

*Consolidated text*

# PROJET DE LOI

ENTITLED

## **The Drug Trafficking (Bailiwick of Guernsey) Law, 2000**

*[CONSOLIDATED TEXT]*

### *NOTE*

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## **The Drug Trafficking (Bailiwick of Guernsey) Law, 2000**

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ENTITLED

## **The Drug Trafficking (Bailiwick of Guernsey) Law, 2000**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> day of January, 1999<sup>a</sup>, 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

##### *Introductory*

##### **Meaning of "drug trafficking" and "drug trafficking offence".**

1. (1) In this Law, "**drug trafficking**" means, subject to subsection (2), doing or being concerned in any of the following, whether in the Bailiwick or elsewhere –

- (a) producing or supplying a controlled drug where the production or supply contravenes section 3(1) of the 1974 Law or a corresponding law,

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<sup>a</sup> Article XII of Billet d'État No. III of 1999.

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- (b) transporting or storing a controlled drug where possession of the drug contravenes section 4(1) of the 1974 Law or a corresponding law,
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by section 2(1) of the 1974 Law or a corresponding law,
- (d) manufacturing or supplying a scheduled substance within the meaning of section 38 where the manufacture or supply is an offence under that section or would be such an offence if it took place in the Bailiwick,
- (e) using any ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under section 41,
- (f) conduct which is an offence under section 57 or which would be such an offence if it took place in the Bailiwick,
- (g) acquiring, having possession of or using property in circumstances which amount to the commission of an offence under section 59 or which would amount to such an offence if it took place in the Bailiwick.

(2) "**Drug trafficking**" also includes a person doing the following, whether in the Bailiwick or elsewhere, that is to say, entering into or being otherwise concerned in an arrangement whereby –

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- (a) the retention or control by or on behalf of another person of the other person's proceeds of drug trafficking is facilitated, or
  - (b) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person's disposal or are used for the other person's benefit to acquire property by way of investment.
- (3) In this Law, "**drug trafficking offence**" means any of the following –
- (a) an offence under section 3(2) or (3) or 4(3) of the 1974 Law (production, supply and possession for supply of controlled drugs),
  - (b) an offence under section 19 of the 1974 Law (assisting in or inducing commission outside the Bailiwick of offence punishable under a corresponding law),
  - (c) an offence under –
    - (i) section 23(1) of the 1972 Law (improper importation),
    - (ii) section 30(2) of the 1972 Law (exportation), or
    - (iii) section 77 of the 1972 Law (fraudulent evasion),

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- (d) an offence under section 38, 41, 57, 58 or 59,
- (e) an offence of conspiracy to commit any of the offences in paragraphs (a) to (d),
- (f) an offence of attempting to commit any of those offences, and
- (g) an offence of inciting another person to commit any of those offences (whether under section 18 of the 1974 Law or otherwise),

and includes aiding, abetting, counselling or procuring the commission of any of the offences mentioned in paragraphs (a) to (d).

(4) In this section, "**corresponding law**" has the same meaning as in the 1974 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 drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), then –

- (a) if Her Majesty's Procureur asks the Court to proceed under this section, or

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- (b) if the Court considers that, even though Her Majesty's Procureur has not asked it to do so, it is appropriate for it to proceed under this section,

it shall act as follows.

(2) The Court shall first determine whether the defendant has benefited from drug trafficking.

(3) For the purposes of this Law, a person has benefited from drug trafficking if he has at any time (whether before or after the coming into force of this Law) received any payment or other reward in connection with drug trafficking carried on by him or another person [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) If the Court determines that the defendant has so benefited, the Court 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 –

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- (i) imposing any fine on him,
  - (ii) making any order involving any payment by him, or
  - (iii) making any order under section 26 of the 1974 Law (forfeiture orders), and
- (c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) No enactment restricting the power of a 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 it considers appropriate in respect of a drug trafficking offence.

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

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

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

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

**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 drug trafficking, 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 the 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.

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(4) Where the defendant appeals against his 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 –

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- (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 "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 drug trafficking offence in respect of which the defendant appears (as mentioned in section 2(1)) before the Court.

**Assessing the proceeds of drug trafficking.**

4. (1) For the purposes of this Law –

- (a) any payments or other rewards received by a person at any time (whether before or after the commencement of this Law) in connection with drug trafficking carried on by him or another person are his proceeds of drug trafficking, and
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

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

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

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 payment or reward in connection with drug trafficking carried on by him,
  - (b) that any expenditure of his since the beginning of that period was met out of payments received by him in connection with drug trafficking 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 such a reward, he received the property free of any other interests in it.

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

- (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) Subsection (2) does not apply if the only drug trafficking offence in respect of which the defendant appears before the Court to be sentenced is an offence under section 57, 58 or 59.

(6) For the purpose of assessing the value of the defendant's proceeds of drug trafficking 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 drug trafficking that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

(7) References in subsection (6) to a confiscation order include a reference to a confiscation order within the meaning of the 1988 Law.

[(8) 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 –

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- (a) the property was received by him as a result of or in connection with criminal conduct 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 criminal conduct carried on by him or another person.

(9) In this section "**criminal conduct**" has the meaning it has in section 1(1) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.]

**Amount to be recovered under confiscation order.**

**5.** (1) Subject to subsection (3), the amount to be recovered in the defendant's case under the confiscation order is the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking.

(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 opinion 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 drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be –

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- (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.

**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 a 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.

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(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 1974 Law (forfeiture orders),
- (b) section 11(2), (3) or (4) of the Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990<sup>b</sup>.

(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 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 (Guernsey) Law, 1983<sup>c</sup>; and for the purposes of the said section 1 the relevant date shall be the date of the confiscation order.

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<sup>b</sup> Ordres en Conseil Vol. XXXII, p. 236.

<sup>c</sup> Ordres en Conseil Vol. XXVIII, p. 184; No. VII of 1992; No. III of 1993; and No. IX of 1998.

**Value of property, etc.**

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 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 this Law or of any payment or reward are references to –

- (a) the value of the gift, payment or reward to the recipient when he received it, adjusted to take account of subsequent changes in the value of money, or
- (b) where subsection (3) applies, the value there 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 (not being cash), or

- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received,

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, but disregarding in either case any charging order.

(4) References in this section to a charging order include a reference to a charging order within the meaning of the 1988 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 drug trafficking carried on by him or another, 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 can 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.

**Procedures 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 –

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Column 1 Amount of confiscation order	Column 2 Maximum period
An amount not exceeding £200	7 days
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

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An amount exceeding £1 million	10 years
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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 the offence or offences.

(7) The reference in subsection (6) to any term of imprisonment which the defendant is liable to serve in respect of the 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<sup>d</sup> 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.

**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 for which it remains unpaid; and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

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<sup>d</sup> 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) shall be that for the time being applying to a judgment debt under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985<sup>e</sup>.

**Statements relating to drug trafficking.**

**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 drug trafficking, or
- (b) assessing the value of his proceeds of drug trafficking.

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

(3) Where the Court proceeds under section 2 without Her Majesty's Procureur having asked it to do so, it may require him to give it a prosecutor's statement, within such period as it may direct.

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

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<sup>e</sup> Ordres en Conseil Vol. XXIX, p. 133; amended by Order of the Royal Court No. I of 1996.

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- (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.

(5) 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.

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

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

- (a) determining whether the defendant has benefited from drug trafficking, or

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- (b) assessing the value of his proceeds of drug trafficking,

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

(8) If the defendant fails in any respect to comply with a requirement under subsection (5) 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 drug trafficking or that any payment or other reward was received by him in connection with drug trafficking carried on by him or another person.

(9) Where –

- (a) there is given to the Court by the defendant a statement as to any 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.

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

(11) No acceptance by the defendant under this section that any payment or other reward was received by him in connection with drug trafficking carried on by him or another person shall be admissible in evidence in any proceedings for an offence.

**Provision of information by defendant.**

**12.** (1) This section applies where –

- (a) Her Majesty's Procureur has asked the Court to proceed under section 2, or
- (b) no such request has been made but the Court is nevertheless proceeding, or considering whether 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 before such date, as may be specified in the order.

(4) Rules of Court may make provision as to the maximum or minimum period that may be allowed under subsection (3).

*Consolidated text*

(5) 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.

(6) 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.

(7) For the purposes of this section, an allegation may be accepted in such manner as may be prescribed by rules of Court or as the Court may direct.

*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 drug trafficking 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 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 drug trafficking if –

*Consolidated text*

- (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 payment or other reward received by the defendant on or after the date of conviction, but only if Her Majesty's Procureur shows that it was received by the defendant in connection with

drug trafficking 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 payment or reward 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.

**Re-assessment of whether defendant has benefited from drug trafficking.**

**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 drug trafficking.

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

*Consolidated text*

- (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 drug trafficking 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 drug trafficking 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 under section 2.

(4) 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.

*Consolidated text*

(5) The Court may take into account any payment or other reward received 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 by the defendant in connection with drug trafficking 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 payment or reward 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 six 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.

**Revised assessment of proceeds of drug trafficking.**

**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 section 2 ("**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 drug trafficking was greater than their assessed value, Her Majesty's Procureur may apply to the Court for the evidence on which he has formed his opinion to be considered by the Court.

*Consolidated text*

(3) Sections 11 and 12 shall apply where Her Majesty's Procureur makes such an application as they apply where Her Majesty's Procureur 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 drug trafficking 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 section 2.

(5) In subsections (2) and (4) –

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

**"real value"** means the value of the defendant's proceeds of drug trafficking 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, 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.

*Consolidated text*

(7) Any determination under section 2(4) by virtue of this section shall be by reference to the amount that might be realised 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(6) shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in respect of the current section 2(4) determination.

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

(a) sections 5(2), 6(4) and 11(9)(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 "a confiscation order is made against the defendant" there were substituted "of the determination".

(10) The Court may take into account any payment or other reward received 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 by the defendant in connection with drug trafficking carried on by the defendant or another person on or before that date.

*Consolidated text*

(11) In considering under this section any evidence which relates to any payment or reward 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 ("the substituted amount").

(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 in default of payment of the substituted amount.

(14) 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; and, in this subsection, "**the date of conviction**" has the same meaning as in section 13.

**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 drug trafficking.

(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 taken into account in making 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 by Her Majesty's Sheriff as receiver appointed 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 ("**the substituted amount**"), and
- (b) 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, where it had not previously made such an order of imprisonment, subject to section 9, order the defendant to be imprisoned in default of payment of the substituted amount.

**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 as receiver appointed 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<sup>f</sup>); and for the purposes of the said section 1 the

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<sup>f</sup> Ordres en Conseil Vol. XXVIII, p. 184; No. VII of 1992; No. III of 1993 and No. IX of 1998.

*Consolidated text*

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 the Court 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 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 order a shorter term in respect of the lesser amount, or vary any terms upon which such imprisonment was deferred.

(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.

**Compensation.**

**18.** (1) If proceedings are instituted against a person for a drug trafficking offence or offences and either –

- (a) the proceedings do not result in his conviction for any drug trafficking offence, or
- (b) he is convicted of one or more drug trafficking 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 –

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- (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.

*Confiscation orders where defendant has absconded or died*

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

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

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

*Consolidated text*

(3) Subsection (4) applies where proceedings for one or more drug trafficking 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, the Court may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that the defendant 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 (5), (7) and (8),

(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 a confiscation order by the

Court shall be entitled to appear before the Court and 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.

**Effect of conviction where 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, as the case may be, any of the offences concerned –

- (a) take account of the order before –
  - (i) imposing any fine on the defendant,

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- (ii) making any order involving any payment by him, or
  - (iii) making any order under section 26 of the 1974 Law (forfeiture orders), and
- (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 the 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.

**Variation of confiscation orders made by virtue of section 19.**

21. (1) This section applies where –
- (a) the Court has made a confiscation order by virtue of section 19(4), and
  - (b) the defendant has ceased to be an absconder.
- (2) If the defendant alleges that –
- (a) the value of his proceeds of drug trafficking in the period by reference to which the determination in question was made (the "**original value**"), or

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- (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 by virtue of this section, section 4(6) shall not apply in relation to any of the defendant's proceeds of drug trafficking 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

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(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.

**Compensation, etc. where absconder is acquitted.**

**22.** (1) This section applies where –

(a) the Court has made a confiscation order by virtue of section 19(4), and

(b) 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.

**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.

**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 the 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.

*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 a drug trafficking offence or

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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 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 drug trafficking.

(2) 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.

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

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- (a) the Court is satisfied that a person is to be charged with a drug trafficking 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).

[(3A) The powers mentioned in subsection (1) are also exercisable where –

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

(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 (3)(a), and
- (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 (3)(a) for a drug trafficking offence.

*Consolidated text*

- (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 the time 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 in respect of the offence or in relation to the application are concluded,
    - (ii) in the case of an order made by virtue of subsection (3), if proposed proceedings in respect of the offence are not instituted, or (as the case may be) if the application is not made,

*Consolidated text*

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 a 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 –

- (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 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

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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 authorised by him to act in that behalf,

- (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.

**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

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- (b) to realisable property held by a specified person, being property transferred to him after the making of the 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 9 or 10 of the 1988 Law or section 27 or 28.

(4) Where the Court has made a restraint order, the Court 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 require 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 an officer of police 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.

**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, &c., Law, 1949<sup>g</sup> 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.

**Personalty charging orders.**

**28.** (1) The Court may make a personalty charging order in respect of realisable property described in subsection (2) securing the payment to the Crown –

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<sup>g</sup> Ordres en Conseil Vol. XIV, p. 67; Vol. XVI, p. 202; Vol. XXVIII, p. 576; and No. VII of 1994.

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- (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) The property referred to in subsection (1) is –
- (a) any interest in real property (not being itself 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, or
    - (iii) any body incorporated outside the Bailiwick or of any country or territory outside the Bailiwick, which is 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,

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- (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, 1979<sup>h</sup>,
  - (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 Interests (Guernsey) Law, 1993<sup>i</sup>, and with the same rights, remedies and effects as attach to a security interest created under that Law.

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<sup>h</sup> Ordres en Conseil Vol. XXVII, p. 132; Vol. XXXII, p. 324; and No. III of 1993.

<sup>i</sup> Order in Council No. III of 1993.

(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).

*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).

(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

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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 9 or 10 of the 1988 Law or 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.]

**Application of proceeds of realisation and other sums.**

**30.** (1) The following sums in the hands of Her Majesty's Sheriff as receiver appointed under section 26 or 29, that is –

- (a) the proceeds of the enforcement of any charge imposed under section 27 or 28,
- (b) the proceeds of the realisation, other than by the enforcement of such a charge, of any property under section 26 or 29, and
- (c) any other sums, being property held by the defendant [or the recipient of a gift caught by this Law],

shall be applied, subject to subsection (2), 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) Before any such sums are so applied they shall be applied in making such payments (if any) as the Royal Court may direct.

(3) 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 as receiver so appointed, Her Majesty's Sheriff 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.

**Exercise by Court or Her Majesty's Sheriff of powers for the realisation of property.**

31. (1) The following provisions apply to the powers conferred –

- (a) on the Court by sections 26 to 30, or
- (b) on Her Majesty's Sheriff when appointed as receiver under section 26 or 29.

(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 powers shall be exercised with a view to realising no more than the value for the time being of the gift.

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(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 the property held by him.

(5) In exercising the 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.

(6) 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 the States of Alderney or the Chief Pleas of Sark.

*Insolvency of defendants, etc.*

**Affairs of person declared 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 made before the declaration, and
- (b) any proceeds of property realised by virtue of section 26(4) or 29(5) or (6) for the time being in the hands of Her Majesty's Sheriff as receiver appointed under section 26 or 29,

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

**Winding up of company holding realisable property.**

*Consolidated text*

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 any 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, and
- (b) any proceeds of property realised by virtue of section 26(4) or 29(5) or (6) for the time being in the hands of Her Majesty's Sheriff as receiver appointed under section 26 or 29.

(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 so appointed 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.

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(3) Nothing in the Companies (Guernsey) Law, 1994<sup>j</sup> or the Companies (Alderney) Law, 1994<sup>k</sup> 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.

(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 –

(i) such an order has been made, but

(ii) before the presentation of the petition for the winding up of the company by the Court, 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 has been made, the time of the making of the order.

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<sup>j</sup> Order in Council No. XXXIII of 1994; and No. XIV of 1996.

<sup>k</sup> Order in Council No. XXXIV of 1994.

*Protection of Her Majesty's Sheriff*

**Restriction on liability of Her Majesty's Sheriff.**

34. Where Her Majesty's Sheriff as receiver appointed under section 26 or 29 –

- (a) takes any action 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) believes, and has 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 or territory within the British Islands, or in relation to any other country or territory –

- designated by an Order in Council of Her Majesty under section 39 of the Drug

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Trafficking Act 1994<sup>1</sup> (and any such designation shall continue to have effect for the purposes of this Law, notwithstanding any repeal of section 39, until amended or revoked by Ordinance of the States), or

- designated by Ordinance of the States,

(any country or territory so designated being referred to in this Law as a "**designated country**") that, subject to such modifications as may be specified, the relevant provisions 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 drug trafficking], and

- (b) make -

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<sup>1</sup> An Act of Parliament (1994 c.37).

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- (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) such incidental, consequential and transitional provision, as appears to the States to be expedient, 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 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 case; and a modification made by such an Ordinance may confer power on a person to exercise a discretion.

(3) For the purposes of this section, "**the relevant provisions of this Law**" are this Part, except sections 10 and 16, and Part V.

**Registration of external confiscation orders.**

*Consolidated text*

36. (1) On an application made by Her Majesty's Procureur on behalf of the government of a designated country, the 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 Ordinary Court shall cancel the registration of an external confiscation order if it appears to the Ordinary Court that the order has been satisfied by payment of the amount due under it.

*Interpretation*

**Interpretation of Part I.**

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

(2) Proceedings for an offence are instituted in the Bailiwick when a person is charged with the offence; 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 a drug trafficking 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 –

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- (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 of this section as it applies to section 32, a confiscation order is also satisfied when the defendant in respect of whom it was made has served a term of imprisonment under section 9 in default of payment of 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.

PART II

THE VIENNA CONVENTION

*Substances useful for manufacture of controlled drugs*

**Manufacture and supply of scheduled substances.**

38. (1) It is an offence for a person –
- (a) to manufacture a scheduled substance, or
  - (b) to supply such a substance to another person,

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knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug.

(2) A person guilty of an offence under subsection (1) shall be liable –

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

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

(3) In this section, "**a controlled drug**" and "**supply**" have the same meaning as in the 1974 Law and "**unlawful production of a controlled drug**" means the production of such a drug which is unlawful by virtue of section 3(1)(a) of the 1974 Law.

(4) In this Part, "**a scheduled substance**" means a substance for the time being specified in Schedule 1.

(5) The States may by Ordinance amend Schedule 1 (whether by addition, deletion or transfer from one Table to the other) but no such Ordinance shall add any substance to the Schedule unless –

(a) it appears to the States to be frequently used in or for the unlawful production of a controlled drug, or

(b) it has been added to the Annex to the Vienna Convention under Article 12 of that Convention.

**Regulations about scheduled substances.**

**39.** (1) The Board may by regulations make provision –

- (a) imposing requirements as to the documentation of transactions involving scheduled substances,
- (b) requiring the keeping of records and the furnishing of information with respect to such substances,
- (c) for the inspection of records kept pursuant to the regulations,
- (d) for the labelling of consignments of scheduled substances.

(2) Regulations made by virtue of subsection (1)(b) may, in particular, require –

- (a) the notification of the proposed exportation of substances specified in Table I in Schedule 1 to such countries as may be specified in the regulations, and
- (b) the production, in such circumstances as may be so specified, of evidence that the required notification has been given,

and for the purposes of section 30 of the 1972 Law (offences in relation to exportation of prohibited or restricted goods) any such substance shall be deemed to

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be exported contrary to a restriction for the time being in force with respect to it under this Law if it is exported without the requisite notification having been given.

(3) Regulations under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 1 respectively and in relation to different cases or circumstances.

(4) Any person who fails to comply with any requirement imposed by the regulations or, in purported compliance with any such requirement, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular is guilty of an offence and shall be liable –

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

(5) No information obtained pursuant to the regulations shall be disclosed except for the purposes of criminal proceedings or of proceedings under the provisions of this Law relating to the confiscation of the proceeds of drug trafficking.

*Offences at sea*

**Offences on Guernsey ships.**

40. Anything which would constitute a drug trafficking offence if done on land in the Bailiwick constitutes that offence if done on a ship registered in the Bailiwick (a "**Guernsey ship**").

**Ships used for illicit traffic.**

41. (1) This section applies to a Guernsey ship, a British ship, a ship registered in a Convention state other than the United Kingdom and a ship not registered in any country or territory.

(2) A person is guilty of an offence if on a ship to which this section applies, wherever it may be, he –

- (a) has a controlled drug in his possession, or
- (b) is in any way knowingly concerned in the carrying or concealing of a controlled drug on the ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 2(1) of the 1974 Law or the law of any other state or territory.

(3) A certificate purporting to be issued by or on behalf of the government of any state to the effect that the importation or export of a controlled drug is prohibited by the law of that state shall be evidence, in any proceedings in a Bailiwick court, of the matters stated.

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

- (a) in a case where the controlled drug is a Class A drug –

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- (i) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the uniform scale, or to both,
  - (ii) on conviction on indictment, to imprisonment for life or to a fine, or to both,
- (b) in a case where the controlled drug is a Class B drug –
- (i) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the uniform scale, or to both,
  - (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine, or to both,
- (c) in a case where the controlled drug is a Class C drug –
- (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,
  - (ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine, or to both.

(5) In this section, "**a controlled drug**" and the references to controlled drugs of a specified Class have the same meaning as in the 1974 Law; and an offence under this section shall be included in the offences to which section 27 of the 1974 Law (defences) applies.

**Enforcement powers.**

**42.** (1) The powers conferred on an enforcement officer by Schedule 2 shall be exercisable in relation to any ship to which section 40 or 41 applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those sections.

(2) Her Majesty's Procureur may, either of his own motion or in response to a request from a Convention state, authorise a Convention state to exercise, in relation to a Guernsey ship, powers corresponding to those conferred on enforcement officers by Schedule 2 but subject to such conditions or limitations, if any, as he may impose.

(3) Subsection (2) is without prejudice to any agreement made, or which may be made, by the United Kingdom on behalf of the Bailiwick whereby the Bailiwick, or any part thereof, as the case may be, undertakes not to object to the exercise by any other state in relation to a Guernsey ship of powers corresponding to those conferred by Schedule 2.

(4) The powers conferred by Schedule 2 shall not be exercised outside the territorial waters of the Bailiwick.

**Jurisdiction and prosecutions.**

43. (1) Proceedings under this Part or Schedule 2 in respect of an offence on a ship may be taken, and the offence may for all incidental purposes be treated as having been committed, within the Bailiwick.

(2) Section 3 of the Territorial Waters Jurisdiction Act 1878<sup>m</sup> (consent of Secretary of State for certain prosecutions) does not apply to any proceedings under this Part.

*Mutual service of process*

**Service of overseas process in the Bailiwick.**

44. (1) This section has effect where Her Majesty's Procureur receives from the government of, or other authority in, a Convention state –

- (a) a summons or other process requiring a person to appear as defendant or attend as a witness in criminal proceedings in respect of one or more drug trafficking offences in that state, or
- (b) a document issued by a court exercising such criminal jurisdiction in that state and recording a decision of the court made in the exercise of that jurisdiction,

together with a request for it to be served on a person in the Bailiwick.

(2) Her Majesty's Procureur may cause the process or document to be served by post or, if the request is for personal service, direct Her Majesty's Sergeant to cause it to be personally served on the person.

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<sup>m</sup> An Act of Parliament (41 and 42 Vict. c.73).

*Consolidated text*

(3) Service by virtue of this section of any process as is mentioned in subsection (1)(a) shall not impose any obligation under the law of any part of the Bailiwick to comply with it.

(4) Any such process served by virtue of this section shall be accompanied by a notice –

- (a) stating the effect of subsection (3),
- (b) indicating that the person on whom it is served may wish to seek advice as to the possible consequences of his failing to comply with the process under the law of the Convention state where it was issued, and
- (c) indicating that under that law he may not, as a witness, be accorded the same rights and privileges as would be accorded to him in criminal proceedings in the Bailiwick.

(5) Where Her Majesty's Sergeant is directed under this section to cause any process or document to be served, he shall after it has been served forthwith inform Her Majesty's Procureur when and how it was served and (if possible) furnish him with a receipt signed by the person on whom it was served; and if Her Majesty's Sergeant has been unable to cause the process or document to be served he shall forthwith inform Her Majesty's Procureur of that fact and of the reason.

**Service of Bailiwick process overseas.**

**45.** (1) Process of the following descriptions, that is to say –

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- (a) a summons requiring a person charged with a drug trafficking offence to appear before a court in the Bailiwick, and
- (b) a summons or order requiring a person to attend before a court in the Bailiwick for the purpose of giving evidence in criminal proceedings in respect of one or more drug trafficking offences,

may be issued or made notwithstanding that the person in question is outside the Bailiwick and may be served outside the Bailiwick in accordance with arrangements made by Her Majesty's Procureur.

(2) Service of any process outside the Bailiwick by virtue of this section shall not impose any obligation under the law of any part of the Bailiwick to comply with it and accordingly failure to do so shall not constitute contempt of any court or be a ground for issuing a warrant to secure the attendance of the person in question.

(3) Subsection (2) is without prejudice to the service of any process (with the usual consequences for non-compliance) on the person in question if subsequently effected in the Bailiwick.

*Mutual provision of evidence*

**Overseas evidence for use in Bailiwick.**

**46.** (1) Where on an application made by or on behalf of Her Majesty's Procureur it appears to the Bailiff –

*Consolidated text*

- (a) that a drug trafficking offence has been committed or that there are reasonable grounds for suspecting that a drug trafficking offence has been committed, and
- (b) that proceedings in respect of the drug trafficking offence have been instituted or that the drug trafficking offence is being investigated,

he may issue a letter ("**a letter of request**") requesting assistance in obtaining outside the Bailiwick such evidence as is specified in the letter for use in the proceedings or investigation.

(2) Subject to subsection (3), a letter of request shall be sent to the Secretary of State for transmission either –

- (a) to a court or tribunal specified in the letter and exercising jurisdiction in the Convention state where the evidence is to be obtained, or
- (b) to any authority recognised by the government of the Convention state in question as the appropriate authority for receiving requests for assistance of the kind to which this section applies.

(3) In cases of urgency a letter of request may be sent direct to such a court or tribunal as is mentioned in subsection (2)(a).

(4) In this section, "**evidence**" includes documents and other articles.

(5) Evidence obtained by virtue of a letter of request shall not without the consent of such an authority as is mentioned in subsection (2)(b) be used for any purpose other than that specified in the letter; and when any document or other article obtained pursuant to a letter of request is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it shall be returned to such an authority unless that authority indicates that the document or article need not be returned.

(6) In exercising any discretion to exclude evidence which is otherwise admissible in relation to a statement contained in evidence taken pursuant to a letter of request the Court shall have regard –

- (a) to whether it was possible to challenge the statement by questioning the person who made it, and
- (b) if proceedings have been instituted, to whether the local law allowed the parties to the proceedings to be legally represented when the evidence was taken.

**Local evidence for use overseas.**

47. (1) This section has effect where Her Majesty's Procureur receives –

- (a) from a court or tribunal exercising criminal jurisdiction in a Convention state or a prosecuting authority in such a state, or
- (b) from any other authority in a Convention state which appears to Her Majesty's Procureur to have the

*Consolidated text*

function of making requests of the kind to which this section applies,

a request for assistance in obtaining evidence in the Bailiwick in connection with criminal proceedings in respect of drug trafficking that have been instituted, or a criminal investigation into drug trafficking that is being carried on, in that state.

- (2) If Her Majesty's Procureur is satisfied –
  - (a) that an offence involving drug trafficking under the law of the Convention state in question has been committed or that there are reasonable grounds for suspecting that such an offence has been committed, and
  - (b) that proceedings in respect of that offence have been instituted in that state or that an investigation into that offence is being carried on there,

Her Majesty's Procureur may, if he thinks fit, institute proceedings before the Court for the purpose of receiving such of the evidence to which the request relates as may appear to the Court to be appropriate for the purpose of giving effect to the request.

(3) For the purpose of satisfying himself as to the matters mentioned in subsection (2)(a) and (b) Her Majesty's Procureur shall regard as conclusive a certificate issued by such authority in the Convention state in question as appears to him to be appropriate.

*Consolidated text*

(4) In this section, "**evidence**" includes documents and other articles.

(5) Schedule 3 has effect with respect to the proceedings before the Court pursuant to this section.

*Additional co-operation powers*

**Search, etc. for material relevant to overseas investigation.**

**48.** (1) If, on an application made by an officer of police, the Bailiff is satisfied –

- (a) that criminal proceedings have been instituted against a person in the requesting Convention state or that a person has been arrested in the course of a criminal investigation carried on there,
- (b) that the conduct constituting the offence which is the subject of the proceedings or the investigation would constitute a drug trafficking offence if it had occurred in any part of the Bailiwick, and
- (c) that there are reasonable grounds for suspecting that there is on premises in the Bailiwick occupied or controlled by that person evidence relating to the offence other than items subject to legal professional privilege,

he may issue a warrant authorising an officer of police to enter and search those premises and to seize any such evidence found there.

*Consolidated text*

(2) The power to search conferred by subsection (1) is only a power to search to the extent that is reasonably required for the purpose of discovering such evidence as is there mentioned.

(3) No application for a warrant shall be made by virtue of subsection (1) except in pursuance of a direction given by Her Majesty's Procureur in response to a request received –

- (a) from a court or tribunal exercising criminal jurisdiction in the Convention state in question or a prosecuting authority in such a state, or
- (b) from any other authority in that Convention state which appears to him to have the function of making requests for the purposes of this section,

and any evidence seized by an officer of police by virtue of this section shall be furnished by him to Her Majesty's Procureur for transmission to that court, tribunal or authority.

(4) If in order to comply with the request it is necessary for any such evidence to be accompanied by any certificate, affidavit or other verifying document the officer of police shall also furnish for transmission such document of that nature as may be specified by Her Majesty's Procureur.

(5) Where the evidence consists of a document, the original or a copy shall be transmitted and, where it consists of any other article, the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

**Enforcing external forfeiture orders.**

**49.** (1) The States may by Ordinance provide for the enforcement in the Bailiwick of any order which –

- (a) is made by a court in the United Kingdom, or in a Convention state which is for the time being designated by an Order in Council made by Her Majesty under section 9 of the Criminal Justice (International Co-operation) Act 1990<sup>n</sup> for the purposes of that section, and
- (b) is for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which an offence involving drug trafficking has been committed or which was used or intended for use in connection with the commission of such an offence.

(2) Without prejudice to the generality of subsection (1), an Ordinance under this section may provide for the registration by the Ordinary Court of any order as a condition of its enforcement and prescribe requirements to be satisfied before an order can be registered.

(3) An Ordinance under this section may make different provision for different cases and may include such supplementary and incidental provisions as appear to the States to be necessary and expedient.

*Supplementary*

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<sup>n</sup> An Act of Parliament (1990 c.5).

**Amendments to 1974 Law.**

**50.** ...

**Interpretation of Part II.**

**51.** (1) In this Part, unless the context otherwise requires –

"**British ship**" means a ship registered in the United Kingdom, Jersey, the Isle of Man or a colony,

"**Convention state**" means a state which is a party to the Vienna Convention and includes any country or territory to which the Vienna Convention applies,

"**Guernsey ship**" has the meaning given in section 40,

"**items subject to legal professional privilege**" has the meaning given in section 65(1),

"**scheduled substance**" has the meaning given in section 38(4),

"**ship**" includes any vessel used in navigation,

"**the territorial waters of the Bailiwick**" includes the territorial waters adjacent to any of the Islands of the Bailiwick,

"**the Vienna Convention**" means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20<sup>th</sup> December, 1988.

(2) If in any proceedings under this Part any question arises whether any country or territory is a state or is a party to the Vienna Convention, a certificate issued by or under the authority of the Secretary of State shall be conclusive evidence on that question.

### PART III

#### IMPORTING OR EXPORTING DRUG TRAFFICKING MONEY

##### **Seizure and detention.**

52. ...

##### **Forfeiture.**

53. ...

##### **Appeal against forfeiture order made by the Ordinary Court.**

54. ...

##### **Rules of Court.**

55. ...

##### **Interpretation of Part III.**

56. ...

### PART IV

#### OFFENCES IN CONNECTION WITH PROCEEDS OF DRUG TRAFFICKING

##### **Concealing or transferring proceeds of drug trafficking.**

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

*Consolidated text*

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

for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he –

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

for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.

(3) In subsections (1)(a) and (2)(a) 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 with respect to it.

**Assisting another person to retain the benefit of drug trafficking.**

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

*Consolidated text*

- (a) the retention or control by or on behalf of another person (called in this section "A") of A's proceeds of drug trafficking is facilitated (whether by concealment, removal from the Bailiwick, transfer to nominees or otherwise), or
- (b) A's proceeds of drug trafficking –
  - (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 carries on or has carried on drug trafficking or has benefited from drug trafficking, he is guilty of an offence.

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

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

- (a) the disclosure –

*Consolidated text*

- (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, and
- (b) 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 –
- (i) the disclosure is made before he does the act concerned and the act is done with the consent of the officer of police [(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.

(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 drug trafficking,

*Consolidated text*

- (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 an officer of police 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 any such disclosure in the manner mentioned in subsection (3)(b)(i) or (ii).

(5) In the case of a person who was in employment at the time in question, 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 an officer of police.

**Acquisition, possession or use of proceeds of drug trafficking.**

**59.** (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he acquires or uses that property or has possession of it.

*Consolidated text*

(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

(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 which are of assistance to him in drug trafficking shall not be treated as consideration for the purposes of subsection (2).

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

(a) 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

*Consolidated text*

- (ii) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure, and
- (b) 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 –
  - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the officer of police [(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.

(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 an officer of police such a suspicion, belief or matter as is mentioned in subsection (5), but

- (b) there is reasonable excuse for his failure to make any such disclosure in the manner mentioned in subsection (5)(b)(i) or (ii).

(8) In the case of a person who was in employment at the time in question, 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 an officer of police.

(9) No officer of police 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 drug trafficking or the proceeds of drug trafficking.

**Failure to disclose knowledge or suspicion of money laundering.**

- 60. (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...
- (6) ...

*Consolidated text*

(7) In this section, "**drug money laundering**" means doing any act –

(a) which constitutes an offence under section 57, 58 or 59, or

(b) in the case of an act done otherwise than in the Bailiwick, which would constitute such an offence if done in the Bailiwick.

(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) ...

(10) ...

**Tipping-off.**

**61.** (1) A person is guilty of an offence if –

(a) he knows or suspects that an officer of police is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into drug money laundering, and

(b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

(2) A person is guilty of an offence if –

*Consolidated text*

- (a) he knows or suspects that a disclosure has been or will be made to an officer of police under section [58 or 59] ("**the disclosure**"), and
  - (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person is guilty of an offence if –
- (a) he knows or suspects that a disclosure of a kind mentioned in section [58(5) or 59(8)] ("**the disclosure**") has been made, and
  - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (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 –

*Consolidated text*

- (i) in contemplation of, or in connection with, legal proceedings, and
- (ii) for the purposes 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) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) No officer of police 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 drug trafficking or the proceeds of drug trafficking.

(8) In this section, "**drug money laundering**" has the same meaning as in section 60.

**Penalties.**

**62.** (1) A person guilty of an offence under section 57, 58 or 59 shall be liable –

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

*Consolidated text*

- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or to a fine, or to both.
- (2) A person guilty of an offence under section [...] 61 shall be 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, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

**[Restrictions on disclosure under this Part.]**

**62A.** (1) Subject to sections 62B and 62C, information which is disclosed to an officer of police –

- (a) under section 58,
- (b) under section 59,

shall not be disclosed by that officer of police or by any person who obtains the information directly or indirectly from him.

(2) A person who contravenes subsection (1) is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 6 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 is a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.]

**[Disclosure for purposes within the Bailiwick.**

**62B.** (1) Section 62A 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 62A does not prohibit the disclosure of information, for other purposes in the Bailiwick, to –

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

**[Disclosure for purposes outside the Bailiwick.**

**62C.** (1) Section 62A does not prohibit the disclosure of information if the information is disclosed –

- (a) for the purposes of the investigation of crime outside the Bailiwick or for the purposes of criminal proceedings outside the Bailiwick, or

*Consolidated text*

- (b) 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 Policy Council.

(2) In this section "investigation", in relation to a crime, includes the prevention of crime and also includes the detection of crime.]

PART V  
MISCELLANEOUS AND SUPPLEMENTAL

*Investigations into drug trafficking*

**Order to make material available.**

63. [(1) An officer of police may, having first obtained the consent of Her Majesty's Procureur, for the purpose of an investigation into –

- (a) whether any person has carried on or has benefited from drug trafficking,
- (b) the extent or whereabouts of the proceeds of drug trafficking, or
- (c) drug money laundering,

apply on oath to the Bailiff for an order under subsection (2) in relation to particular material or material of a particular description.]

*Consolidated text*

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

within such period as the order may specify; provided always that this subsection has effect subject to section 67(11).

(3) The period to be specified in an order under subsection (2) shall be seven 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 carried on or has benefited from drug trafficking,
- (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 purpose of which the application is made, and

*Consolidated text*

- (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 the 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 an officer of police [who has first obtained the consent of Her Majesty's Procureur], order any person who appears to him to be entitled to grant entry to the premises to allow an officer of police [who has first obtained the consent of Her Majesty's Procureur] 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

*Consolidated text*

(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, the States of Alderney or the Chief Pleas of Sark.

**Authority for search.**

**64.** [(1) An officer of police may, having first obtained the consent of Her Majesty's Procureur, for the purpose of an investigation into –

- (a) whether any person has carried on or has benefited from drug trafficking,
- (b) the extent or whereabouts of the proceeds of drug trafficking, or
- (c) drug money laundering,

apply on oath 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 an officer of police to enter and search the premises, by force if necessary, if the Bailiff is satisfied –

- (a) that an order under section 63 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 –

*Consolidated text*

- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking,
  - (b) that the conditions in section 63(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 purpose of which the application is made might be seriously prejudiced unless an officer of police could 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 carried on or has benefited from drug trafficking,

*Consolidated text*

- (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose 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 purpose of which the application is made might be seriously prejudiced unless an officer of police arriving at the premises could secure immediate entry to them.

(5) Where an officer of police 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 and excluded material, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

**Provisions supplementary to sections 63 and 64.**

**65.** (1) In sections 63 and 64 –

**"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 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,

*Consolidated text*

- (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.

*Consolidated text*

(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,

*Consolidated text*

- (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.

**Offence of prejudicing investigation.**

**66.** (1) Where, in relation to [an investigation described in section 63(1) or 64(1)] –

- (a) an order under section 63 has been made or has been applied for and has not been refused, or

*Consolidated text*

- (b) a warrant under section 64 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.

*Consolidated text*

(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 or to a fine not exceeding level 5 on the uniform scale, or to both,

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

**Disclosure of information held by States departments.**

67. (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(3) and the Court has made a restraint order or charging order which in either case has not been discharged,

*Consolidated text*

but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), subsection 25(4) shall apply 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

*Consolidated text*

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) an officer of police.

*Consolidated text*

(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 drug trafficking.

(10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon 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 63(2) 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 committee, board, authority or other department of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark.

*[Customer information orders*

**Customer information orders.**

**67A.** (1) The Bailiff may, on an application made by Her Majesty's Procureur or by an officer of police, 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 carried on or has benefited from drug trafficking,
- (b) the extent or whereabouts of the proceeds of drug trafficking, or
- (c) drug 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,

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(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 by an officer of police, 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 an officer of police 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.]

**[Meaning of customer information.]**

**67B.** (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,

*Consolidated text*

- (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 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.

*Consolidated text*

- (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,
  - (c) a description of any business which the person carries on,
  - (d) the country or territory 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 or territory 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,

*Consolidated text*

- (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) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>qa</sup>.

(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.

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<sup>qa</sup> Order in Council No. VIII of 1999; amended by Order in Council No. II of 2005 and by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007; also amended by Ordinance XXVIII of 1999; Ordinance XII of 2002; Ordinance XXXIII of 2003; G.S.I. No. 27 of 2002; and certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999.

(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.]

**[Requirements for making of customer information order.]**

**67C.** (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 carried on or has benefited from drug trafficking or the extent or whereabouts of the proceeds of drug trafficking, there must be reasonable grounds for suspecting that the person specified in the application for the order has carried on or has benefited from drug trafficking.

(3) In the case of an investigation into drug money laundering, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed an offence under section 57, 58 or 59.

(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.]

**[Offences in relation to customer information orders.]**

**67D.** (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.]

**[Statements.]**

*Consolidated text*

**67E.** (1) A statement made by a financial services business in response to a customer information order may not, subject to subsection (2), be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply –

- (a) in the case of proceedings under Part I,
- (b) on a prosecution for an offence under section 67D(1) or (3), or
- (c) on a prosecution for some other offence where, in giving evidence, the financial services business makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial services business unless –

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the financial services business in the proceedings arising out of the prosecution.]

**[Disclosure of information.]**

**67F.** 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.]

**[Supplementary.]**

**67G.** (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) An officer of police may not make an application for a customer information order unless he is authorised to do so by Her Majesty's Procureur.]

*[Account monitoring orders*

**Account monitoring orders.**

**67H.** (1) The Bailiff may, on an application made by Her Majesty's Procureur or by an officer of police, 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 carried on or has benefited from drug trafficking,
- (b) the extent or whereabouts of the proceeds of drug trafficking, or
- (c) drug 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.

*Consolidated text*

(4) "**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 –

- (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 an officer of police 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.]

**[Requirements for making of account monitoring order.]**

**67I.** (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 carried on or has benefited from drug trafficking or the extent or whereabouts of the proceeds of drug trafficking, there must be reasonable grounds for suspecting that the person specified in the application for the order has carried on or has benefited from drug trafficking.

(3) In the case of an investigation into drug money laundering, there must be reasonable grounds for suspecting that the person specified in the application for the order has committed an offence under section 57, 58 or 59.

(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.]

**[Offences in relation to account monitoring orders.**

**67J.** (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.]

**[Statements.**

*Consolidated text*

**67K.** (1) A statement made by a financial services business in response to an account monitoring order may not, subject to subsection (2), be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply –

- (a) in the case of proceedings under Part I,
- (b) on a prosecution for an offence under section 67J(1) or (3), or
- (c) on a prosecution for some other offence where, in giving evidence, the financial services business makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(c) against a financial services business unless –

- (a) evidence relating to it is adduced, or
- (b) a question relating to it is asked,

by or on behalf of the financial services business in the proceedings arising out of the prosecution.]

**[Disclosure of information.]**

**67L.** 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.]

**[Supplementary.]**

**67M.** (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) An officer of police may not make an application for an account monitoring order unless he is authorised to do so by Her Majesty's Procureur.]

*[Code of practice*

**Code of practice for Part V.**

**67N.** (1) The Home Department may issue a code of practice in connection with the exercise by officers of police 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 an officer of police 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.]

*[Corporate offences*

**Offences by bodies corporate and partnerships, etc.**

**67O.** (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

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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.

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(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.]

**References to financial services businesses and relevant businesses.**

**67P.** References in this Law to a financial services business (however expressed) include references to a person carrying on such a business.]

*Interpretation of Law*

**Meaning of "property" and related expressions.**

**68.** (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

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- (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 to 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.

**General interpretation.**

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

"**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<sup>r</sup>,

"**Alderney Land Register**" means the register established under Part III of the Alderney Land and Property, &c., Law, 1949<sup>s</sup>,

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<sup>r</sup> Order in Council No. XXXIV of 1994.

<sup>s</sup> Ordres en Conseil Vol. XIV, p. 67; Vol. XVI, p. 202; Vol. XXVIII, p. 576; and No. VII of 1994.

**"the Bailiff"** means the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff or the Juge Délégué,

**"the 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<sup>t</sup>, or
- (b) an Alderney company,

**"the Board"** means the States of Guernsey [Home Department],

**"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<sup>u</sup>,

**"the Committee"** means the States of Guernsey [Home Department],

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<sup>t</sup> Order in Council No. XXXIII of 1994; and No. XIV of 1996.

<sup>u</sup> 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.

**"the Court"** and **"the Full Court"** both mean the Royal Court of Guernsey, sitting as a Full Court,

**"Court of Appeal"** means the court established by the Court of Appeal (Guernsey) Law, 1961<sup>v</sup>,

**"defendant"** means a person against whom proceedings have been instituted (within the meaning given in section 37(2)) for a drug trafficking offence (whether or not he has been convicted),

[**"drug money laundering"** has the meaning given by section 60(7),]

[**"financial services business"** means a business of a class or description for the time being specified in Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>va</sup>,]

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"the 1972 Law"** means the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended<sup>w</sup>,

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<sup>v</sup> Ordres en Conseil Vol. XVIII, p. 315.

<sup>va</sup> Order in Council No. VIII of 1999; amended by Order in Council No. II of 2005 and by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007; also amended by Ordinance XXVIII of 1999; Ordinance XII of 2002; Ordinance XXXIII of 2003; G.S.I. No. 27 of 2002; and certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999.

<sup>w</sup> Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 278; No. XIII of 1991.

**"the 1974 Law"** means the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended<sup>x</sup>,

**"the 1988 Law"** means the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988, as amended<sup>y</sup>,

**"modifications"** includes additions, alterations and omissions,

**"officer of police"** 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<sup>z</sup>,

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<sup>x</sup> Ordres en Conseil Vol. XXIV, p. 273; Vol. XXVIII, p. 307; Vol. XXXI, p. 47; No. XIII of 1991; No. V of 1992; and No. XVI of 1995.

<sup>y</sup> Ordres en Conseil Vol. XXXI, p. 109; Vol. XXXII, p. 236; No. V of 1992; and No. III of 1993.

<sup>z</sup> Ordres en Conseil Vol. XXX, p. 37.

- (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 1972 Law,

**"the Ordinary Court"** means the Royal Court sitting as an Ordinary Court,

**["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<sup>za</sup>].

(2) The provisions of the Interpretation (Guernsey) Law, 1948<sup>aa</sup> shall apply to the interpretation of this Law throughout the Bailiwick.

(3) In this Law, references to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.

(4) Subject to section 73(2) and (6) –

- (a) any reference in this Law to an offence includes a reference to an offence committed before the coming into force of this Law, and

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<sup>za</sup> Ordres en Conseil Vol. XXXI, p. 279; the scale of fines was amended by Ordinance No. XXIX of 2006.

<sup>aa</sup> Ordres en Conseil Vol. XIII, p. 355.

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- (b) any reference in this Law to "**drug trafficking**" includes a reference to drug trafficking carried out before the commencement of this Law.
- (5) Unless the context otherwise requires –
- (a) a reference in this Law to a numbered or lettered Part, section, subsection, paragraph or Schedule is a reference to the Part, section, subsection or paragraph of, or to the Schedule to, this Law which is so numbered or lettered,
  - (b) a reference in a provision of this Law to a numbered or lettered subsection or paragraph is a reference to the subsection or paragraph of that provision which is so numbered or lettered,
  - (c) a reference in this Law to any enactment includes a reference to that enactment as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied by or under any enactment including this Law.

**Index of defined expressions.**

**70.** In this Law, 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 67H(4)),]

**"Alderney company"** (section 69(1)),

**"Alderney land register"** (section 69(1)),

**"amount that might be realised"** (section 6(1)),

**"amount to be recovered"** (section 5(1)),

**"the Bailiff"** (section 69(1)),

**"the Bailiwick"** (section 69(1)),

**"Bailiwick company"** (section 69(1)),

**"benefited from drug trafficking"** (section 2(3)),

**"the Board"** (section 69(1)),

**"British ship"** (section 51(1)),

**"charging order"** (section 69(1)),

**"collective investment scheme"** (section 69(1)),

**"the Committee"** (section 69(1)),

**"concluded"**, in relation to an application under section 13, 14 or 19  
(section 37(4)),

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**"concluded"**, in relation to an application under section 15 or 16 (section 37(5)),

**"concluded"**, in relation to proceedings for a drug trafficking offence (section 37(3)),

**"confiscation order"** (section 2(8)),

**"Convention state"** (section 51(1)),

**"the Court"** (section 69(1)),

**"Court of Appeal"** (section 69(1)),

[**"customer information"** (section 67B(1)),]

**"the date of conviction"** (section 3(11)),

**"defendant"** (section 69(1)),

**"designated country"** (section 35(1)(a)),

[**"drug money laundering"** (section 60(7)),]

**"drug trafficking"** (section 1(1) and (2)),

**"drug trafficking offence"** (section 1(3)),

**"external confiscation order"** (section 35(1)(a)(i)),

**"financial services business"** (sections 67P and 69(1)),]

**"the Full Court"** (section 69(1)),

**"gift caught by this Law"** (section 8(1)),

**"Guernsey ship"** (section 40),

**"held"**, in relation to property (section 68(4)(a) and (5)(a)),

**"Her Majesty's Procureur"** (section 69(1)),

**"instituted"**, in relation to proceedings for an offence (section 37(2)),

**"interest"**, in relation to property (section 68(3)),

**"items subject to legal professional privilege"** (section 65(1)),

**"the 1972 Law"** (section 69(1)),

**"the 1974 Law"** (section 69(1)),

**"the 1988 Law"** (section 69(1)),

**"making a gift"** (section 8(2)),

**"modifications"** (section 69(1)),

**"officer of police"** (section 69(1)),

**"the Ordinary Court"** (section 69(1)),

**"personalty charging order"** (section 28(1)),

**"premises"** (section 65(1)),

**"proceeds of drug trafficking"** (section 4(1)(a)),

**"property"** (section 68(1)),

**"realisable property"** (section 6(2)),

**"realty charging order"** (section 27(2)),

**"restraint order"** (section 26(1)),

**["safe deposit box"** (section 67B(5)),]

**"satisfied"**, in relation to a confiscation order (section 37(6) and (7)),

**"scheduled substance"** (section 38(4)),

**"ship"** (section 51(1)),

**"subject to appeal"**, in relation to an order (section 37(8)),

**"the territorial waters of the Bailiwick"** (section 51(1)),

**"transferred"**, in relation to property (section 68(5)(b)),

**"uniform scale"** (section 69(1)),]

**"value of a gift, payment or reward"** (section 7(2)),

**"value of proceeds of drug trafficking"** (section 4(1)(b)),

**"value of property"** (section 7(1)),

**"the Vienna Convention"** (section 51(1)).

*Constitution of Court*

**Constitution of Court for purposes of Part I of this Law.**

**71.** (1) Rules of Court may provide that, for the purposes of performing such functions of the Royal Court, whether sitting as a Full Court or as an Ordinary Court, under the provisions of Part I of this Law as may be specified in the rules –

- (a) the Court shall be properly constituted if it 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.

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(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.

*Ordinances, regulations and rules*

**[Power to amend Law by Ordinance.**

**71A.** (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).]

**General provisions as to subordinate legislation.**

**72.** (1) Any Ordinance of the States, regulations of the Board or, as the case may be, the Committee 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

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to the States or, as the case may be, the Board, the Committee 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 Board, the Committee 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.

*Supplemental*

**Transitional provisions and savings.**

**73.** (1) The transitional provisions and savings set out in Schedule 4 shall have effect.

(2) Part I shall not apply –

- (a) in relation to any proceedings for, or in respect of, an offence if the person accused (or, as the case may be, convicted) of that offence committed the offence before the date on which this Law comes into force, or
- (b) in relation to any proceedings not within paragraph (a) instituted before that date,

and references in this subsection to proceedings include a reference to any order made by a court in the proceedings.

(3) Accordingly (and without prejudice to section 19(2) of the Interpretation (Guernsey) Law, 1948<sup>ab</sup>), the relevant enactments and any instrument made under any of those enactments shall continue to apply in relation to any proceedings within subsection (2)(a) or (b) (and, in particular, in relation to any

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<sup>ab</sup> Ordres en Conseil Vol. XIII, p. 355.

confiscation order, within the meaning of the 1988 Law, made in any such proceedings) as if this Law had not been passed.

- (4) In subsection (3), "**the relevant enactments**" are –
- (a) the enactments reproduced in Part I,
  - (b) any other enactment reproduced by this Law, so far as applicable in relation to any of the enactments reproduced in Part I, and
  - (c) any enactment amended by this Law,

but do not include any enactment which, immediately before the date on which this Law comes into force, had not come into force.

(5) Subsection (2) is without prejudice to section 4(7), 7(4), 26(3) or 29(7).

**Repeals.**

**74.** The enactments mentioned in Schedule 5 are repealed to the extent specified in the second column of that Schedule.

**Rules of Court.**

**75.** The Royal Court may, from time to time, make rules dealing generally with all matters of procedure and incidental matters arising under this Law and for carrying this Law into effect.

**Citation and commencement.**

**76.** (1) This Law may be cited as the Drug Trafficking (Bailiwick of Guernsey) Law, 2000.

(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.

SCHEDULE 1

Sections 38 and 39

SUBSTANCES USEFUL FOR MANUFACTURING CONTROLLED DRUGS

TABLE 1

*N*-Acetylanthranilic acid  
Ephedrine  
Ergometrine  
Ergotamine  
Isosafrole  
Lysergic acid  
3, 4-Methylenedioxyphenyl-2-propanone  
1-Phenyl-2-propanone  
Piperonal  
Pseudoephedrine  
Safrole

The salts of the substances listed in this Table whenever the existence of such salts is possible.

TABLE II

Acetic anhydride  
Acetone  
Anthranilic acid  
Ethyl ether  
Hydrochloric acid  
Methyl ethyl ketone (also referred to as 2-Butanone or M.E.K.)  
Phenylacetic acid  
Piperidine

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Potassium permanganate

Sulphuric acid

Toluene

The salts of the substances listed in this Table except hydrochloric acid and sulphuric acid whenever the existence of such salts is possible.

SCHEDULE 2

Section 42

ENFORCEMENT POWERS IN RESPECT OF SHIPS

*Preliminary*

1. In this Schedule –

"**an enforcement officer**" has the same meaning as "an officer of police" in section 69, and

"**the ship**" means the ship in relation to which the powers conferred by this Schedule are exercised.

*Power to stop, board, divert and detain*

2. (1) An enforcement officer may stop the ship, board it and, if he thinks it necessary for the exercise of his functions, require it to be taken to a port in the Bailiwick and detain it there.

(2) For any of those purposes he may require the master or any member of the crew to take such action as he deems necessary.

(3) If an enforcement officer detains a ship he shall serve on the master a written notice stating that it is to be detained, which shall have effect until the notice is withdrawn by the service on him of a further written notice signed by an enforcement officer.

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*Power to search and obtain information*

3. (1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.

(2) An enforcement officer may require any person on the ship to give information concerning himself or anything on the ship.

(3) Without prejudice to the generality of those powers an enforcement officer may –

- (a) open any containers,
- (b) make tests and take samples of anything on the ship,
- (c) require the production of documents, books or records relating to the ship or anything on it,
- (d) make photographs or copies of anything whose production he has power to require.

*Powers in respect of suspected offence*

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 40 or 41 has been committed on a ship to which that section applies he may –

- (a) arrest without warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence, and

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- (b) seize and detain anything found on the ship which appears to him to be evidence of the offence.

*Assistants*

5. (1) An enforcement officer may take with him, to assist him in exercising his powers –

- (a) any other persons, and
- (b) any equipment or materials.

(2) A person whom an enforcement officer takes with him to assist him may perform any of the officer's functions but only under the officer's supervision.

*Use of reasonable force*

6. An enforcement officer may use reasonable force, if necessary, in the performance of his functions.

*Evidence of authority*

7. An enforcement officer shall, if required, produce evidence of his authority.

*Protection of officers*

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under

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this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

*Offences*

9. (1) A person is guilty of an offence if he –
- (a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule,
  - (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions, or
  - (c) in purporting to give information required by an officer for the performance of those functions –
    - (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
    - (ii) intentionally fails to disclose any material particular.

(2) A person guilty of an offence under this paragraph shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale, or to both.

SCHEDULE 3

Section 45

LOCAL EVIDENCE FOR USE OVERSEAS:  
PROCEEDINGS OF THE COURT

*Securing attendance of witnesses*

1. The Court has the like powers for securing the attendance of witnesses for the purpose of the proceedings as it has for the purpose of other criminal proceedings before the Court.

*Power to administer oaths*

2. The Court may in the proceedings take evidence on oath.

*Privilege of witnesses*

3. (1) A person shall not be compelled to give in the proceedings any evidence which he could not be compelled to give –

(a) in criminal proceedings before the Court, or

(b) subject to sub-paragraph (2), in criminal proceedings in the Convention state from which the request for the evidence has come.

(2) Sub-paragraph (1)(b) shall not apply unless the claim of the person questioned to be exempt from giving the evidence is conceded by the court, tribunal or authority which made the request.

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(3) Where such a claim made by any person is not conceded in accordance with sub-paragraph (2) he may (subject to the other provisions of this paragraph) be required to give the evidence to which the claim relates but the evidence shall not be transmitted to the court, tribunal or authority which requested it if a court in the Convention state in question, on the matter being referred to it, upholds the claim.

(4) Without prejudice to sub-paragraph (1), a person shall not be compelled under this Schedule to give any evidence if his doing so would be prejudicial to the security of the Bailiwick; and a certificate signed by or on behalf of Her Majesty's Procureur to the effect that it would be so prejudicial for that person to do so shall be conclusive evidence of that fact.

(5) Without prejudice to sub-paragraph (1), a person shall not be compelled under this Schedule to give any evidence in his capacity as an officer or servant of the Crown.

(6) In this paragraph, references to giving evidence include references to answering any question and to producing any document or other article and the reference in sub-paragraph (3) to the transmission of evidence given by a person shall be construed accordingly.

*Transmission of evidence*

**4.** (1) The evidence received by the Court shall be furnished to Her Majesty's Procureur for transmission to the court, tribunal or authority that made the request.

(2) If in order to comply with the request it is necessary for the evidence to be accompanied by any certificate, affidavit or other verifying

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document, the Court shall also furnish for transmission such document of that nature as may be specified by Her Majesty's Procureur.

(3) Where the evidence consists of a document the original or a copy shall be transmitted, and where it consists of any other article the article itself or a description, photograph or other representation of it shall be transmitted, as may be necessary in order to comply with the request.

*Supplementary*

5. For the avoidance of doubt, it is hereby declared that the Bankers' Books Evidence (Guernsey) Law, 1954, as amended<sup>ac</sup> applies to the proceedings as it applies to other proceedings before the Court.

6. No order for costs shall be made in the proceedings.

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<sup>ac</sup> Ordres en Conseil Vol. XVI, p. 24; Vol. XXVIII, p. 431.

SCHEDULE 4

Section 73

TRANSITIONAL PROVISIONS, ETC.

*General transitional provisions and savings*

1. Anything done or having effect as if done (including the making of Ordinances and rules of Court) under or for the purposes of any provision repealed or revoked by this Law has effect as if done under or for the purposes of any corresponding provision of this Law.

2. Any reference (express or implied) in this Law or any other enactment, or in any instrument or document, to a provision of this Law is (so far as the context permits) to be read as being or (according to the context) including in relation to times, circumstances and purposes before the commencement of this Law a reference to the corresponding provision repealed or revoked by this Law.

3. Any reference (express or implied) in any enactment, or in any instrument or document, to a provision repealed or revoked by this Law is (so far as the context permits) to be read as being or (according to the context) including in relation to times, circumstances and purposes after the coming into force of this Law a reference to the corresponding provision of this Law.

4. Paragraphs 1 to 3 –

- (a) have effect in place of section 19(1) of the Interpretation (Guernsey) Law, 1978<sup>ad</sup> (but are without prejudice to any other provision of that Law), and

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<sup>ad</sup> Ordres en Conseil Vol. XIII, p. 355.

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(b) are subject to section 73(2) to (5).

*Provision in relation to Part III*

5. Nothing in section 54 applies to an order made before the coming into force of this Law under section 11 of the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992<sup>ae</sup>.

*Further transitional provisions*

6. The States may, in connection with the coming into force of any provision of this Law, by Ordinance make such further transitional provision or savings as they consider appropriate.

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<sup>ae</sup> Order in Council No. V of 1992.

## SCHEDULE 5

Section 74

## REPEALS

(1) Enactment	(2) Extent of repeal
The Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 <sup>af</sup>	The whole Law
The Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990 <sup>ag</sup>	Section 22(1) and Schedule 8
The Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992 <sup>ah</sup>	The whole Law
The Security Interests (Guernsey) Law, 1993 <sup>ai</sup>	The final entry in Schedule 2 relating to section 10 of the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988

<sup>af</sup> Ordres en Conseil Vol. XXXI, p. 109.

<sup>ag</sup> Ordres en Conseil Vol. XXXII, p. 236.

<sup>ah</sup> Order in Council No. V of 1992.

<sup>ai</sup> Order in Council No. III of 1993.