE

Section 44A, and the heading thereto, were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 12, with effect from 3rd December, 2007.

PART III

MISCELLANEOUS AND SUPPLEMENTAL

Investigations into criminal conduct

Order to make material available.

45. (1) Subject to subsection (10), a police officer may for the purposes of an investigation into whether any person has [engaged in or benefited from] criminal conduct or into the extent or whereabouts of the proceeds of criminal conduct, apply to the Bailiff for an order under subsection (2) in relation to particular material or material of a particular description.

(2) If on such an application the Bailiff is satisfied that the conditions in subsection (4) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application relates shall –

- (a) produce it to a police officer for him to take away, or
- (b) give a police officer access to it,

within such period as the order may specify; provided always that this subsection has effect subject to section [48(11)].

(3) The period to be specified in an order under subsection (2)

shall be 7 days unless it appears to the Bailiff that a longer or shorter period would be appropriate in the particular circumstances of the application.

- (4) The conditions referred to in subsection (2) are –
 - (a) that there are reasonable grounds for suspecting that a specified person has [engaged in or benefited from] criminal conduct,
 - (b) that there are reasonable grounds for suspecting that the material to which the application relates –
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, and
 - (ii) does not consist of or include items subject to legal professional privilege [or excluded material], and
 - (c) that there are reasonable grounds for believing that it is in the public interest, having regard –
 - (i) to the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) to the circumstances under which the person in possession of material holds it,

that the material should be produced or that access to it should be given.

(5) Where the Bailiff makes an order under subsection (2)(b) in relation to material on any premises he may, on the application of a police officer, subject to subsection (10), order any person who appears to him to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

(6) An application under subsection (1) or (5) may be made ex parte to the Bailiff in chambers.

(7) Provision may be made by rules of Court as to –

- (a) the discharge and variation of orders under this section, and
- (b) proceedings relating to such orders.

(8) Where the material to which an application under subsection (1) relates consists of information contained in a computer –

- (a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible, and
- (b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

- (9) An order under subsection (2) –
- (a) shall not confer any right to production of, or access to, items subject to legal professional privilege [or excluded material],
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise, and
 - (c) may be made in relation to material in the possession of the States of Guernsey, States of Alderney or Chief Pleas of Sark.

(10) No application for an order under this section may be made without the consent of Her Majesty's Procureur.

NOTES

In section 45,

the words in square brackets in, first, subsection (1) and, second, in the first pair of square brackets in subsection (4) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 13(a) and section 13(b), with effect from 3rd December, 2007;

the figures in square brackets in subsection (2) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 14, with effect from 3rd December, 2007;

the words in the second pair of square brackets in subsection (4) and in the square brackets in paragraph (a) of subsection (9) were inserted

by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 15, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 45 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

Authority for search.

46. (1) Subject to subsection (6), a police officer may, for the purposes of an investigation into whether any person has [engaged in or benefited from] criminal conduct or into the extent or whereabouts of the proceeds of criminal conduct, apply to the Bailiff for a warrant under this section in relation to specified premises.

(2) On such an application the Bailiff may issue a warrant authorising a police officer to enter and search the premises if the Bailiff is satisfied –

- (a) that an order made under section 45 in relation to material on the premises has not been complied with,
- (b) that the conditions in subsection (3) are fulfilled, or
- (c) that the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in subsection (2)(b) are –

- (a) that there are reasonable grounds for suspecting that a specified person has [engaged in or benefited from] criminal conduct,

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- (b) that the conditions in section 45(4)(b) and (c) are fulfilled in relation to any material on the premises, and
- (c) that it would not be appropriate to make an order under that section in relation to the material because –
 - (i) it is not practicable to communicate with any person entitled to produce the material,
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer can secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) are –
 - (a) that there are reasonable grounds for suspecting that a specified person has [engaged in or benefited from] criminal conduct,
 - (b) that there are reasonable grounds for suspecting that there is on the premises any such material relating –

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- (i) to the specified person, or
- (ii) to the question of whether that person has [engaged in or benefited from] criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct,

as is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, but that the material cannot at the time of the application be particularised, and

- (c) that –
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
 - (ii) entry to the premises will not be granted unless a warrant is produced, or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer arriving at the premises can secure immediate entry to them.

(5) Where a police officer has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other

than items subject to legal professional privilege [or excluded material], which is likely to be of value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.

(6) No application for a warrant under this section may be made without the consent of Her Majesty's Procureur.

NOTES

In section 46,

the words in square brackets in subsection (1), subsection (3) and in the first and second pairs of square brackets in subsection (4) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, respectively section 13(c), section 13(d), section 13(e) and section 13(f), with effect from 3rd December, 2007;

the words in square brackets in subsection (5) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 15, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 46 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

Provisions supplementary to sections 45 and 46.

46A. (1) In sections 45 and 46 –

"excluded material", subject to subsections (2) and (3), means –

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or

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unpaid office and which he holds in confidence,

- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence, and
- (c) journalistic material which a person holds in confidence and which consists –
 - (i) of documents, or
 - (ii) of records other than documents,

"items subject to legal professional privilege", subject to subsection (4), means –

- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client,
- (b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, and
- (c) items enclosed with or referred to in such

communications and made –

- (i) in connection with the giving of legal advice,
or
- (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them,

"premises" includes any place and, in particular, includes –

- (a) any vehicle, vessel, aircraft or hovercraft,
- (b) any offshore installation, and
- (c) any tent or movable structure.

(2) A person holds material other than journalistic material in confidence for the purposes of this section if he holds it subject –

- (a) to an express or implied undertaking to hold it in confidence, or
- (b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, whether passed before or after the commencement of this Law.

(3) A person holds journalistic material in confidence for the purposes of this section if –

- (a) he holds it subject to such an undertaking, restriction or obligation, and
- (b) it has been continuously held (by one or more persons) subject to such an undertaking, restriction or obligation since it was first acquired or created for the purposes of journalism.

(4) Items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege.

(5) In this section "**personal records**" means documentary and other records concerning an individual (whether living or dead) who can be identified from them and relating –

- (a) to his physical or mental health,
- (b) to spiritual counselling or assistance given or to be given to him, or
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who –
 - (i) by reason of his office or occupation has responsibilities for his personal welfare, or

- (ii) by reason of an order of a court has responsibilities for his supervision.

(6) Subject to subsection (7), in this section "**journalistic material**" means material acquired or created for the purposes of journalism.

(7) Material is only journalistic material for the purposes of this section if it is in the possession of a person who acquired or created it for the purposes of journalism.

(8) A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.]

NOTE

Section 46A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 16, with effect from 3rd December, 2007.

Offence of prejudicing an investigation.

47. (1) Where, in relation to an investigation of a nature described in section 45(1) or 46(1) –

- (a) an order under section 45 has been made or has been applied for and has not been refused, or
- (b) a warrant under section 46 has been issued,

a person is guilty of an offence if, knowing or suspecting that the investigation is

taking place, he makes any disclosure which is likely to prejudice the investigation.

(2) In proceedings against a person for an offence under this section it is a defence to prove –

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation, or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter –

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or
- (b) to any person –
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purpose of those proceedings.

(4) Subsection (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(5) A person guilty of an offence under this section shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both,
- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, a fine, or both.

NOTE

In its application to external confiscation orders, section 47 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

[Disclosure of information held by States departments.]

48. (1) Subject to subsection (4), the Court may on an application by Her Majesty's Procureur order any material mentioned in subsection (3) which is in the possession of a States department to be produced to the Court within such period as the Court may specify.

(2) The power to make an order under subsection (1) is exercisable if –

- (a) the powers conferred on the Court by sections 26(1), 27(1) and 28(1) are exercisable by virtue of section 25(1), or
- (b) those powers are exercisable by virtue of section 25(2) and the Court has made a restraint order or charging

order which in either case has not been discharged,

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 25(4) applies for the purposes of this section as it applies for the purposes of sections 26, 27 and 28.

(3) The material referred to in subsection (1) is any material which –

- (a) has been submitted to an officer of a States department by the defendant or by a person who has at any time held property which was realisable property,
- (b) has been made by an officer of a States department in relation to the defendant or such a person, or
- (c) is correspondence which passed between an officer of a States department and the defendant or such a person,

and an order under subsection (1) may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the Court that the material is likely to contain information that would facilitate the exercise of the powers conferred on the Court by sections 26 to 29 or on Her Majesty's Sheriff as receiver appointed under section 26 or 29 or in pursuance of a charging order.

(5) The Court may by order authorise the disclosure to Her Majesty's Sheriff as receiver of any material produced under subsection (1) or any part of such material; but the Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the States department to make representations to the Court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions under any provision of this Law of Her Majesty's Sheriff as receiver or the Court.

(7) The Court may by order authorise the disclosure to a person mentioned in subsection (8) of any material produced under subsection (1) or any part of any such material; but the Court shall not make an order under this subsection unless –

- (a) a reasonable opportunity has been given for an officer of the States department to make representations to the Court, and
- (b) it appears to the Court that the material is likely to be of value in exercising functions relating to the investigation of crime.

(8) The persons referred to in subsection (7) are –

- (a) Her Majesty's Procureur,
- (b) a police officer.

(9) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to –

- (a) crime,
- (b) whether any person has engaged in or benefited from criminal conduct, or
- (c) the extent or whereabouts of the proceeds of criminal conduct.

(10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction on the disclosure of information imposed by statute or contract or otherwise.

(11) An order under subsection (1) and, in the case of material in the possession of a States department, an order under section 45 may require any officer of the department (whether named in the order or not) who may for the time being be in possession of the material concerned to comply with it, and such an order shall be served as if the proceedings were civil proceedings against the department.

(12) The person on whom such an order is served –

- (a) shall take all reasonable steps to bring it to the attention of the officer concerned, and
- (b) if the order is not brought to that officer's attention within the period referred to in subsection (1), shall

report the reasons for the failure to the Court,

and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a).

(13) In this section "**States department**" means any department, council or committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark.]

NOTES

Section 48 was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 17, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 48 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

[Customer information orders

Customer information orders.

48A. (1) The Bailiff may, on an application made by Her Majesty's Procureur or by a police officer, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for a customer information order must state that a person specified in the application is subject to an investigation into –

(a) whether he has engaged in or benefited from criminal conduct,

- (b) the extent or whereabouts of the proceeds of criminal conduct, or
 - (c) money laundering.
- (3) The application must also state that –
 - (a) the order is sought for the purposes of the investigation,
 - (b) the order is sought against the financial services business specified in the application.
- (4) An application for a customer information order may specify –
 - (a) all financial services businesses,
 - (b) a particular description of financial services business, or
 - (c) a particular financial services business.
- (5) A customer information order is an order that a financial services business covered by the application for the order must, on being required to do so by notice in writing given by Her Majesty's Procureur or a police officer, provide any such customer information as it has relating to the person specified in the application.
- (6) A financial services business required to provide information

under a customer information order must provide the information to Her Majesty's Procureur or a police officer in such manner, and at or by such time, as they may require.

(7) If a financial services business on which a requirement is imposed by a notice given under a customer information order requires the production of evidence of authority to give the notice, it is not bound to comply with the requirement unless evidence of authority is produced to it.

(8) A customer information order –

- (a) may be made ex parte and in chambers,
- (b) may be made notwithstanding that notice of the application for it has not been given to any other person, and
- (c) may be made subject to such terms and conditions as the Bailiff thinks fit.]

NOTE

Section 48A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[Meaning of customer information.]

48B. (1) "Customer information", in relation to a person and a financial services business, is information as to whether the person holds, or has held, an account or safe deposit box at the financial services business (whether

solely or jointly with another) and (if so) information as to –

- (a) the matters specified in subsection (2) if the person is an individual,
 - (b) the matters specified in subsection (3) if the person is a body corporate.
- (2) The matters referred to in subsection (1)(a) are –
- (a) the account number or the number of any safe deposit box,
 - (b) the person's full name,
 - (c) his date of birth,
 - (d) his most recent home and business address and any previous such address,
 - (e) in the case of an account, the date on which he began to hold the account and, if he has ceased to hold the account, the date on which he did so,
 - (f) in the case of a safe deposit box, the date on which the box was made available to him and, if the box has ceased to be available to him, the date on which it so ceased,
 - (g) such evidence of his identity as was obtained by the

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financial services business under or for the purposes of any legislation relating to money laundering,

(h) the full name, date of birth and most recent home and business address, and any previous such address, of any person –

(i) who is or has been a signatory to the account,
or

(ii) who holds or has held an account at the financial services business jointly with him,

(i) the account number of any other account held at the financial services business to which he is a signatory and details of the person holding the other account,

(j) the current balance of each account identified, and

(k) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order) concerning each of the accounts identified took place.

(3) The matters referred to in subsection (1)(b) are –

(a) the account number or the number of any safe deposit box,

(b) the person's full name,

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- (c) a description of any business which the person carries on,
- (d) the country in which it is incorporated or otherwise established and any number allocated to it,
- (e) its registered office and any previous registered office, or anything similar under the legislation of the country of incorporation or establishment,
- (f) any address from which it conducts or has conducted business,
- (g) in the case of an account, the date on which it began to hold the account and, if it has ceased to hold the account, the date on which it did so,
- (h) in the case of a safe deposit box, the date on which the box was made available to it and, if the box has ceased to be available to it, the date on which it so ceased,
- (i) such evidence of its identity as was obtained by the financial services business under or for the purposes of any legislation relating to money laundering,
- (j) the full name, date of birth and most recent home and business address and any previous such address of any person who is or has been a signatory to the account,

- (k) the current balance of each account identified, and
- (l) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order) concerning each of the accounts identified took place.

(4) In this section "**money laundering**" has the meaning given by section 49(6).

(5) In this Law a "**safe deposit box**" includes any procedure under which a financial services business provides a facility to hold items for safe keeping on behalf of another person.

(6) The Home Department may by regulations provide for information of a class or description specified in the regulations –

- (a) to be customer information, or
- (b) no longer to be customer information.]

NOTE

Section 48B was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[Requirements for making of customer information order.]

48C. (1) These are the requirements for the making of a customer information order.

(2) In the case of an investigation into whether a person has engaged in or benefited from criminal conduct or the extent or whereabouts of the proceeds of criminal conduct, there must be reasonable grounds for suspecting that the person specified in the application for the order has engaged in or benefited from criminal conduct.

(3) In the case of an investigation into money laundering, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(4) In the case of any investigation, there must be reasonable grounds for believing that the customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(5) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.]

NOTE

Section 48C was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[Offences in relation to customer information orders.

48D. (1) A financial services business commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it by or under a

customer information order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(3) A financial services business commits an offence if, in purported compliance with a customer information order, it –

- (a) makes a statement which it knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.]

NOTE

Section 48D was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

Statements.

[48E. A statement made by a financial services business in response to a customer information order –

(a) may be used in evidence against it in proceedings other than criminal proceedings, and

(b) may not be used in evidence against it in criminal proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that financial services business, or

(ii) in proceedings –

(A) under Part I,

(B) for an offence under section 48D(1) or (3),

(C) for some other offence where, in giving evidence, the financial services business makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(D) for perjury, or

(E) for perverting the course of justice.]]

NOTE

Section 48E (which was originally inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

[Disclosure of information.]

48F. A customer information order has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such an order.]

NOTE

Section 48F was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[Supplementary.]

48G. (1) The Court may make rules in respect of the practice and procedure to be followed in connection with proceedings relating to customer information orders.

(2) An application to discharge or vary a customer information order may be made to the Court by –

- (a) Her Majesty's Procureur,
 - (b) any person affected by the order.
- (3) The Court may, subject to such terms and conditions as it thinks fit –
- (a) discharge the order,
 - (b) vary the order.
- (4) The powers of the Court under this section to discharge or vary a customer information order may be exercised by the Bailiff in chambers sitting unaccompanied by the Jurats; and references to "**the Court**" shall be construed accordingly.
- (5) A police officer may not make an application for a customer information order unless he is authorised to do so by Her Majesty's Procureur.]

NOTE

Section 48G was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[Account monitoring orders

Account monitoring orders.

- 48H.** (1) The Bailiff may, on an application made by Her Majesty's

Procureur or by a police officer, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for an account monitoring order must state that a person specified in the application is subject to an investigation into –

- (a) whether he has engaged in or benefited from criminal conduct,
- (b) the extent or whereabouts of the proceeds of criminal conduct, or
- (c) money laundering.

(3) The application must also state that –

- (a) the order is sought for the purposes of the investigation,
- (b) the order is sought against the financial services business specified in the application in relation to account information of the description so specified.

(4) In this Law "**account information**" is information relating to an account held at the financial services business specified in the application by the person so specified (whether solely or jointly with another).

(5) The application for an account monitoring order may specify information relating to –

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- (a) all accounts held by the person specified in the application for the order at the financial services business so specified,
- (b) a particular description of accounts so held, or
- (c) a particular account so held.

(6) An account monitoring order is an order that the financial services business specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to a police officer in the manner, and at or by the time, stated in the order.

(7) The period stated in an account monitoring order must not exceed a period of 90 days beginning on the day on which the order is made.

(8) An account monitoring order –

- (a) may be made ex parte and in chambers,
- (b) may be made notwithstanding that notice of the application for it has not been given to any other person, and
- (c) may be made subject to such terms and conditions as the Bailiff thinks fit.]

NOTE

Section 48H, and the heading thereto, were inserted by the Criminal Justice

(Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[Requirements for making of account monitoring order.

48I. (1) These are the requirements for the making of an account monitoring order.

(2) In the case of an investigation into whether a person has engaged in or benefited from criminal conduct or the extent or whereabouts of the proceeds of criminal conduct, there must be reasonable grounds for suspecting that the person specified in the application for the order has engaged in or benefited from his criminal conduct.

(3) In the case of an investigation into money laundering, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence.

(4) In the case of any investigation, there must be reasonable grounds for believing that the account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the order is sought.

(5) In the case of any investigation, there must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.]

NOTE

Section 48I was inserted by the Criminal Justice (Proceeds of Crime)

(Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[Offences in relation to account monitoring orders.]

48J. (1) A financial services business commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it by or under an account monitoring order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(3) A financial services business commits an offence if, in purported compliance with an account monitoring order, it –

- (a) makes a statement which it knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.]

NOTE

Section 48J was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[Statements.]

[48K. A statement made by a financial services business in response to an account monitoring order –

- (a) may be used in evidence against it in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against it in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that financial services business, or
 - (ii) in proceedings –
 - (A) under Part I,
 - (B) for an offence under section 48J(1) or (3),
 - (C) for some other offence where, in giving evidence, the financial services business

makes a statement inconsistent with it,
but the statement is only admissible to
the extent necessary to establish the
inconsistency,

(D) for perjury, or

(E) for perverting the course of justice.]]

NOTE

Section 48K (which was originally inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

[Disclosure of information.]

48L. An account monitoring order has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such an order.]

NOTE

Section 48L was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[Supplementary.]

48M. (1) The Court may make rules in respect of the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

(2) An application to discharge or vary an account monitoring order may be made to the Court by –

(a) Her Majesty's Procureur,

(b) any person affected by the order.

(3) The Court may, subject to such terms and conditions as it thinks fit –

(a) discharge the order,

(b) vary the order.

(4) The powers of the Court under this section to discharge or vary an account monitoring order may be exercised by the Bailiff in chambers sitting unaccompanied by the Jurats; and references to "**the Court**" shall be construed accordingly.

(5) A police officer may not make an application for an account monitoring order unless he is authorised to do so by Her Majesty's Procureur.]

NOTE

Section 48M was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

[Code of practice

Code of practice for Part III.

48N. (1) The Home Department may issue a code of practice in connection with the exercise by police officers of their functions under this Part.

(2) The code shall come into force on the date specified therein.

(3) The code shall be laid before a meeting of the States as soon as possible after being issued; and, if at that or the next meeting the States resolve to annul the code, then it shall cease to have effect, but without prejudice to anything done under it or to the issuing of a new code.

(4) The Home Department may revise the whole or any part of the code and issue the code as revised; and subsections (2) and (3) apply (with appropriate modifications) to the revised code as they apply to the original code.

(5) A failure by a police officer to comply with a provision of the code does not of itself make him liable to criminal or civil proceedings.

(6) The code is admissible in evidence in criminal and civil proceedings and is to be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.]

NOTE

Section 48N, and the heading thereto, were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 18, with effect from 3rd December, 2007.

Financial services businesses

Financial services businesses and the duties thereof.

49. (1) The businesses specified in Schedule 1 are financial services businesses for the purposes of this Law.

(2) The Policy Council may by regulation amend Schedule 1 by adding, deleting or amending any class or description of business.

(3) The Policy Council shall by regulation make provision in respect of the duties and requirements to be complied with by financial services businesses for the purposes of forestalling and preventing money laundering.

(4) Without limitation, regulations under subsection (3) –

(a) shall prescribe the procedures in respect of identification, verification, monitoring, record-keeping, internal reporting and training to be established and maintained by financial services businesses,

(b) may prescribe supervisory or regulatory authorities (including, without limitation, authorities by which financial services businesses must be registered) for the purposes of the regulations and fees payable to such authorities,

(c) may authorise or require any person who obtains

information in the course of the application of any procedure under the regulations, or in the course of performing any function under the regulations or under any other enactment to which the regulations refer, to disclose that information to a police officer or to any other person or body specified in the regulations,

- (d) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences, including (without limitation) provision as to –
 - (i) the persons or bodies or classes or descriptions of persons or bodies who may be found guilty of offences under the regulations,
 - (ii) the penalties which may be imposed, and
 - (iii) the defences which are to be available,
- (e) may prescribe for the purposes of the regulations the rules, instructions and guidance which any court shall take into account in determining whether any person has complied with a duty or requirement imposed by or in pursuance of the regulations, being rules, instructions and guidance –
 - (i) which, in the opinion of the court, are relevant to the duty or requirement in question, and

(ii) which have been issued or approved by a person or body specified in the regulations, and

(f) may make such other provision as in the opinion of the Policy Council is necessary or expedient for or in relation to the purposes of the regulations.

(5) A disclosure made to a police officer or to any other person or body under the provisions of regulations under subsection (3) –

(a) shall not be treated as a breach of any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and

(b) does not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(6) For the purposes of this section –

"business" includes any trade, profession or economic activity, whether or not carried on for profit, and

"money laundering", in addition to doing any act set out in section 41(7), includes doing any act –

(a) which constitutes an offence under section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of

Guernsey) Law, 2002^{ra}], or section 9, 10, 11, 12 or 13 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011], and in those sections the "**purposes of terrorism**" include, to the extent that they do not already do so –

- (i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1 of that Law, or
 - (ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,
- (b) which constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^{rb},
- (c) which constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b),
- (d) which constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b), or
- (e) which would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b), (c) or (d) if done in the Bailiwick,

^{ra} Order on Council No. XVI of 2002.

^{rb} Order on Council No. VII of 2000.

irrespective of the value of the property involved, and for the purposes of this subsection having possession of any property shall be taken to be doing an act in relation to it.

(7) The Commission may make rules, instructions and guidance for the purposes of regulations under subsection (3).

(8) Any court shall take the rules, instructions and guidance into account in determining whether or not any person has complied with the regulations.

(9) The rules, instructions and guidance may (without limitation) make provision in respect of the matters set out in subsection (4)(a).

(10) The power to make rules, instructions and guidance is without prejudice to the power to prescribe rules, instructions and guidance under subsection (4)(e).

(11) Section 54 (general provisions as to subordinate legislation) has effect in relation to rules, instructions and guidance made by the Commission as if references in that section to an Ordinance and to the States were references respectively to rules, instructions and guidance and to the Commission.]

NOTES

Section 49 was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 19, with effect from 3rd December, 2007.

In section 49, the words in square brackets in subsection (6) were inserted by the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011, section

36, Schedule, paragraph 1(a), with effect from 25th January, 2012.

In its application to external confiscation orders, section 49 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 16, with effect from 1st January, 2000.

The following Regulations have been made under section 49:

Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007;

Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008;

Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2009;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010;

Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2010;

Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2010.

[Relevant businesses

Relevant businesses and the duties thereof.

49A. (1) The businesses specified in Schedule 2 are relevant businesses for the purposes of this Law.

(2) The Policy Council may by regulation amend Schedule 2 by adding, deleting or amending any class or description of business.

(3) The Policy Council shall by regulation make provision in respect of the duties and requirements to be complied with by relevant businesses for the purposes of forestalling and preventing money laundering.

- (4) Without limitation, regulations under subsection (3) –
- (a) shall prescribe the procedures in respect of identification, verification, monitoring, record-keeping, internal reporting and training to be established and maintained by relevant businesses,
 - (b) may prescribe supervisory or regulatory authorities (including, without limitation, authorities by which relevant businesses must be registered) for the purposes of the regulations and fees payable to such authorities,
 - (c) may authorise or require any person who obtains information in the course of the application of any procedure under the regulations, or in the course of performing any function under the regulations or under any other enactment to which the regulations refer, to disclose that information to a police officer or to any other person or body specified in the regulations,
 - (d) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences, including (without limitation) provision as to –
 - (i) the persons or bodies or classes or descriptions of persons or bodies who may be found guilty of offences under the regulations,

- (ii) the penalties which may be imposed, and
 - (iii) the defences which are to be available,
 - (e) may prescribe for the purposes of the regulations the rules, instructions and guidance which any court shall take into account in determining whether any person has complied with a duty or requirement imposed by or in pursuance of the regulations, being rules, instructions and guidance –
 - (i) which, in the opinion of the court, are relevant to the duty or requirement in question, and
 - (ii) which have been issued or approved by a person or body specified in the regulations, and
 - (f) may make such other provision as in the opinion of the Policy Council is necessary or expedient for or in relation to the purposes of the regulations.
- (5) A disclosure made to a police officer or to any other person or body under the provisions of regulations under subsection (3) –
- (a) shall not be treated as a breach of any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and

- (b) does not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(6) For the purposes of this section –

"**business**" includes any trade, profession or economic activity, whether or not carried on for profit, and

"**money laundering**", in addition to doing any act set out in section 41(7), includes doing any act –

- (a) which constitutes an offence under section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^{rc}[, or section 9, 10, 11, 12 or 13 of the Terrorist Asset Freezing (Bailiwick of Guernsey) Law, 2011], and in those sections the "**purposes of terrorism**" include, to the extent that they do not already do so –
 - (i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1 of that Law, or
 - (ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,
- (b) which constitutes an offence under section 57, 58 or

^{rc} Order on Council No. XVI of 2002.

59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000rd,

- (c) which constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b),
- (d) which constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b), or
- (e) which would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b), (c) or (d) if done in the Bailiwick,

irrespective of the value of the property involved, and for the purposes of this subsection having possession of any property shall be taken to be doing an act in relation to it.

(7) The Commission may make rules, instructions and guidance for the purposes of regulations under subsection (3).

(8) Any court shall take the rules, instructions and guidance into account in determining whether or not any person has complied with the regulations.

(9) The rules, instructions and guidance may (without limitation) make provision in respect of the matters set out in subsection (4)(a).

rd Order on Council No. VII of 2000.

(10) The power to make rules, instructions and guidance is without prejudice to the power to prescribe rules, instructions and guidance under subsection (4)(e).

(11) Section 54 (general provisions as to subordinate legislation) has effect in relation to rules, instructions and guidance made by the Commission as if references in that section to an Ordinance and to the States were references respectively to rules, instructions and guidance and to the Commission.]

NOTES

Section 49A, and the heading thereto, were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 3rd December, 2007.

In section 49A, the words in square brackets in subsection (6) were inserted by the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011, section 36, Schedule, paragraph 1(b), with effect from 25th January, 2012.

The following Regulations have been made under section 49A:

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2008;

Criminal Justice (Proceeds of Crime) (Restriction on Cash Transactions) (Bailiwick of Guernsey) Regulations, 2008;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2009;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) (No. 2) Regulations, 2009;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2010;

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) (No.

2) *Regulations, 2010;*

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) (No.

3) Regulations, 2010.

[Enforcement of money laundering regulations

Site visits, etc, for Commission's officers, servants or agents.

49B. (1) In order to determine whether a financial services business has complied with any regulations under section 49 [and any rules, instructions and guidance of the Commission under that section], the Commission's officers, servants or agents may on request enter any premises in the Bailiwick owned, leased or otherwise controlled or occupied by the business.

(2) If the Commission's officers, servants or agents exercise their right of entry under subsection (1), they may require the officers, servants or agents of the financial services business –

- (a) to produce for examination (whether at the premises of the business or at the offices of the Commission) any documents held by the business,
- (b) to produce copies of any documents in a legible form for the officers, servants or agents of the Commission to take away,
- (c) to answer questions for the purpose of verifying compliance with any regulations under section 49 [and any rules, instructions and guidance of the Commission under that section].

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(3) Except in cases of urgency the right of entry conferred by subsection (1) may only be exercised between 9.00 a.m. and 4.00 p.m. on any day except any Saturday, Sunday, Christmas Day, Easter Day or public holiday.

(4) Nothing in this section compels the production or divulgence of an item subject to legal professional privilege or excluded material, but an advocate or other legal adviser may be required to give the name and address of a client.

[5) A statement made by a person in response to a requirement under this section –

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except –

(i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

(ii) in proceedings for –

(A) an offence under subsection (7) or (8),

(B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is

only admissible to the extent necessary
to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.]

(6) A requirement under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(7) A person who without reasonable excuse obstructs, or fails to comply with a request or requirement of, a person exercising or purporting to exercise any power conferred by this section is guilty of an offence and liable –

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(8) A person who in purported compliance with a requirement under this section –

(a) makes a statement which he knows to be false or misleading in a material particular,

- (b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence and liable –

- (i) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (ii) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.]

NOTES

Section 49B, and the heading thereto, were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 3rd December, 2007.

In section 49B,

the words in square brackets in subsection (1) and in paragraph (c) of subsection (2) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 3, with effect from 3rd December, 2007;

subsection (5) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

In accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008, regulation 24, and the commencement provisions in regulation 2 thereof, section 49B is extended in respect of any prescribed business as if references herein to "financial services business" or "section 49" were references to "prescribed business" and "section 49A" respectively.

Power of Bailiff to grant warrant.

49C. (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting –

- (a) that a request or requirement under section 49B has not been complied with,
- (b) that any information or document furnished pursuant to such a request or requirement is false, misleading, inaccurate or incomplete,
- (c) that if such a request or requirement were made –
 - (i) it would not be complied with,
 - (ii) any documents to which it would relate would be removed, tampered with, falsified or destroyed, or
 - (iii) the making of the request or requirement or any attempt to enforce it might significantly prejudice any inquiry to which the request or requirement would relate,

he may grant a warrant.

(2) A warrant under this section authorises any police officer, together with any other person named or described in the warrant (including,

without limitation, any officer, servant or agent of the Commission) –

- (a) to enter any premises specified in the warrant using such force as may be reasonably necessary,
- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of establishing whether the business has complied with any regulations under section 49 [and any rules, instructions and guidance of the Commission under that section], to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,
- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant –
 - (i) to answer any questions relevant to establishing whether the business has complied with any regulations under section 49 [and any rules, instructions and guidance of the Commission under that section],
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
 - (iii) to make an explanation of any such documents.

(3) A warrant under this section ceases to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any documents of which possession is taken under the powers conferred by a warrant under this section may be retained –

(a) for a period of 4 months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or

(b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(5) Nothing in a warrant under this section compels the production or divulgence of an item subject to legal professional privilege or excluded material, but an advocate or other legal adviser may be required to give the name and address of a client.

[(6) A statement made by a person in response to a requirement imposed by or under a warrant under this section –

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

(b) may not be used in evidence against him in criminal proceedings except –

Consolidated text

- (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
- (ii) in proceedings for –
 - (A) an offence under subsection (8) or (9),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.]

(7) A requirement imposed by or under a warrant under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(8) A person who without reasonable excuse obstructs or fails to comply with a requirement of a person exercising or purporting to exercise any power conferred by a warrant under this section is guilty of an offence and liable –

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding

level 5 on the uniform scale, or to both, or

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

(9) A person who in purported compliance with a requirement imposed by or under a warrant under this section –

- (a) makes a statement which he knows to be false or misleading in a material particular,
- (b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence and liable –

- (i) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
- (ii) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.]

NOTES

Section 49C was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 3rd December, 2007.

In section 49C,

the words in the first and second pairs of square brackets in subsection (2) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007, section 3, with effect from 3rd December, 2007;

subsection (6) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

In accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008, regulation 24, and the commencement provisions in regulation 2 thereof, section 49C is extended in respect of any prescribed business as if references herein to "section 49" were references to "section 49A".

[Power to extend sections 49B and 49C to relevant businesses.]

49D. (1) The Policy Council may by regulation direct that the provisions of this Law specified in subsection (2) shall extend, subject to such exceptions, adaptations and modifications as may be specified in the regulations, to relevant businesses.

(2) The specified provisions are sections 49B and 49C and any other provision of this Law so far as necessary for the purpose of giving effect to those sections as extended under subsection (1).]

NOTES

Section 49D was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 3rd December, 2007.

The following Regulations have been made under section 49D:

Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008.

[Corporate offences

Offences by bodies corporate and partnerships, etc.

49E. (1) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Where any such offence is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where any such offence is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of any such offence shall be paid from the funds of the body.]

NOTE

Section 49E, and the heading thereto, were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 20, with effect from 3rd December, 2007.

Interpretation of Law

Meaning of "property" and related expressions.

50. (1) In this Law "**property**" includes money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property.

(2) This Law applies to property whether it is situated in the Bailiwick or elsewhere.

(3) In this Law "**interest**", in relation to property, includes right.

(4) In this Law –

- (a) references to property held by a person include a reference to property vested in his committee of creditors or in a liquidator, and
 - (b) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (5) For the purposes of this Law –
- (a) property is held by any person if he holds or is beneficially entitled (under a trust, as a member of a body corporate or otherwise) to that property or any interest in it, and
 - (b) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

References to financial services businesses and relevant businesses.

50A. References in this Law to a financial services business or relevant business (however expressed) include, except in paragraph 1 of Schedule 2, references to a person carrying on such a business.]

NOTE

Section 50A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 21, with effect from 3rd December, 2007.

General interpretation.

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

"**Alderney company**" means a body corporate the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994^s,

"**Alderney land register**" means the register established under Part III of the Alderney Land and Property, etc, Law, 1949^t,

["**Bailiff**" means the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué,]

"**Bailiwick**" means the Bailiwick of Guernsey,

"**Bailiwick company**" means –

(a) a body corporate the memorandum and articles of which are registered in the Register of Companies within the meaning of section 117(1) of the Companies (Guernsey) Law, 1994^u, or

(b) an Alderney company,

^s Order in Council No. XXXIV of 1994.

^t Ordres en Conseil Vol. XIV, p. 67; Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156; and No. VII of 1994.

^u Order in Council No. XXXIII of 1994; No. XIV of 1996.

"charging order" means a realty charging order or a personalty charging order,

"collective investment scheme" means any arrangement such as is identified and described in paragraph 1 of Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987^v,

"Commission" means the Guernsey Financial Services Commission,

"Committee" means the States of Guernsey [Policy Council],

[**"country"** includes a territory,]

"Court of Appeal" means the Court established by the Court of Appeal (Guernsey) Law, 1961^w,

"defendant" means a person against whom proceedings have been instituted, within the meaning of section 37(2), for an offence, whether or not he has been convicted,

[**"document"** includes information recorded in any form (including, without limitation, in electronic form) and –

(a) in relation to information recorded otherwise than in

^v Ordres en Conseil Vol. XXX, p. 281; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Order in Council No. XII of 1995; Ordinance No. X of 1998.

^w Ordres en Conseil Vol. XVIII, p. 315.

legible form, references to its production, however expressed, include (without limitation) references to the production of a copy of the information in a legible form in which it can be taken away,

- (b) without prejudice to paragraph (a), references to the production of documents, however expressed, include (without limitation) references to the production of a copy thereof in the English language,]

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

["Home Department" means the States of Guernsey Home Department,]

["intelligence service" has the same meaning as in section 67 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003,]

["money laundering offence" means –

- (a) an offence under section 38, 39 or 40,
- (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
- (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a),
or
- (d) an offence committed outside the Bailiwick which

would constitute an offence specified in paragraph (a), (b) or (c) if committed within the Bailiwick,]

"police officer" means –

- (a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of the said salaried police force, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed [or deemed to be appointed pursuant to the provisions of an Ordinance made under section 46A] of the Government of Alderney Law, 1987^x,
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of the Island of Guernsey, and
- (d) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^y [,

^x Ordres en Conseil Vol. XXX, p. 37; Vol. XXXI, pp. 83 and 306; No. XI of 1993; No. IX of 1995; No. IV of 1996; and No. IV of 1998.

^y Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

["**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^{ya}.]

(2) The provisions of the Interpretation (Guernsey) Law, 1948^z shall apply to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment, statutory instrument or rule of court is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

NOTES

In section 51,

the definitions of the expressions "Bailiff", "country", "document", "Home Department", "money laundering offence" and "uniform scale" in subsection (1) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 22, with effect from 3rd December, 2007;

the words in square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004;

the definition of the expression "intelligence service" in subsection (1) was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(5), with effect from 28th July, 2010;

the words in square brackets in paragraph (b) of the definition of the expression "police officer" in subsection (1) were substituted by the

^{ya} Ordres en Conseil Vol. XXXI, p. 278.

^z Ordres en Conseil Vol. XIII, p. 355.

Government of Alderney (Amendment) Law, 2000, section 2, with effect from 19th June, 2002.

The functions, rights and liabilities of the Advisory and Finance Committee and of its President arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy Council and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(a), Schedule 2, paragraph 1(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

In its application to external confiscation orders, section 51 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 17, with effect from 1st January, 2000.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

Index of defined expressions.

52. In this Law, unless the context requires otherwise, each expression listed below is defined by, or otherwise falls to be construed in accordance with, the provision of this Law indicated in parentheses immediately after the expression –

["account information" (section 48H(4)),]

"Alderney company" (section 51(1)),

"Alderney land register" (section 51(1)),

"amount that might be realised" (section 6(1)),

"amount to be recovered" (section 5(1) and (3)),

[**"Bailiff"** (section 51(1)),]

"Bailiwick" (section 51(1)),

"Bailiwick company" (section 51(1)),

"benefited from criminal conduct" (section 2(3)),

[**"business"** (sections 49(6) and 49A(6)),]

"charging order" (section 51(1)),

"collective investment scheme" (section 51(1)),

"Commission" (section 51(1)),

"Committee" (section 51(1)),

"concluded", in relation to proceedings for an offence (section 37(3)),

"concluded", in relation to an application under section 13, 14 or 19 (section 37(4)),

"concluded", in relation to an application under section 15 or 16 (section 37(5)),

"confiscation order" (section 2(10)),

[**"country"** (section 51(1)),]

"Court" (section 2(1)),

"Court of Appeal" (section 51(1)),

"criminal conduct" (section 1(1)),

[**"customer information"** (section 48B(1)),]

"defendant" (section 51(1)),

"designated country" (section 35(1)(a)),

[**"document"** (section 51(1)),]

"drug trafficking" (section 1(2)),

"drug trafficking offence" (section 1(2)),

"external confiscation order" (section 35(1)(a)(i)),

"financial services business" [(sections 49(1) and 50A)],

"gift caught by this Law" (section 8(1)),

"held", in relation to property (section 50(4)(a) and (5)(a)),

"Her Majesty's Procureur" (section 51(1)),

[**"Home Department"** (section 51(1)),]

"instituted", in relation to proceedings for an offence (section 37(2)),

[**"intelligence service"** (section 51(1)),]

"interest", in relation to property (section 50(3)),

"making a gift" (section 8(2)),

"money laundering" (section 41(7)),

[**"money laundering offence"** (section 51(1)),]

"personalty charging order" (section 28),

"police officer" (section 51(1)),

"proceeds of criminal conduct" (section 4(1)(a)),

"property" (section 50(1)),

"realisable property" (section 6(2)),

"realty charging order" (section 27(2)),

["relevant business" (sections 49A(1) and 50A),]

"restraint order" (section 26(1)),

"satisfied", in relation to a confiscation order (section 37(6) and (7)),

"subject to appeal", in relation to an order (section 37(8)),

"transferred", in relation to property (section 50(5)(b)),

["uniform scale" (section 51(1)),]

"value of a gift" (section 7(2)),

"value of proceeds of criminal conduct" (section 4(1)(b)),

"value of property" (section 7(1)).

NOTES

In section 52,

the entries for the expressions "account information", "Bailiff", "business", "country", "customer information", "document", "Home Department", "money laundering offence", "relevant business" and "uniform scale" were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 23, with effect from 3rd December, 2007;

the words, figures, parentheses and letter in square brackets in the entry for the expression "financial services business" were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 24, with effect from 3rd December, 2007;

the entry for the expression "intelligence service" was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) (No. 2) Ordinance, 2010, section 1(6), with effect from 28th July, 2010.

In its application to external confiscation orders, section 52 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 18, with effect from 1st January, 2000.

Constitution of Court

Constitution of Court for purposes [...] of this Law.

53. (1) Rules of Court may provide that, for the purposes of performing such functions of the Court, whether sitting as a Full Court or as an Ordinary Court, under the provisions [...] of this Law as may be specified in the rules –

- (a) the Court shall be properly constituted if its consists of the Bailiff –
 - (i) sitting unaccompanied by the Jurats, or
 - (ii) sitting accompanied by such number of the Jurats as may be so specified, and
- (b) the Court may, where it consists of the Bailiff sitting as mentioned in paragraph (a)(i) or (a)(ii), sit in

chambers.

(2) A function performed in pursuance of rules of Court under subsection (1) shall be considered for all purposes to have been performed by the Court; and any order or finding made or other thing done pursuant to the rules shall have effect as if made or done by the Court.

(3) The provisions of this section and of any rules hereunder are without prejudice to any provision of this Law conferring functions upon the Bailiff or, as the case may be, permitting matters to be heard in chambers.

NOTES

In section 53, and the marginal note thereto, the words omitted in square brackets were repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 25, with effect from 3rd December, 2007.

In its application to external confiscation orders, section 53 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 19, with effect from 1st January, 2000.

[Power to amend Law by Ordinance.]

53A. (1) The States may by Ordinance amend this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations or rules (and vice versa).]

NOTES

Section 53A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 26, with effect from 3rd December, 2007.

The following Ordinances have been made under section 53A:

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2007;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2008;

Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

Ordinances, regulations and rules

General provisions as to subordinate legislation.

54. (1) Any Ordinance of the States, regulations of the Committee [or Home Department] or rules of Court under this Law –

- (a) may be amended or repealed by a subsequent Ordinance or, as the case may be, by subsequent regulations or rules hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States or, as the case may be, the Committee [or Home Department] or the Court to be necessary or expedient,
- (c) shall, in the case of regulations, be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new

regulations.

(2) Any power conferred upon the States, the Committee [or Home Department] or the Court by this Law to make an Ordinance or, as the case may be, regulations or rules of Court may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

NOTES

In section 54, the words in square brackets in subsection (1) and subsection (2) were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 27, with effect from 3rd

December, 2007.

In its application to external confiscation orders, section 54 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 20, with effect from 1st January, 2000.

Citation and commencement

Citation and commencement.

55. (1) This Law may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

(2) This Law shall come into operation on the day appointed by Ordinance of the States, and such an Ordinance may appoint different days for different provisions and different purposes.

NOTES

The Law was brought into force on 1st January, 2000 by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Commencement) Ordinance, 1999, section 1.

In its application to external confiscation orders, section 55 is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 20, with effect from 1st January, 2000.

FINANCIAL SERVICES BUSINESSES

1. The businesses specified in Part I are financial services businesses for the purposes of this Law except where they are incidental or other activities falling within Part II, however, those businesses specified in paragraphs 2 to 19 are only financial services businesses when carried on by way of business [for or on behalf of a customer].

PART I
BUSINESSES

2. Lending (including, without limitation, the provision of consumer credit or mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfeiting) and advancing loans against cheques).

3. Financial leasing.

4. Operating a money service business (including, without limitation, a business providing money or value transmission services, currency exchange (bureau de change) and cheque cashing).

[4A. Buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion or buying or selling postage stamps, except where –

- (a) in the case of buying, selling or arranging the buying or selling of, or otherwise dealing in, bullion, the business consists only of buying, selling or arranging for the buying or selling of bullion, or otherwise dealing in bullion, where the value of each purchase,

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sale or deal does not exceed £10,000, in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked,

- (b) in the case of buying postage stamps, the business consists only of buying postage stamps where the value of each purchase does not exceed £10,000, in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, and
- (c) in the case of selling postage stamps, the business consists only of selling postage stamps –
 - (i) where the value of each sale does not exceed £10,000, in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, or
 - (ii) in the course of –
 - (A) a postal services business carried on under the authority of a licence granted under the Post Office (Bailiwick of Guernsey) Law, 2001, or
 - (B) a business authorized to sell postage stamps by the holder of a licence under that Law.]

5. Facilitating or transmitting money or value through an informal money or value transfer system or network.

6. Issuing, redeeming, managing or administering means of payment, means of payment includes, without limitation, credit, charge and debit cards, cheques, travellers' cheques, money orders and bankers' drafts [and electronic money].

7. Providing financial guarantees or commitments.

8. Trading [...] (by way of spot, forward, swaps, futures, options, etc.)

in –

(a) money market instruments (including, without limitation, cheques, bills and certificates of deposit),

(b) foreign exchange, exchange, interest rate or index instruments, and

(c) commodity futures, transferable securities or other negotiable instruments or financial assets[...].

[9.] Participating in securities issues and the provision of financial services related to such issues, including, without limitation, underwriting or placement as agent (whether publicly or privately) [...].]

10. Providing settlement or clearing services for financial assets including, without limitation, securities, derivative products or other negotiable instruments.

11. Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings[, except where the advice is provided in the course of carrying on the business of a lawyer or accountant].

12. Money broking.

13. Money changing.

14. Providing individual or collective portfolio management services or advice.

15. Providing safe custody services.

16. Providing services for the safekeeping or administration of cash or liquid securities on behalf of clients.

17. Carrying on the business of a credit union.

18. Accepting repayable funds other than deposits.

19. ...

20. Accepting deposits in the course of carrying on "**deposit-taking business**" as defined in the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

21. Carrying on "**controlled investment business**" as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

[22. Carrying on "**insurance business**" as defined in the Insurance Business (Bailiwick of Guernsey) Law, 2002 or doing anything which can only lawfully be done under the authority of a licence of the Commission under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.]

23. Carrying on "**regulated activities**" as defined in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, in circumstances where the activity is prohibited except under the authority and in accordance with the conditions of a licence granted by the Commission under section 6 of that Law (a "**fiduciary licence**")[, or carrying on by way of business the activities described in sections 3(1)(g) or (x) of that Law].

[23A. Otherwise investing, administering or managing funds or money on behalf of other persons.]

PART II

INCIDENTAL AND OTHER ACTIVITIES

24. (1) Any [...] business falling within paragraphs 2 to 19 carried out in the course of carrying on the profession of –

(a) ...

(b) ...

(c) an actuary where such business is incidental to the provision of actuarial advice or services.

(2) For the purposes of this paragraph, business is incidental to

the provision of such advice or services, if –

- (a) separate remuneration is not being given for the business as well as for such advice or services,
- (b) such advice or services is not itself [...] business falling within paragraphs 2 [to 18], and
- (c) the business being carried out is incidental to the main purpose for which that advice or services is provided.

25. The carrying on of any [business in Part I] –

- (a) by way of the provision of in-house legal, accountancy or actuarial advice or services to any business referred to in paragraphs 2 to [23A], or
- (b) in the course of carrying on the profession (respectively) of a lawyer, accountant or actuary for any client carrying on such a business.

26. ...

[27. Activities constituting the restricted activities of dealing, advising and promotion for the purposes of Schedule 2 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 provided that –

- (a) such activities are carried on by a person who is not incorporated or registered in the Bailiwick,

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- (b) such activities are carried on by a person who does not maintain a physical presence in the Bailiwick,
- (c) such activities are carried on from a country or territory listed in Appendix C to the Handbook,
- (d) the conduct of such activities is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations on Money Laundering in respect of such activities, and
- (e) the conduct of such activities is supervised for compliance with the requirements referred to in item (d), by an overseas regulatory authority.

28. Any business falling within paragraph 22 which is –

- (a) carried on by a person who is licensed in the Bailiwick solely to carry on general insurance business under the Insurance Business (Bailiwick of Guernsey) Law, 2002,
- (b) carried on by a person who is not incorporated or registered in the Bailiwick,
- (c) carried on by a person who does not maintain a physical presence in the Bailiwick,

- (d) not managed in or from within the Bailiwick, and
- (e) subject to authorisation and supervision by the United Kingdom Financial Services Authority.

29. A business falling within paragraphs 2 to 18 of Part I provided that –

- (a) the total turnover of that business, plus that of any other business falling within Part I carried on by the same person, does not exceed £50,000 per annum,
- (b) no occasional transactions are carried out in the course of such business, that is to say, any transaction involving more than £10,000, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked,
- (c) the turnover of such business does not exceed 5% of the total turnover of the person carrying on such business,
- (d) the business is ancillary, and directly related, to the main activity of the person carrying on the business,
- (e) in the course of such business, money or value is not transmitted or such transmission is not facilitated by any means,

- (f) the main activity of the person carrying on the business is not that of a business falling within Part I,
- (g) the business is provided only to customers of the main activity of the person carrying on the business and is not offered to the public, and
- (h) the business is not carried on by a person who also carries on a business falling within paragraphs 20 to [23A] of Part I.]]

NOTES

The Schedule (which was renumbered as "Schedule 1" by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007, section 28(1), with effect from 3rd December, 2007) was substituted by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007, regulation 18(2), with effect from 15th December, 2007.

In the Schedule,

paragraph 4A, the words in square brackets in paragraph 1 and the words in square brackets in paragraph 6 were inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010, respectively regulation 1(b), regulation 1(a) and regulation 1(c), with effect from 22nd February, 2010;

the words omitted in, first, the first and, second, the second pairs of square brackets in paragraph 8 and, third, square brackets within paragraph 9 were repealed by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010, respectively regulation 1(d)(i), regulation 1(d)(ii) and regulation 1(e), with effect from 22nd February, 2010;

paragraph 9 and paragraph 22 were substituted, and the words in square brackets in paragraph 11 were inserted, by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008, respectively regulation 1(a),

regulation 1(c) and regulation 1(b), with effect from 1st December, 2008;

paragraph 19 was repealed by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008, regulation 2(2), with effect from 8th September, 2008;

the words in square brackets in paragraph 23 were inserted, and paragraph 26 was repealed, by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010, respectively regulation 1(f) and regulation 1(g), with effect from 22nd February, 2010;³

paragraph 23A was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008, regulation 1(d), with effect from 1st December, 2008;

the words omitted in, first, the first pair of square brackets in paragraph 24(1) and, second, the first pair of square brackets in paragraph 24(2)(b) were repealed by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008, respectively regulation 2(3)(a) and regulation 2(3)(b), with effect from 8th September, 2008;

subparagraph (a) and subparagraph (b) of paragraph 24 were repealed by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008, regulation 2(3)(a), with effect from 8th November, 2008;

the words in, first, the second pair of square brackets in paragraph 24(2)(b) and, second, the first pair of square brackets in paragraph 25 were substituted by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008, respectively regulation 2(3)(b) and regulation 2(3)(c), with effect from 8th September, 2008;

the words in, first, the second pair of square brackets in paragraph 25 and, second, the square brackets in paragraph 29(h) were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008, respectively regulation 1(e) and regulation 1(g), with effect from 1st December, 2008;

paragraph 27, paragraph 28 and paragraph 29 were inserted by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008, regulation 2(3)(e), with effect from 8th September, 2008.

In its application to external confiscation orders, the Schedule (Schedule 1)

is modified in accordance with the provisions of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Enforcement of Overseas Confiscation Orders) Ordinance, 1999, section 1(2), Schedule 2, paragraph 21, with effect from 1st January, 2000.

[SCHEDULE 2
RELEVANT BUSINESSES

Section 49A

1. The businesses specified in the following paragraphs of this Schedule are relevant businesses for the purposes of this Law.

However, a business is not a relevant business if it is financial services business within the meaning of section 49(1) and Schedule 1.

2. **High value dealing.**

Trading in goods when there is received, in respect of any transaction, a payment or payments in cash of at least £7,500 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked.

3. **Estate agency.**

[Acting, in the course of a business, on behalf of others in the acquisition or disposal of real property or any interest therein] –

- (a) for the purpose of or with a view to effecting the introduction to the client of a third person who wishes to acquire or (as the case may be) dispose of such an interest, and
- (b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or (as the case may be) the acquisition of that interest.

Estate agency does not include any business specified in paragraph 5.

4. Casinos and organised gambling.

The provision or carrying on by way of business of any service or activity which, under the provisions of –

- (a) the Gambling (Guernsey) Law, 1971^{za} or any Ordinance made under it,
- (b) the Hotel Casino Concession (Guernsey) Law, 2001^{zb},
- (c) the Gambling (Alderney) Law, 1999^{zc} or any Ordinance made under it, or
- (d) the Gambling (Sark) Law, 2002^{zd},

is prohibited except where provided or carried on under the authority of a licence, concession or other authorisation granted under any of those Laws or any Ordinance made under them.

[5. Legal and accountancy services.

The business of lawyer, notary or other independent legal professional, when they prepare for or carry out transactions for a client in relation to the following activities –

^{za} Ordres en Conseil Vol. XXIII, p. 109; Vol. XXIV, p. 400; No. XXVII of 1997; no. II of 2001.

^{zb} Order in Council No. XI of 2002.

^{zc} Order in Council No. XIV of 1999; No. XXVII of 2001.

^{zd} Order in Council No. VIII of 2002; No. XXIX of 2003.

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- (a) the acquisition or disposal of an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest),
- (b) the management of client money, securities or other assets,
- (c) the management of bank, savings or securities accounts,
- (d) the organisation of contributions for the creation, operation, management or administration of companies, or
- (e) the creation, operation, management or administration of legal persons or arrangements, and the acquisition or disposal of business entities,

or the business of auditor, external accountant, insolvency practitioner or tax adviser.

For the purposes of this paragraph, an "**independent legal professional**" does not include legal professionals employed by –

- (a) public authorities, or
- (b) undertakings which do not by way of business provide legal services to third parties,

an "**auditor**" means any person who, by way of business, provides audit services pursuant to any function under an enactment,

"**external accountant**" means any person who, by way of business, provides accountancy services to third parties and does not include accountants employed by –

- (a) public authorities, or
- (b) undertakings which do not by way of business provide accountancy services to third parties,

"**insolvency practitioner**" means any person who, by way of business, provides services which include acceptance of appointment as an administrator, liquidator or receiver under the Companies (Guernsey) Law, 2008, the Limited Partnerships (Guernsey) Law, 1995 or any other similar enactment,

"**tax adviser**" means any person who, by way of business, provides advice about the tax affairs of other persons,

and, for the avoidance of doubt, in each case, does not include an employed person whose duties relate solely to the provision of audit services or accountancy services or services of a type described in the above definitions of insolvency practitioner or tax adviser, as the case may be, to his employer.]]

NOTES

Schedule 2 was inserted by the Criminal Justice (Proceeds of Crime)

(Bailiwick of Guernsey) (Amendment) Law, 2007, section 28(2), with effect from 3rd December, 2007.

In Schedule 2,

the words in square brackets in paragraph 3 were substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008, regulation 2, with effect from 1st December, 2008;

paragraph 5 was substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2010, regulation 2, with effect from 4th October, 2010, subject to the supplemental and transitional provisions in regulation 4 of the 2010 Regulations.

¹ Paragraph (b) of subsection (1), paragraph (b) of subsection (2) and paragraph (b) of subsection (3) were previously substituted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, respectively section 3(a), section 3(c) and section 3(e), with effect from 24th March, 2010.

² Prior to its repeal, subsection (6) was amended by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010, section 3(f), with effect from 24th March, 2010.

³ Prior to its repeal, paragraph 26 was amended by the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) (Amendment) Regulations, 2008, regulation 23(d), with effect from 8th September, 2008; the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (Amendment of Schedules 1 and 2) Regulations, 2008, regulation 1(f), with effect from 1st December, 2008.