

PROCEEDS OF CRIME (JERSEY) LAW 1999

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PROCEEDS OF CRIME (JERSEY) LAW 1999

Arrangement

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PROCEEDS OF CRIME (JERSEY) LAW 1999[1]

A LAW to provide for the confiscation and forfeiture of the proceeds of crime, to establish new offences of money laundering and new procedures to forestall, prevent and detect money laundering, and to enable the enforcement in Jersey of overseas confiscation orders, and for connected purposes[2]

Commencement [see endnotes]

PART 1

INTRODUCTORY

1 Interpretation

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

"Commission" and "Financial Services Commission" mean the Jersey Financial Services Commission established by Article 2 of the Financial Services Commission (Jersey) Law 1998;[3]

"competent authority" means a competent authority for the purposes of Article 3(3) of the Investigation of Fraud (Jersey) Law 1991;[4]

"confiscation order" means an order made under Article 3, and also means any order under that Article that is made by virtue of Article 9, 12 or 13;

"Court" means the Royal Court;

"criminal conduct" means conduct, whether occurring before or after Article 3 comes into force, that –

(a) constitutes an offence specified in Schedule 1; or

(b) if it occurs or has occurred outside Jersey, would have constituted such an offence if occurring in Jersey;

"criminal investigation" means an investigation which police officers or other persons have a duty to conduct for the purpose of ascertaining whether a person should be charged with an offence specified in Schedule 1 or, in a jurisdiction outside Jersey, with an equivalent offence;

"Criminal Offences Confiscations Fund" and "Fund" mean the Criminal Offences Confiscations Fund established under Article 24;

"defendant" means a person against whom proceedings have been instituted for an offence specified in Schedule 1 (whether or not he or she has been convicted);

"designated customs officer" means an officer of the Impôts who is designated under Article 34E(2) or, if no one is for the time being designated, the Agent of the Impôts;

"designated police officer" means a police officer who is designated under Article 34E(1) or, if no one is for the time being designated, the Chief Officer of the States of Jersey Police Force;

"drug trafficking" has the same meaning as is given to that expression by Article 1(1) of the Misuse of Drugs (Jersey) Law 1978[5];

"exported", in relation to any money, includes its being brought to any place in Jersey for the purpose of being exported;

"external confiscation order" means an order made by a court in a country or territory outside Jersey –

(a) for the purpose of recovering property obtained as a result of or in connection with conduct corresponding to an offence specified in Schedule 1;

(b) for the purpose of recovering the value of the property so obtained; or

(c) for the purpose of depriving a person of a pecuniary advantage so obtained;

"financial services business" means a business specified, or of a description specified, in Schedule 2;

"gift caught by Part 2" and "gift caught by this Part" have the meaning given in Article 2(9);

"interest", in relation to property, includes right;

"investigation", in relation to crime, includes the prevention of crime and also includes the detection of crime;

"making a gift" has the meaning given in Article 2(10);

"modifications" includes additions, alterations and omissions;

"money" means cash (that is to say, coins or notes in any currency) or any negotiable instrument;

"money laundering" means –

(a) conduct which is an offence under any provision of Articles 30 and 31 of this Law or of Articles 15 and 16 of the Terrorism (Jersey) Law 2002[6]; or

(b) conduct outside Jersey which, if occurring in Jersey, would be an offence specified in sub-paragraph (a);

"police officer" means a member of the Honorary Police, a member of the States of Jersey Police Force, the Agent of the Impôts or any other officer of the Impôts;

"proceeds of criminal conduct", in relation to any person who has benefited from criminal conduct, means that benefit;

"property" means all property, whether movable or immovable, or vested or contingent, and whether in Jersey or elsewhere, including –

(a) any legal document or instrument evidencing title to or interest in any such property;

(b) any interest in or power in respect of any such property;

(c) in relation to movable property, any right, including a right to possession,

and for the avoidance of doubt, a reference in this Law to property being obtained by a person includes a reference to any interest in that property being obtained;

"realisable property" has the meaning given in Article 2(1) and (2);

"*saisie judiciaire*" means an order to which Article 16(1) refers;

"value of a gift" has the meaning given in Article 2(7) and (8);

"value of property" has the meaning given in Article 2(4), (5) and (6);

"virtual currency" has the meaning given in Schedule 2, Part B, paragraph 4(4).[7]

(2) For the purposes of this Law –

(a) references to property obtained, or to a pecuniary advantage derived, in connection with the commission of an offence or with criminal conduct include a reference to property obtained or to a pecuniary advantage derived both in that connection and in some other connection; and

(b) where a person derives a pecuniary advantage as a result of or in connection with the commission of an offence or with criminal conduct, the person is to be treated as if the person had obtained as a result of or in connection with the commission of that offence, or that conduct, a sum of money equal to the value of the pecuniary advantage.

(2A) For the purposes of this Law –

(a) a person benefits from any criminal conduct if that person obtains property as a result of or in connection with the conduct; and

(b) in particular, but without derogation from sub-paragraph (a), a person benefits from criminal conduct if the person receives any payment or other reward in connection with such conduct, whether carried on by that person or by another.[8]

(2B) For the purposes of Part 2, "relevant criminal conduct", in relation to a defendant, means the offences for which the defendant appears to be sentenced, together with any other offences which the Court may take into consideration in sentencing the defendant.[9]

(3) For the purposes of Part 2, proceedings for an offence are instituted in Jersey –

(a) when the Bailiff issues a warrant in respect of the offence for the arrest of a person who is out of Jersey;

(b) when a person is arrested and charged with the offence;

(c) when a summons in respect of the offence is served on a person at the instance of the Attorney General; or

(d) when a summons in respect of the offence is served on a person in accordance with Article 9 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949,[10]

and where the application of this paragraph 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.

(4) For the purposes of Part 2, proceedings in Jersey for an offence are concluded –

(a) when the defendant is acquitted of that offence and of all other counts (if any) on which the defendant is also tried at the same time;

(b) if the defendant is convicted on one or more counts but the Court decides not to make a confiscation order against the defendant, when it makes that decision; or

(c) if a confiscation order is made against the defendant in those proceedings, when the order is satisfied.

(5) An application under Article 9, 12 or 13 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 the defendant as a result of that application, when the order is satisfied.

(6) An application under Article 14 or 19 is concluded –

(a) if the Court decides not to vary the confiscation order in question, when it makes that decision; or

(b) if it varies the confiscation order as a result of the application, when the order is satisfied.

(7) For the purposes of Part 2, a confiscation order is satisfied when no amount is due under it.

(8) For the purposes of Part 2, 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.

(9) The States may amend paragraph (1) by Regulations.[11]

2 Meanings of expressions relating to realisable property

(1) In Part 2, "realisable property" means –

(a) any property held by the defendant;

(b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by Part 2; and

(c) any property to which the defendant is beneficially entitled.

(2) However, property is not realisable property if an order under Article 29 of the Misuse of Drugs (Jersey) Law 1978[12], Article 27 of the Terrorism (Jersey) Law 2002[13] or Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008 is in force in respect of the property.[14]

(3) For the purposes of Part 2, the amount that might be realised at the time a confiscation order is made is the total of the values at that time of all the realisable property, including –

(a) the total value of any property to which the defendant is beneficially entitled, less –

(i) any amount due in respect of a fine or other order of the Court or the Court of Appeal or the Magistrate's Court or the Youth Court, imposed or made on conviction for an offence, where the fine was imposed or the order was made before the making of the confiscation order,

(ii) any sum in respect of which the person to whom it is due would, if the defendant had become bankrupt before the making of the confiscation order, be entitled to claim preference ("*préférence*") or privilege ("*privilège*"), as the case may be,

(iii) any sum the payment of which is secured on all or any of the realisable property by a simple conventional hypothec or a judicial hypothec created in accordance with the Loi (1880) sur la Propriété Foncière[15] before the making of the confiscation order, and

(iv) any sum the payment of which is secured on all or any of the realisable property by a security interest created before the making of the confiscation order, being a continuing security interest to which, as referred to in Article 1A of the Security Interests (Jersey) Law 1983[16], that Law applies or a security interest within the meaning of the Security Interests (Jersey) Law 2012[17]; and

(b) the total of the values at that time of all gifts caught by Part 2.[18]

(4) Subject to the following provisions of this Article, for the purposes of Part 2 the value of property (other than cash) in relation to any person holding the property means the market value of the property.

(5) References in Part 2 to the value at any time (referred to in paragraph (6) as the "material time") of any property obtained by a person as a result of or in connection with an offence are references to –

(a) the value of the property to the person when the person obtained it, adjusted to take account of subsequent changes in the value of money; or

(b) where paragraph (6) applies, the value there mentioned,

whichever is greater.

(6) If at the material time the person holds –

(a) the property that the person obtained (not being cash); or

(b) property that, in whole or in part, directly or indirectly represents in the person's hands the property that the person obtained,

the value referred to in paragraph (5)(b) is the value to the person at the material time of the property mentioned in sub-paragraph (a) of this paragraph or (as the case may be) the property mentioned in sub-paragraph (b) of this paragraph so far as it so represents the property that the person obtained.

(7) Subject to paragraph (10), references in Part 2 to the value at any time (referred to in paragraph (8) as the "material time") of a gift caught by Part 2 are references to –

(a) the value of the gift to the recipient when he or she received it, adjusted to take account of subsequent changes in the value of money; or

(b) where paragraph (8) applies, the value there mentioned,

whichever is greater.

(8) Subject to paragraph (10), if at the material time the person holds –

(a) the property that he or she received (not being cash); or

(b) property that, in whole or in part, directly or indirectly represents in his or her hands the property that he or she received,

the value referred to in paragraph (7)(b) is the value to him or her at the material time of the property mentioned in sub-paragraph (a) of this paragraph or (as the case may be) sub-paragraph (b) of this paragraph so far as it so represents the property that he or she received.

(9) A gift (including a gift made before the commencement of this Article) is caught by Part 2 if –

(a) it was made by the defendant at any time after the commission of the offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and

(b) the Court considers it appropriate in all the circumstances to take the gift into account,

and for the purposes of this paragraph an offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence that the Court takes into consideration when determining his or her sentence.

(10) For the purposes of Part 2 –

(a) the circumstances in which the defendant is to be treated as making a gift include those where the defendant transfers property to another person directly or indirectly for a value that is significantly less than the value provided by the defendant; and

(b) in those circumstances, the preceding provisions of this Article 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 sub-paragraph (a) bears to the value provided by the defendant.

(11) The States may amend this Article (except this paragraph) by Regulations.[19]

PART 2

CONFISCATION ORDERS

3 Confiscation orders

(1) Where a defendant appears before the Court to be sentenced in respect of one or more offences specified in Schedule 1, and the defendant has not previously been sentenced or otherwise dealt with in respect of his or her conviction for the offence or (as the case may be) any of the offences concerned –

(a) if the Attorney General asks the Court to proceed under this Article; or

(b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to proceed under this Article,

the Court may act in accordance with this Article.

(2) However, this Article shall not apply in the case of any proceedings against any defendant where the defendant is convicted in those proceedings of an offence that was committed before this Article comes into force.

(3) Where the Court is proceeding under this Article, it may first determine whether the defendant has benefited from any relevant criminal conduct.

(4) If the Court determines that the defendant has so benefited it may, before sentencing or otherwise dealing with the defendant in respect of the offence or (as the case may be) any of the offences concerned –

(a) determine in accordance with Article 4 the amount to be recovered in the defendant's case by virtue of this Article; and

(b) make a confiscation order, to the effect that the defendant pay that amount.

(5) Where the Court makes a confiscation order –

(a) it shall take account of the order before –

(i) imposing any fine on the defendant,

(ii) making any order involving any payment by the defendant, or

(iii) making any forfeiture order under Article 29 of the Misuse of Drugs (Jersey) Law 1978, Article 27 of the Terrorism (Jersey) Law 2002 or Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008[20]; and

(b) subject to sub-paragraph (a), it shall leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant in the proceedings.[21]

(6) No enactment restricting the power of a court dealing with an offender in a particular way from dealing with the offender also in any other way shall

by reason only of the making of an order under this Article restrict the Court from dealing with an offender in any way that the Court considers appropriate in respect of an offence specified in Schedule 1.

(7) Where –

(a) the Court makes both a confiscation order and an order for the payment of compensation under Article 2 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994[22] against the same person in the same proceedings; and

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

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

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

(a) whether a person has benefited from any offence; or

(b) the amount to be recovered in the person's case by virtue of this Article,

shall be that applicable in civil proceedings.

(9) The States may amend Schedule 1 by Regulations, by adding, deleting or substituting any offence.[23]

4 Amount to be recovered under confiscation order[24]

(1) Subject to paragraphs (2) and (3), the amount which a defendant is required by a confiscation order to pay (in this Article, "the penalty") shall be the amount assessed by the Court to be the value of the defendant's benefit from the relevant criminal conduct (in paragraph (2), the "assessed value").

(2) Where the Court is satisfied that the amount which might be realised at the time when the confiscation order is made is less than the assessed value, the penalty shall be the amount which appears to the Court might be so realised (or, if that amount is nil, a nominal amount).

(3) Where the Court is satisfied that a victim of the relevant criminal conduct has instituted or intends to institute civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct, the penalty may be of such lesser amount as the Court thinks fit.

5 Confiscation order relating to a course of relevant criminal conduct

(1) This Article applies for the purposes of Article 3 where a defendant appears before the Court to be sentenced in respect of a qualifying offence –

(a) if the Attorney General asks the Court to apply it for the purposes of that Article; or

(b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to do so.[25]

(2) An offence is a qualifying offence for the purposes of this Part if it is an offence in respect of which all of the following conditions are satisfied, namely –

(a) it is an offence specified in Schedule 1;

(b) it is an offence committed after this Article comes into force; and

(c) the Court is satisfied that it is an offence from which the defendant has benefited.

(3) The relevant period for the purposes of this Article, in relation to a defendant, is the period of 6 years ending when the proceedings in which this Article applies were instituted against the defendant.

(4) When this Article applies for the purposes of Article 3, the Court may if it thinks fit (but subject to paragraph (6)) make the assumptions in paragraph (5) for the purpose –

(a) of determining whether the defendant has benefited from relevant criminal conduct; and

(b) if the defendant has, of assessing the value of the defendant's benefit from such conduct.

(5) Those assumptions are –

(a) that any property appearing to the Court to be held by the defendant at any time since the date of the defendant's conviction, or appearing to the Court to have been transferred to the defendant at any time since the beginning of the relevant period –

(i) was received by the defendant at the earliest time when he or she appears to the Court to have held it, and

(ii) was received by the defendant as a result of or in connection with the commission of offences specified in Schedule 1;

(b) that any of the defendant's expenditure since the beginning of the relevant period was met out of payments received by the defendant as a result of or in connection with the commission of offences specified in Schedule 1; and

(c) for the purposes of valuing any property that the defendant had or is assumed to have had at any time, that the defendant received the property free of any other interests in it.

(6) The Court shall not make an assumption in paragraph (5) in respect of any particular property or expenditure –

(a) if the assumption, so far as it relates to that property or expenditure, is shown to be incorrect;

(b) if the assumption, so far as it relates to that property or expenditure, is shown to be correct in respect of an offence from which the defendant's benefit has been the subject of a previous confiscation order; or

(c) if the Court is satisfied that, for any other reason, there would be a serious risk of injustice if the assumption were made in respect of that property or expenditure.

(7) Where the assumptions in paragraph (5) are made the offences from which, in accordance with those assumptions, the defendant is found to have

benefited shall be treated as if they were comprised, for the purposes of this Part, in the conduct that is to be treated as relevant criminal conduct by the defendant.

(8) In this Article, the "date of the defendant's conviction" means –

(a) in a case not falling within sub-paragraph (b), the date on which the defendant is convicted of the offence in question; and

(b) where the defendant is convicted of that offence and one or more other offences in the proceedings in question, and those convictions are not all on the same date, the date of the latest of those convictions.

6 Postponed determinations

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

(a) determining whether the defendant has benefited from any relevant criminal conduct; or

(b) determining the amount to be recovered in the defendant's case by virtue of Article 3,

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

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

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

(a) by itself; or

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

exceeds 6 months beginning with the date of conviction.

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

(a) postpone the making of either or both of the determinations mentioned in paragraph (1) for such period as it may specify; or

(b) where it has already exercised its powers under this Article to postpone, extend the specified period.

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

(a) on application by the defendant or the Attorney General; 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 paragraph (4) shall not exceed the period ending 3 months after the date on which the appeal is determined or otherwise disposed of.

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

(8) Where the Court has so proceeded, it may determine in accordance with Article 4 the amount to be recovered in the case of the defendant by virtue of Article 3 and make a confiscation order under Article 3, notwithstanding that the defendant has been sentenced or otherwise dealt with already.

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

(a) impose any fine on the defendant; or

(b) make any order mentioned in Article 3(5)(a).

(10) Where the Court has sentenced the defendant under paragraph (7) of this Article during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making any order mentioned in Article 3(5)(a), so long as it does so within 28 days after the specified period.

(11) In this Article the "date of conviction" means –

(a) in a case not falling within sub-paragraph (b), the date on which the defendant was convicted; or

(b) where the defendant was convicted, in the same proceedings but on different dates, of 2 or more offences that are comprised in relevant criminal conduct, the date of the latest of those convictions.

7 Statements relating to criminal offences

(1) Subject to paragraphs (3) and (4), the Attorney General –

(a) may at any time give to the Court a statement of matters that the Attorney General considers relevant for the purpose –

(i) of determining whether the defendant has benefited from any relevant criminal conduct, or

(ii) of assessing the value of the defendant's benefit from that conduct; and

(b) shall give to the Court such a statement, setting out all information available to the Attorney General that is relevant for the purposes of Article 5(5) and (6), if the case is one in which the Attorney General has asked the Court to apply that Article for the purposes of Article 3.

(2) In this Article, such a statement is referred to as an "Attorney General's statement".

(3) Where the Court proceeds under Article 3 without being asked by the Attorney General to do so, it may require the Attorney General to give an Attorney General's statement within such period as it may determine.

(4) Where the Attorney General applies to the Court under any of Articles 9, 12, 13 and 14 the Attorney General shall give to the Court, within such time as it may direct, an Attorney General's statement.

(5) Where the Attorney General has given an Attorney General's statement –

(a) the Attorney General may at any time give the Court a further Attorney General's statement; and

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

(6) Where any Attorney General'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 the defendant accepts each allegation in the statement; and

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

(7) Where the Court has given a direction under this Article, it may at any time vary it by a further direction.

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

(a) determining whether the defendant has benefited from relevant criminal conduct; or

(b) assessing the value of the defendant's benefit from relevant criminal conduct,

treat the defendant's acceptance as conclusive of the matters to which it relates.

(9) If the defendant fails in any respect to comply with a requirement under paragraph (6), the defendant may be treated for the purposes of this Article as accepting every allegation in the Attorney General's statement in question, apart from –

(a) any allegation in respect of which the defendant has complied with the requirement; and

(b) any allegation that the defendant has benefited from an offence or that any property was obtained by the defendant as a result of or in connection with the commission of an offence.

(10) Where –

(a) there is tendered to the Court by the defendant a statement as to any matters relevant for the purpose of determining the amount that might be realised at the time the confiscation order is made; and

(b) the Attorney General accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance by the Attorney General as conclusive of the matters to which it relates.

(11) An allegation may be accepted and particulars of any matter may be given, for the purposes of this Article, in such manner as may be provided for by Rules of Court or as the Court may direct.

(12) No acceptance by the defendant under this Article that the defendant has benefited from an offence or that any property was obtained by the

defendant as a result of or in connection with an offence shall be admissible in evidence in any proceedings for an offence.

8 Provision of information by defendant

(1) This Article applies where –

(a) the Attorney General has asked the Court to proceed under Article 3 or has applied to the Court under Article 12, 13 or 14; or

(b) no such request or application has been made but the Court is nevertheless proceeding, or considering whether to proceed, under Article 3.

(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 paragraph (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 paragraph (3).

(5) If the defendant fails, without reasonable excuse, to comply with any order under this Article, the Court may draw such inference from that failure as it considers appropriate.

(6) Where the Attorney General accepts to any extent any allegation made by the defendant in giving to the Court information required by an order under this Article, the Court may treat that acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this Article, an allegation may be accepted in such manner as may be provided for by Rules of Court or as the Court may direct.

9 Powers of the Court where defendant has died or absconded

(1) Paragraph (2) applies where a person has been convicted of one or more offences specified in Schedule 1.

(2) If the Attorney General asks it to proceed under this paragraph, the Court may exercise its powers under this Part to make a confiscation order against the defendant, if satisfied that the defendant has died or absconded.

(3) Paragraph (4) applies where proceedings for one or more offences specified in Schedule 1 have been instituted against a person but have not been concluded.

(4) If the Attorney General asks it to proceed under this paragraph, the Court may exercise its powers under this Part to make a confiscation order against the defendant, if satisfied that the defendant has absconded.

(5) The power conferred by paragraph (4) may not be exercised at any time before the end of the period of 2 years beginning with the date that is, in the opinion of the Court, the date on which the defendant absconded.

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

(a) Articles 5 and 7(6), (8) and (9) shall not apply;

(b) the Court shall not make a confiscation order against a person who has absconded unless it is satisfied that the Attorney General has taken reasonable steps to contact the person; and

(c) 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.

10 Effect of confiscation order on sentencing of absconder

(1) Where in the case of any defendant the Court has made a confiscation order by virtue of Article 9 it 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,

(ii) making any order involving any payment by the defendant, or

(iii) making any forfeiture order under Article 29 of the Misuse of Drugs (Jersey) Law 1979, Article 26 of the Terrorism (Jersey) Law 2002 or Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008[26]; and

(b) subject to sub-paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.[27]

(2) Where the Court has made a confiscation order by virtue of Article 9, and the defendant subsequently appears before the Court to be sentenced in respect of one or more of the offences concerned, Article 3(1) shall not apply so far as the defendant's appearance is in respect of that offence or those offences.

11 Enforcement of confiscation orders

(1) Where the Court orders the defendant to pay any amount under Article 3 the Court may order the defendant to be imprisoned, for a fixed term to be specified in the order, in default of payment of the amount.

(2) The term of imprisonment to be so specified shall not exceed 10 years.

(3) The effect of an order of imprisonment under paragraph (1) shall be as follows –

(a) in default of payment of the amount to which the order relates, the defendant shall serve the term of imprisonment specified in the order;

(b) if payment is made of any part of the amount due, the term of imprisonment shall be reduced by such number of days as bears, to the total number of days of the term of imprisonment, the same proportion as the amount so paid bears to as much of the amount as was due at the time when the confiscation order was made; and

(c) if the whole of the amount due is paid before the defendant has served the term of imprisonment specified in the order, the defendant shall not be liable to serve any remaining portion of that term.

(4) The term of imprisonment imposed under paragraph (1) in default of payment shall not, in the case of a defendant who is liable to serve a term of imprisonment in respect of the offence or offences, begin to run until after the defendant has served the term of imprisonment for the offence or offences.

(5) The reference in paragraph (4) to the term of imprisonment that the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment, or detention in a young offender institution, that the defendant is liable to serve in respect of the offence or offences, and for the purposes of this paragraph consecutive terms and terms that are wholly or partly concurrent shall be treated as a single term.

(6) This Article applies to confiscation orders made by the Court of Appeal as it applies to confiscation orders made by the Royal Court, and references in this Article to the Court shall be construed accordingly.

(7) Where the defendant serves a term of imprisonment or detention in default of payment of any amount due under a confiscation order, the defendant's serving of that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

12 Reconsideration of case where Court has not considered a confiscation order

(1) This Article applies where the defendant has appeared before the Court to be sentenced in respect of one or more offences specified in Schedule 1, but the Court has not proceeded under Article 3.

(2) If the Attorney General has evidence –

(a) that was not available when the defendant appeared to be sentenced (and accordingly was not considered by the Court); and

(b) that the Attorney General believes would have led the Court to determine that the defendant had benefited from relevant criminal conduct if –

(i) the Attorney General had asked the Court to proceed under Article 3, and

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

the Attorney General may apply to the Court for it to consider the evidence.

(3) The Court may then proceed under Article 3 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 Article 3 by virtue of this Article, the Court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under Article 3 by virtue of this Article, 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 –

(a) any fine imposed on the defendant in respect of any relevant criminal conduct; and

(b) any order made in connection with such conduct under Article 2 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994.[28]

(7) Where the Court is proceeding under Article 3 by virtue of this Article, the requirement in Article 3(4) that the Court shall not have sentenced or otherwise dealt with the defendant already, in the case in question, shall not apply.

(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 the Attorney General shows that it represents the defendant's benefit from any relevant criminal conduct.

(9) On an application made under Article 3 by virtue of this Article –

(a) if the Attorney General asks the Court to apply Article 5; or

(b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to do so,

and the other requirements of Article 5(1) are fulfilled, that Article shall apply notwithstanding that the defendant has been sentenced or otherwise dealt with already, in the case in question, but in that event no assumption may be made under paragraph (4) of that Article in respect of any property unless it was held by or transferred to the defendant before the defendant was sentenced or otherwise dealt with.

(10) No application shall be entertained by the Court under this Article if it is made after the end of the period of 6 years beginning with the date of conviction.

(11) In this Article the "date of conviction" means –

(a) in a case not falling within sub-paragraph (b), the date on which the defendant was convicted; or

(b) where the defendant 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.

13 Reconsideration of determination that defendant has not benefited

(1) This Article applies where the Court has made a determination (the "original determination") under Article 3(3) that the defendant has not benefited from any relevant criminal conduct.

(2) If the Attorney General has evidence –

(a) that was not considered by the Court in making the original determination; and

(b) that the Attorney General believes would have led the Court to determine that the defendant had benefited from that relevant criminal conduct if it had been considered by the Court,

the Attorney General 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 relevant criminal conduct if that evidence had been available to it, the Court –

(a) shall make a fresh determination under Article 3(3); and

(b) shall make a determination under paragraph (4) of that Article of the amount to be recovered by virtue of that Article; and

(c) may make a confiscation order.

(4) Where the Court is proceeding under Article 3 by virtue of this Article, the requirement in Article 3(4) that the Court shall not have sentenced or otherwise dealt with the defendant already, in the case in question, shall not apply.

(5) The Court may take into account any payment or other reward received by the defendant on or after the date of the original determination, but only if the Attorney General shows that it represents the defendant's benefit from any relevant criminal conduct.

(6) On an application made under Article 3 by virtue of this Article in a case to which Article 5 does not otherwise apply –

(a) if the Attorney General asks the Court to apply Article 5; or

(b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to do so,

and the other requirements of Article 5(1) are fulfilled, that Article shall apply notwithstanding that the defendant has been sentenced or otherwise dealt with already, in the case in question, but in that event no assumption may be made under paragraph (4) of that Article in respect of any property unless it was held by or transferred to the defendant before the defendant was sentenced or otherwise dealt with.

(7) Where the Court –

(a) has been asked to proceed under Article 9 in relation to a defendant who has absconded; and

(b) has decided not to make a confiscation order against the defendant,

this Article shall not apply at any time while the defendant remains an absconder.

(8) No application shall be entertained by the Court under this Article if it is made after the end of the period of 6 years beginning –

(a) in a case not falling within sub-paragraph (b), with the date on which the defendant was convicted; or

(b) where the defendant appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, with the date of the latest of those convictions.

14 Revised assessment of benefit already determined

(1) This Article applies where the Court has made a determination under Article 3(4) of the amount to be recovered in a particular case by virtue of that paragraph (the "current determination").

(2) Where the Attorney General is of the opinion that the value of the defendant's benefit from any relevant criminal conduct was greater than the value at which that benefit was assessed by the Court on the current determination, the Attorney General may apply to the Court for the evidence on which the Attorney General has formed his or her opinion to be considered by the Court.

(3) If, having considered the evidence, the Court is satisfied that the real value of the defendant's benefit from relevant criminal conduct is greater than its assessed value (whether because the real value was higher at the time of the current determination than was thought or because the value of the benefit in question has subsequently increased), the Court shall make a fresh determination under Article 3(4) of the amount to be recovered by virtue of that Article.

(4) Where the Court is proceeding under Article 3 by virtue of this Article, the requirement in Article 3(4) that the Court shall not have sentenced or otherwise dealt with the defendant already, in the case in question, shall not apply.

(5) Any determination under Article 3(4) by virtue of this Article shall be by reference to the amount that might be realised at the time when that determination is made.

(6) For the purposes of any determination under Article 3(4) by virtue of this Article, the restriction in Article 5(6) (by reason of Article 5(6)(b)) on the Court's power to make assumptions shall not apply in relation to any of the defendant's benefit from relevant criminal conduct taken into account in respect of the current determination.

(7) In relation to any determination under Article 3(4) by virtue of this Article, Article 2(3), Article 4 and 7(10) shall have effect as if it were a confiscation order.

(8) The Court may take into account any payment or other reward received by the defendant on or after the current determination, but only if the Attorney General shows that it represents the defendant's benefit from relevant criminal conduct.

(9) Where –

(a) the Court is, by virtue of paragraph (3) of this Article, to make a fresh determination; and

(b) the case is one to which Article 5 applies,

no assumption may be made under paragraph (4) of that Article in respect of any property unless it was held by or transferred to the defendant before the time when the defendant was sentenced or otherwise dealt with in the case in question.

(10) If, as a result of the making of the fresh determination required by paragraph (3), the amount to be recovered exceeds the amount of the

current determination, the Court may substitute for the amount to be recovered under the confiscation order that was made by reference to the current determination such greater amount as it thinks just in all the circumstances of the case.

(11) Subject to Article 11, where the Court varies a confiscation order under paragraph (10), it may substitute for any term of imprisonment imposed under Article 11(1) a longer term in respect of the greater amount substituted under paragraph (10) of this Article.

(12) Where a confiscation order has been made in relation to any defendant by virtue of Article 9, this Article shall not apply at any time while the defendant is an absconder.

(13) No application shall be entertained by the Court under this Article if it is made after the end of the period of 6 years beginning –

(a) in a case not falling within sub-paragraph (b), with the date on which the defendant was convicted; or

(b) where the defendant appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, with the date of the latest of those convictions.

15 Cases in which *saisies judiciaires* may be made

(1) The powers conferred on the Court by Article 16 are exercisable where –

(a) the Court has made a confiscation order;

(b) proceedings have been instituted in Jersey against the defendant for an offence specified in Schedule 1 or an application has been made by the Attorney General in respect of the defendant under any of Articles 9, 12, 13, 14 and 19 and –

(i) the proceedings have not, or the application has not, been concluded, and

(ii) the Court is satisfied that there is reasonable cause to believe –

(A) in the case of an application under Article 14 or 19, that the Court will be satisfied as mentioned in Article 14(3) or (as the case may be) Article 19(2), or

(B) in any other case, that the defendant has benefited from the offence; or

(c) the Court is satisfied –

(i) that proceedings are to be instituted in Jersey against a person for an offence specified in Schedule 1, or that an application of a kind mentioned in sub-paragraph (b) of this paragraph is to be made against the defendant, and

(ii) as to the matters mentioned in clause (ii) of that sub-paragraph.

(1A) The powers conferred on the Court by Article 16 are also exercisable where –

(a) a criminal investigation has been started in Jersey in respect of alleged criminal conduct; and

(b) the Court is satisfied that there is reasonable cause to believe that the alleged offender has benefited from the criminal conduct.[29]

(2) For the purposes of Article 16, at any time when those powers are exercisable before proceedings have been instituted –

(a) references in this Part to the defendant shall be construed as references to the person to whom paragraph (1)(c) of this Article refers;

(b) references in this Part to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person to whom paragraph (1)(c) of this Article refers for an offence specified in Schedule 1.

(3) Where the Court has made an order under Article 16 by virtue of paragraph (1)(c) of this Article, in relation to proposed proceedings for an offence specified in Schedule 1, the Court shall discharge the order if the proceedings have not been instituted within such time as the Court considers reasonable.

(4) Where the Court has made an order under Article 16 in relation to a proposed application by virtue of paragraph (1)(c) of this Article, the Court shall discharge the order if the application is not made within such time as the Court considers reasonable.

(5) The Court shall not exercise its powers under Article 16, by virtue of paragraphs (1)(a) and (b) or (1A) of this Article, if it is satisfied that –

(a) there has been undue delay in commencing proceedings or, as the case may be, continuing the proceedings or application in question; or

(b) the Attorney General does not intend to proceed.[30]

16 *Saisies judiciaires*

(1) The Court may, subject to such conditions and exceptions as may be specified in it, make an order (in this Part referred to as a *saisie judiciaire*) on an application made by or on behalf of the Attorney General.

(2) An application for a *saisie judiciaire* may be made *ex parte* to the Bailiff in chambers.

(3) A *saisie judiciaire* shall provide for notice to be given to any person affected by the order.

(4) Subject to paragraph (5), on the making of a *saisie judiciaire* –

(a) all the realisable property held by the defendant in Jersey shall vest in the Viscount;

(b) any specified person may be prohibited from dealing with any realisable property held by that person whether the property is described in the order or not;

(c) any specified person may be prohibited from dealing with any realisable property transferred to the person after the making of the order,

and the Viscount shall have the duty to take possession of and, in accordance with the Court's directions, to manage or otherwise deal with any such realisable property; and any specified person having possession of any realisable property may be required to give possession of it to the Viscount.

(5) Any property vesting in the Viscount pursuant to paragraph (4)(a) shall so vest subject to all hypothecs and security interests with which such property was burdened prior to the vesting.

(6) A *saisie judiciaire* –

(a) may be discharged or varied in relation to any property;

(b) in a case falling within paragraph (1A) of Article 15 –

(i) may be discharged, on the application of the alleged offender and before the commencement of any proceedings against the alleged offender, where the Court is satisfied that there has been undue delay in commencing proceedings in pursuance of the criminal investigation;

(ii) shall be discharged, where the Attorney General informs the Court that proceedings will not be commenced in pursuance of the criminal investigation;

and

(c) shall be discharged on satisfaction of the confiscation order.[31]

(7) An application for the discharge or variation of a *saisie judiciaire* may be made to the Bailiff in chambers by any person affected by it and the Bailiff may rule upon the application or may, at the Bailiff's discretion, refer it to the Court for adjudication.

(8) Where it appears to the Court that any order made by it under this Article may affect immovable property situate in Jersey, it shall order the registration of the order in the Public Registry.

(9) For the purposes of this Article, 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 Jersey.

(10) Where the Court has made a *saisie judiciaire* a police officer may, for the purpose of preventing the removal of any realisable property from Jersey, seize the property.

(11) Property seized under paragraph (10) shall be dealt with in accordance with the Court's directions.

17 Realisation of property

(1) Where –

(a) in proceedings that have been instituted for an offence, a confiscation order is made or an order is varied under Article 14 or 19;

(b) the order is not subject to appeal;

(c) the proceedings relating to the order have not been concluded; and

(d) the Court has made a *saisie judiciaire*,

the Court may empower the Viscount to realise, in such manner as it may direct, any realisable property that has vested in the Viscount or come into the Viscount's possession pursuant to Article 16.

(2) The Court shall not in respect of any property exercise its power under paragraph (1) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

18 Interest on sums unpaid under confiscation orders

(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 under the confiscation order.

(2) When paragraph (1) of this Article applies and interest has accrued, the Court may on the application of the Attorney General increase (subject to Article 11) any term of imprisonment imposed under paragraph (1) of that Article.

(3) The rate of interest under paragraph (1) shall be such rate as the Royal Court shall from time to time by Rules of Court prescribe.

19 Increase in realisable property

(1) This Article applies where, by virtue of Article 4, the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of the person's benefit from relevant criminal conduct.

(2) If, on an application made in accordance with paragraph (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 it has subsequently increased) the Court shall issue a certificate to that effect, giving the Court's reasons.

(3) An application under paragraph (2) may be made by the Attorney General or by the Viscount in relation to the realisable property of the person in question.

(4) Where a certificate has been issued under paragraph (2) the Attorney General 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 assessed value to which paragraph (1) refers) as appears to the Court to be appropriate having regard to the amount now shown to be realisable; and

(b) subject to Article 11, increase any term of imprisonment imposed under paragraph (1) of that Article.

20 Application of proceeds of realisation and other sums

(1) The following sums in the hands of the Viscount, that is to say –

(a) money that has vested in the Viscount or come into the Viscount's possession pursuant to Article 16; and

(b) the proceeds of the realisation of any property under Article 17,

shall, after such payments (if any) as the Court may direct have been made out of those sums and then after payment of the Viscount's fees and expenses, be applied on the defendant's behalf towards the satisfaction of the confiscation order.

(2) The amount applied by the Viscount towards the satisfaction of the confiscation order shall be paid into the Criminal Offences Confiscations Fund.

(3) If, after payment of the Viscount's fees and expenses and of the amount payable under the confiscation order, any sums remain in the hands of the Viscount, the Viscount shall distribute those sums –

(a) among such of those persons who held the property that has been realised under this Part; and

(b) in such proportions,

as the Court may direct after giving them a reasonable opportunity to make representations to the Court.

21 Variation of confiscation order where realisable property is inadequate

(1) If, on an application by the defendant or the Viscount in respect of a confiscation order, the Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Court shall issue a certificate to that effect, giving the Court's reasons.

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

(a) in the case of realisable property held by a person who has become bankrupt, the Court shall take into account the extent to which the person has been deprived of property for the benefit of the person's creditors; and

(b) the Court may disregard any inadequacy in the realisable property that 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 Part from any risk of realisation under this Part.

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

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

(a) 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) subject to Article 11, substitute for any term of imprisonment imposed under paragraph (1) of that Article a shorter term in respect of the lesser amount substituted under sub-paragraph (a) of this paragraph.

(5) Rules of Court may make provision –

(a) for the giving of notice of any application under this Article; and

(b) for any person appearing to the Court to be affected by the exercise of its powers under this Article to be given a reasonable opportunity to make representations to the Court.

22 Bankruptcy of defendant

(1) Where a person who holds realisable property becomes bankrupt –

(a) no property for the time being subject to a *saisie judiciaire* made before the order adjudging the person bankrupt; and

(b) no proceeds of property realised by virtue of Article 16(4) or 17 for the time being in the hands of the Viscount,

shall form part of the person's estate for the relevant bankruptcy proceedings.

(2) Where a person has become bankrupt, the powers conferred on the Court by Articles 16, 17, 18, 19 and 20 or on the Viscount shall not be exercised in relation to –

(a) property which the bankrupt has placed under the control of the Court (a *remis entre les mains de la Justice*);

(b) property which has been declared *en désastre*;

(c) property of which the bankrupt has made a general cession (*a fait cession générale*); or

(d) property which has been adjudged renounced (*adjugé renoncé*).

(3) Paragraph (2) does not affect the enforcement of a *saisie judiciaire* –

(a) made before the person becomes bankrupt; or

(b) on property that was subject to a *saisie judiciaire* when the person became bankrupt.

23 Limitation of liability of Viscount

Where the Viscount –

(a) takes any action in relation to property that is not realisable property, being action that the Viscount would be entitled to take if it were such property; and

(b) believes and has reasonable grounds for believing that the Viscount is entitled to take that action in relation to that property,

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

24 Criminal Offences Confiscations Fund

(1) There shall be established a Fund to be called the Criminal Offences Confiscations Fund which, subject to this Article, shall be managed and controlled by the Minister for Treasury and Resources.[32]

(2) All amounts –

(a) recovered under or in satisfaction of a confiscation order; or

(b) received under an asset sharing agreement,

shall be included in the monies which are paid into the Fund.[33]

(3) Monies paid into the Fund shall not form part of the annual income of the States.

(3A) The Fund shall be a special fund for the purposes of the Public Finances (Jersey) Law 2005[34].[35]

(4) Subject to paragraph (5), monies in the Fund shall be applied by the Minister for Treasury and Resources for the following purposes, that is to say –

(a) in promoting or supporting measures that, in the opinion of the Minister for Treasury and Resources, may assist –

(i) in preventing, suppressing or otherwise dealing with criminal conduct,

(ii) in dealing with the consequences of criminal conduct, or

(iii) without prejudice to the generality of clauses (i) and (ii), in facilitating the enforcement of any enactment dealing with criminal conduct;

(b) discharging Jersey's obligations under asset sharing agreements; and

(c) meeting the expenses incurred by the Minister for Treasury and Resources in administering the Fund.[36]

(4A) Without prejudice to the generality of paragraph (4), and following consultation with the Attorney General, the States may by Regulations provide that such particular monies or particular class of monies in the Fund as shall be specified in the Regulations shall be applied only for such purpose as shall similarly be specified.[37]

(5) Before promoting or supporting any measure under paragraph (4)(a), the Minister for Treasury and Resources shall consult the Attorney General and other persons or bodies (including other Ministers) as the Minister for Treasury and Resources considers appropriate.[38]

(6) Monies paid into the Fund, while not applied for any of the purposes mentioned in paragraph (4), may be –

(a) held in the custody of the Treasurer of the States at the States Treasury; or

(b) placed, in the name of the States, in a current or deposit account with one or more banks selected by the Minister for Treasury and Resources,

and any interest earned on such monies while held in such an account shall be paid by the States into the Fund.[39]

(7) Monies held in any account by virtue of paragraph (6)(b) may be withdrawn on the signature of the Treasurer of the States.

(8) In this Article, "asset sharing agreement" means any agreement or arrangement made by or on behalf of Jersey with a country or territory outside Jersey for the sharing of the proceeds of criminal conduct that, as a result of mutual assistance, have been confiscated or forfeited either in Jersey or elsewhere.[40]

25 Compensation where defendant not convicted

(1) If proceedings are instituted against a person for an offence or offences specified in Schedule 1, and either –

(a) the proceedings do not result in the person's conviction for any such offence; or

(b) where the person is convicted of one or more of those offences –

(i) the conviction or convictions concerned are quashed, or

(ii) the person 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 that 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 it is satisfied –

(a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned; and

(b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of a *saisie judiciaire*.

(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 Article shall be such as the Court thinks just in all the circumstances of the case.

(5) Compensation payable under this Article shall be payable out of the annual income of the States.

26 Cancellation of confiscation order, and compensation, where absconder acquitted

(1) Where –

(a) the Court has made a confiscation order by virtue of Article 9(4) in relation to a defendant who is an absconder; and

(b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts,

the Court shall cancel the confiscation order.

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

(3) The amount of compensation to be paid under this Article shall be such as the Court considers just in all the circumstances of the case.

(4) Provision may be made by Rules of Court for –

(a) giving notice of any application under this Article; and

(b) any person appearing to the Court to be likely to be affected by any exercise of its powers under this Article to be given a reasonable opportunity to make representations to the Court.

(5) Compensation payable under this Article shall be paid out of the annual income of the States.

(6) Where the Court cancels a confiscation order under this Article, it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

27 Cancellation of confiscation order, and compensation, where absconder returns

(1) This Article applies where –

(a) the Court has made a confiscation order by virtue of Article 9(4) in relation to a defendant who is an absconder;

(b) the defendant has ceased to be an absconder; and

(c) Article 26 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 Article 9(4) was exercised; or

(b) the Attorney General does not intend to proceed with the prosecution.

(3) Where the Court cancels a confiscation order under this Article it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

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

(5) Provision may be made by Rules of Court for –

(a) the giving of notice of any application under this Article; and

(b) any person appearing to the Court to be likely to be affected by any exercise of its powers under this Article to be given a reasonable opportunity to make representations to the Court.

(6) Compensation payable under this Article shall be paid out of the annual income of the States.

(7) Where the Court cancels a confiscation order under this Article, it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

28 Variation of confiscation order, and compensation, where absconder returns

(1) This Article applies where –

(a) the Court has made a confiscation order by virtue of Article 9(4) in relation to a defendant who is an absconder; and

(b) the defendant has ceased to be an absconder.

(2) If the defendant alleges that –

(a) the value of the defendant's benefit from any relevant criminal conduct in the period by reference to which the determination in question was made (the "original value"); or

(b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, the defendant may apply to the Court for it to consider the defendant's 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 Article 3(4); and

(b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) For the purposes of any determination under Article 3(4) by virtue of this Article, the restriction in Article 5(6) (by reason of Article 5(6)(b)) on the Court's power to make assumptions shall not apply in relation to any of the defendant's benefit from relevant criminal conduct taken into account in determining the original value.

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

(a) it may (subject to Article 11) substitute for any term of imprisonment imposed under paragraph (1) of that Article a shorter term in respect of the lesser amount substituted under paragraph (3)(b) of this Article by way of variation of the confiscation order; and

(b) on the application of a person who held property that was realisable property, it may order compensation to be paid to the applicant 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) The amount of compensation to be paid under this Article shall be such as the Court considers just in all the circumstances of the case.

(7) Provision may be made by Rules of Court for –

(a) the giving of notice of any application under this Article; and

(b) any person appearing to the Court to be likely to be affected by any exercise of its powers under this Article to be given a reasonable opportunity to make representations to the Court.

(8) Compensation payable under this Article shall be paid out of the annual income of the States.

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

28A Enforcement of confiscation orders in a country or territory outside Jersey[41]

(1) The States may by Regulations –

(a) make such provision in connection with the taking of action in a country or territory outside Jersey with a view to satisfying a confiscation order as appears to the States to be necessary or expedient;

(b) without prejudice to the generality of sub-paragraph (a), direct that, in such circumstances as may be specified in the Regulations, proceeds which arise out of action taken in a country or territory outside Jersey with a view to satisfying a confiscation order and which are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified in the Regulations.

(2) Without prejudice to the generality of paragraph (1), Regulations made under it may make –

(a) such provision as to the evidence or proof of any matter for the purposes of such Regulations; and

(b) such incidental, consequential and transitional provision,

as appears to the States to be necessary or expedient.

PART 3

MONEY LAUNDERING

29 Criminal property[42]

(1) For the purposes of this Part –

"criminal property" includes –

(a) any property derived from or obtained, directly or indirectly, through criminal conduct, if the alleged offender knows or suspects that the property is derived from or obtained, directly or indirectly, through criminal conduct; and

(b) any property that is used in, or intended to be used in, criminal conduct, if the alleged offender knows or suspects that the property is used in, or is intended to be used in, criminal conduct.[43]

(2) For such purposes it does not matter –

(a) whether the criminal conduct was conduct of the alleged offender or of another person;

(b) whether the person who benefited from the criminal conduct was the alleged offender or another person; nor

(c) whether the criminal conduct occurred before or after the coming into force of this provision.

30 Offences of dealing with criminal property[44]

(1) A person who –

(a) acquires criminal property;

(b) uses criminal property; or

(c) has possession or control of criminal property,

is guilty of an offence.

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

(a) having possession or control of property includes doing an act in relation to the property; and

(b) it does not matter whether the acquisition, use, possession or control is for the person's own benefit or for the benefit of another.

(3) A person who –

(a) enters into or becomes concerned in an arrangement; and

(b) knows or suspects that the arrangement facilitates, by any means, the acquisition, use, possession or control of criminal property by or on behalf of another person,

is guilty of an offence.

(4) A person who is guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.

(5) A person shall not be guilty of an offence under this Article in respect of anything done by the person in carrying out any function relating to the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.

(6) Subject to paragraph (7), a person shall not be guilty of an offence under paragraph (1) if the person acquired, used, possessed or controlled the property for adequate consideration.

(7) The defence of adequate consideration in paragraph (6) shall not be available where –

(a) property or services provided to a person assist that person in criminal conduct;

(b) a person providing property or services to another person knows, suspects, or has reasonable grounds to suspect that the property or services will or may assist the other person in criminal conduct; or

(c) the value of the consideration is significantly less than the value of the property acquired or, as the case may be, the value of its use or possession.

(8) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

31 Concealment etc. of criminal property[45]

(1) A person who –

(a) conceals criminal property;

(b) disguises criminal property;

(c) converts or transfers criminal property; or

(d) removes criminal property from Jersey,

is guilty of an offence.

(2) In paragraph (1), reference to concealing or disguising property includes reference to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.

(3) A person who is guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine or to both.

(4) A person shall not be guilty of an offence under this Article in respect of anything done by the person in carrying out any function relating to the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.

(5) Without prejudice to any provision in the preceding paragraphs of this Article, the importation or exportation for any purpose of criminal property which constitutes or represents the proceeds of drug trafficking is prohibited.

(6) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

32 Protection for disclosures, and defence of intended disclosure[46]

(1) Paragraphs (2) and (3) apply where a person makes a disclosure to a police officer –

(a) of a suspicion or belief that any property constitutes or represents proceeds of criminal conduct and of any matter on which such suspicion or belief is based; or

(b) of information, for the purposes of a criminal investigation or criminal proceedings in Jersey.

(2) The disclosure –

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by any enactment or contract or otherwise; and

(b) shall not involve the person making it in liability of any kind.

(3) Where the person making the disclosure does any act, or deals with the property in any way which apart from this provision would amount to the commission of an offence under Article 30 or 31, the person shall not be guilty of such an offence if the conditions set out in paragraph (4) are fulfilled.

(4) The conditions mentioned in paragraph (3) are that the disclosure is made in good faith and either –

(a) if the disclosure is made before the person does the act in question, the act is done with the consent of a police officer; or

(b) if the disclosure is made after the person does the act in question, it is made on the person's own initiative and as soon as reasonably practicable after the person has done the act in question.

(5) In the case of a person ("P") who was in employment at the time of making the disclosure, a disclosure by P to an appropriate person shall be treated as though it were a disclosure to a police officer, and paragraphs (1) to (3) shall have effect as though references to the police officer were references to the appropriate person.

(6) In paragraph (5) and in Article 34B, the "appropriate person" is the person designated by P's employer in accordance with the procedure established by the employer for such disclosures to be made.

(7) In proceedings against a person for an offence under Article 30, it shall be a defence to prove that –

(a) the alleged offender intended to disclose, to a police officer, the suspicion or belief that property constitutes or represents proceeds of criminal conduct; and

(b) there is reasonable excuse for the alleged offender's failure to make such a disclosure.

33 Restrictions on further disclosure[47]

(1) Information that is disclosed –

(a) to a police officer under Article 32 or 34A or any Order made under Article 37; or

(b) to a designated police officer or designated customs officer,

shall not be disclosed by that officer or by any person who obtains information directly or indirectly from that officer, unless such further disclosure is permitted by Article 34.

(2) A person who discloses information in contravention of paragraph (1) is guilty of an offence and shall be liable to imprisonment for a term of 6 months and to a fine.[48]

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

(4) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

34 Further disclosure permitted for certain purposes[49]

(1) Article 33 does not prohibit the disclosure of information –

(a) to a person in Jersey for the purposes of a criminal investigation or criminal proceedings in Jersey; or

(b) for other purposes in Jersey; to –

(i) the Attorney General,

(ii) the Financial Services Commission,

(iii) a police officer,

(iv) any other person who is for the time being authorized in writing by the Attorney General to obtain the information, or

(v) any supervisory body designated as such by the Chief Minister under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008[50].

(2) Where the Attorney General has consented to disclosure of information and has not withdrawn that consent, Article 33 does not prohibit the disclosure of information –

(a) for the purposes of the investigation of crime outside Jersey or of criminal proceedings outside Jersey; or

(b) to a competent authority outside Jersey.

(3) The Attorney General may give consent –

(a) generally or specifically; and

(b) unconditionally or subject to such conditions as the Attorney General may stipulate.

(4) Without prejudice to the generality of paragraph (3), the Attorney General's consent may be given in terms that permit the disclosure from time to time (as the occasion requires) of such a class of information as is specified in the consent to such a person or authority, or class of persons or authority, as is so specified.

(5) Without prejudice to the generality of paragraph (3), a condition –

(a) may be expressed generally or in respect of any specified information;

(b) may provide that information may only be disclosed in specified circumstances or for a specified purpose; or

(c) may provide that any person or authority to whom information is disclosed shall not disclose it to any other person without the prior consent of the Attorney General.

34A Failure to disclose knowledge or suspicion of money laundering[51]

(1) This Article applies where –

(a) a person ("A") knows or suspects that another person is engaged in money laundering; and

(b) the information or other matter on which that knowledge or suspicion is based comes to A's attention in the course of A's trade, profession, business or employment.[52]

(1A) Where this Article applies, A must disclose, in accordance with the conditions set out in paragraph (1B) –

(a) the knowledge or suspicion mentioned in paragraph (1)(a); and

(b) the information or other matter mentioned in paragraph (1)(b),

and if A does not make such a disclosure, A commits an offence.[53]

(1B) The conditions mentioned in paragraph (1A) are that the disclosure is made –

(a) to a police officer;

(b) in good faith; and

(c) as soon as is practicable after the information or other matter came to A's attention.[54]

(2) It is not an offence under this Article for a professional legal adviser to fail to disclose any information or other matter that comes to him or her in circumstances of legal privilege.

(3) Where a person discloses to a police officer in good faith –

(a) the person's suspicion or belief that another person is engaged in money laundering; or

(b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.[55]

(4) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding 5 years or to a fine or to both.

34B Statutory defences[56]

(1) It is a defence to a charge of committing an offence under Article 34A that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

(2) In the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under Article 34A that the person disclosed the information or other matter in question to the

appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures.

(3) A disclosure to which paragraph (2) applies shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.

34C Cases to which Article 34A does not apply[57]

(1) Article 34A does not apply to information or other matter that comes to a person, as an employer or employee, in the course of the carrying on of a financial services business.

(2) Article 34A does not apply –

(a) to any person designated by Regulations made by the States for the purposes of this Article; or

(b) in such circumstances as may be specified, to any person who falls within such category of person as may be specified in Regulations made by the States for the purposes of this Article.

(3) Regulations made for the purposes of this Article may designate any person appearing to the States to be performing regulatory, supervisory, investigative or registration functions.

(4) The categories of person specified in Regulations made for the purposes of this Article shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions.

34D Failure in a financial institution to report to designated police officer, designated customs officer or nominated officer[58] [59]

(1) This Article applies where the conditions in both paragraph (2) and paragraph (3) are fulfilled.[60]

(2) The first condition is that a person ("A") knows, suspects or has reasonable grounds for suspecting that –

(a) another person is engaged in money laundering; or

(b) any property constitutes or represents proceeds of criminal conduct.[61]

(3) The second condition is that the information or other matter on which A's knowledge or suspicion is based, or which gives reasonable grounds for such suspicion, came to A in the course of the carrying on of a financial services business.[62]

(4) Where this Article applies, A must disclose, in accordance with the conditions set out in paragraph (4A) –

(a) the knowledge, suspicion or grounds for suspicion mentioned in paragraph (2); and

(b) the information or other matter mentioned in paragraph (3),

and if A does not make such a disclosure, A commits an offence.[63]

(4A) The conditions mentioned in paragraph (4) are that the disclosure is made –

(a) to a designated police officer, a designated customs officer or a nominated officer;

(b) in good faith; and

(c) as soon as is practicable after the information or other matter comes to A.[64]

(5) A person does not commit an offence under this Article if –

(a) the person has a reasonable excuse for not disclosing the information or other matter; or

(b) the person is a professional legal adviser and the information or other matter comes to him or her in circumstances of legal privilege.

(6) A person does not commit an offence under this Article by failing to disclose any information or other matter that has come to his or her attention, if –

(a) it comes to the person in the course of his or her employment in the financial services business;

(b) the person carrying on the financial services business was required by an Order made under Article 37 to provide the employee with training, but had not done so;

(c) the training, if it had been given, would have been material; and

(d) the employee does not know or suspect that the other person concerned is engaged in money laundering.

(7) In deciding whether a person has committed an offence under this Article, the court –

(a) shall take account of any relevant Code of Practice or guidance that applies to that person or the business carried on by that person and is issued by the supervisory body exercising supervisory functions in respect of that person; or

(b) if no such Code of Practice or guidance applies, shall take into account any relevant Code of Practice or guidance that is issued by another supervisory body; or

(c) if there is no such relevant Code of Practice or guidance, may take account of any other relevant guidance issued by a body that is representative of that person or any supervised business carried on by that person.[65]

(7A) For the purposes of paragraph (7), "Code of Practice", "supervised business", "supervisory body" and "supervisory functions" have the same meaning as in the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008[66].[67]

(8) A disclosure to a nominated officer is a disclosure which –

(a) is made to a person nominated by the employer of the person making the disclosure to receive disclosures under this Article; and

(b) is made in the course of the discloser's employment and in accordance with the procedure established by the employer for the purpose.

(9) Where a person to whom paragraph (1) refers discloses in good faith to a designated police officer, designated customs officer or nominated officer –

(a) the person's suspicion or belief that another person is engaged in money laundering; or

(b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.[68]

(10) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding 5 years or to a fine or to both.

34E Designated police and customs officers[69]

(1) The Chief Officer of the States of Jersey Police Force may by public notice designate one or more police officers (whether by reference to the name of the officer or officers or post), being members of that Force, for the purposes of Article 34D.

(2) The Agent of the Impôts may by public notice designate one or more officers of the Impôts for the purposes of Article 34D.

35 Tipping off and interference with material[70]

(1) Paragraph (2) applies where a person knows or suspects that the Attorney General or any police officer is acting or proposing to act in connection with an investigation that is being or is about to be conducted into money laundering.

(2) It is an offence for the person –

(a) to disclose to another person any information relating to the investigation; or

(b) to interfere with material which is likely to be relevant to the investigation.

(3) Paragraph (4) applies where a person knows or suspects that a disclosure –

(a) under Article 32; or

(b) to which Article 34A(3) or Article 34D(9) applies,

has been or will be made.

(4) It is an offence for the person –

(a) to disclose to another person –

(i) the fact that such a disclosure has been or will be made, or

(ii) any information otherwise relating to such a disclosure;

or

(b) to interfere with material which is likely to be relevant to an investigation resulting from such a disclosure.

(5) The States may by Regulations specify cases in which a disclosure or interference to which paragraph (2) or (4) would otherwise apply shall not amount to the commission of an offence.

(6) Paragraphs (2) and (4) do not apply to a disclosure which –

(a) is made by a professional legal adviser –

(i) to a client, or to the client's representative, in connection with the provision of legal advice to the client, or

(ii) to any person for the purpose of actual or contemplated legal proceedings;

(b) is made by a person who is the client of a professional legal adviser to that adviser, for either of the purposes mentioned in sub-paragraph (a)(i) or (ii); or

(c) is made by a person who is the client of an accountant to that accountant for the purpose of enabling him or her to provide any of the services listed in paragraph 2(1) of Part B of Schedule 2,

and is not made with a view to furthering a criminal purpose.[71]

(7) For the purposes of paragraphs (2) and (4), interference with material includes falsifying, concealing, destroying or disposing of the material or part of it.

(8) A person shall not be guilty of an offence under paragraph (2) or (4) in respect of anything done by the person in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.

(9) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding 5 years or to a fine, or both.

(10) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

36 Financial services business

(1) Schedule 2 shall have effect to specify what is financial services business for the purposes of this Law.[72]

(2) The States may amend Schedule 2 by Regulations, by adding, deleting, substituting or varying the description of any business.

37 Procedures to prevent and detect money laundering[73]

(1) The Chief Minister shall, by Order, prescribe measures to be taken (including measures not to be taken) by persons who carry on financial services business, for the purposes of preventing and detecting money laundering.[74]

(1A) Without prejudice to the generality of paragraph (1), such measures may include –

(a) identification procedures;

(b) record keeping procedures;

(c) internal reporting procedures; and

(d) training procedures,

to be maintained by persons who carry on financial services business.[75]

(2) An Order made under this Article –

(a) may specify supervisory authorities for the purposes of the Order;

(b) may authorize or require any person who acquires information in the course of the application of any procedure under any such Order, or in the course of carrying out any function under any such Order, or under any other enactment to which the Order refers, to disclose that information to a police officer, the Commission or any person or institution with whom that person shares common ownership, management or compliance control; and

(c) may make such other provision as is reasonably necessary or incidental to the purposes of the Order.[76]

(3) No disclosure in accordance with an Order made under this Article to any person mentioned in paragraph (2)(b) shall be treated as a breach of any restriction on disclosure imposed by any enactment or contract or otherwise or involve the person making it in liability of any kind.[77]

(4) If a person carrying on a financial services business contravenes or fails to comply with a requirement that is contained in any Order made under this Article and applies to that business, the person shall be guilty of an offence.

(5) Where an offence under paragraph (4) by a body corporate is proved –

(a) to have been committed with the consent or connivance of; or

(b) to be attributable to any neglect on the part of,

a director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he or she, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) Where an offence under paragraph (4) by an unincorporated association is proved –

(a) to have been committed with the consent or connivance of; or

(b) to be attributable to any neglect on the part of,

a person concerned in the management or control of the association, the person, as well as the association, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(7) Any person who is guilty of an offence under this Article is liable –

(a) if the person is a body corporate, to a fine; or

(b) if the person is not a body corporate, to imprisonment for a term not exceeding 2 years or to a fine or to both.

(8) In determining whether a person has complied with a requirement that is contained in any Order made under this Article, the court –

(a) shall take account of any relevant Code of Practice or guidance that applies to that person or the business carried on by that person and

is issued by the supervisory body exercising supervisory functions in respect of that person; or

(b) if no such Code of Practice or guidance applies, shall take into account any relevant Code of Practice or guidance that is issued by another supervisory body; or

(c) if there is no such relevant Code of Practice or guidance, may take account of any other relevant guidance issued by a body that is representative of that person or any supervised business carried on by that person.[78]

(9) For the purposes of paragraph (8), "Code of Practice"; "supervisory body", "supervisory functions" and "supervised business" have the same meaning as in the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008[79].[80]

(10) In proceedings against a person for an offence under this Article, it is a defence to prove that the person took all reasonable steps and exercised due diligence to avoid committing the offence.

(11) For the purposes of this Article, "money laundering" includes, in addition to the matters comprised in the definition of that term in Article 1(1) –

(a) conduct that is an offence under any of the following provisions –

(i) Articles 34A and 34D of this Law,

(ii) Articles 7, 8 and 10 of the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002[81], or

(iii) Articles 13–17 and 19 of the Terrorist Asset-Freezing (Jersey) Law 2011[82];

(b) conduct outside Jersey which, if occurring in Jersey, would be an offence specified in sub-paragraph (a).[83]

PART 4

EXTERNAL CONFISCATION ORDERS

38 Recognition of external confiscation orders[84]

(1) The States may by Regulations direct that, subject to such modifications as may be specified in the Regulations, this Law shall apply to –

(a) external confiscation orders; and

(b) criminal investigations or proceedings begun in a country or territory outside Jersey which may result in an external confiscation order being made there.[85]

(2) Without prejudice to the generality of paragraph (1), Regulations made under it may make –

(a) such provision as to the evidence or proof of any matter for the purposes of such Regulations and Article 39; and

(b) such incidental, consequential and transitional provision,

as appears to the States to be necessary or expedient.

39 Registration of external confiscation orders

(1) On the application of the Attorney General, the Court may register an external confiscation order if –

(a) the Court is satisfied that at the time of registration the order is in force and is not subject to appeal;

(b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable the person to defend them; and

(c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.[86]

(2) In paragraph (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 Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by the payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

PART 5

MISCELLANEOUS

40 Investigations relating to proceeds of criminal conduct

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

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

(a) produce it to a police officer for the police officer to take away; or

(b) give a police officer access to it and, if so required by the police officer, permit him or her to make copies of it,

within such period as the order may specify.

(3) The period to be specified in an order under paragraph (2) shall be 7 days unless it appears to the Bailiff that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions to which paragraph (2) refers are –

(a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;

(b) that there are reasonable grounds for suspecting that the material to which the application relates –

(i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, and

(ii) does not consist of or include items subject to legal privilege; and

(c) that there are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given, 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.

(5) Where the Bailiff makes an order under paragraph (2) giving a police officer access to material on any premises the Bailiff may, on the application of a police officer, order any person who appears to the Bailiff to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

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

(7) An application for the discharge or variation of an order under this Article may be made to the Bailiff in chambers, and the Bailiff may rule upon the application or may, at the Bailiff's discretion, refer it to the Court for adjudication.

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

(a) an order under paragraph (2) to produce material to a police officer for the police officer to take away 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 paragraph (2) giving a police officer access to material 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 paragraph (2) –

(a) shall not confer any right to production of, or access to, items subject to legal privilege;

(b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any statute or contract or otherwise; and

(c) may be made in relation to material in the possession of a States department.

(10) [87]

(11) Provision may be made by Rules of Court as to –

(a) the manner in which applications may be made under this Article;

(b) the discharge and variation of orders under this Article; and

(c) proceedings related to orders under this Article.[88]

(12) A person who, without reasonable excuse –

(a) fails to comply with an order under this Article; or

(b) obstructs a police officer who is acting or attempting to act in pursuance of such an order,

is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine or to both.

(13) If a person –

(a) knows or suspects that an investigation to which paragraph (1) refers is being or is likely to be carried out; and

(b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of material that the person knows or suspects is or would be relevant to such an investigation,

the person shall be guilty of an offence and liable to imprisonment for 7 years or to a fine or to both, unless the person proves that the act or omission was inadvertent.

41 Authority for search

(1) A police officer may, for the purposes of an investigation into whether any person has benefited from any criminal conduct or into the extent or whereabouts of the proceeds of any criminal conduct, apply to the Bailiff for a warrant under this Article in relation to specified premises.

(2) On such an application, the Bailiff may issue a warrant authorising a police officer together with any other person named in the warrant to enter (if necessary by force) and search the premises, if the Bailiff is satisfied –

(a) that an order made under Article 40 in relation to material on the premises has not been complied with;

(b) that the conditions in paragraph (3) are fulfilled; or

(c) that the conditions in paragraph (4) are fulfilled.[89]

(3) The conditions to which paragraph (2)(b) refers are –

(a) that there are reasonable grounds for suspecting that a specified person has benefited from criminal conduct;

(b) that the conditions in Article 40(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 Article 40 in relation to the material because –

(i) it is not practicable to communicate with any person entitled to produce the material,

(ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.

(4) The conditions to which paragraph (2)(c) refers are –

(a) that there are reasonable grounds for suspecting that a specified person has benefited from any criminal conduct;

(b) that there are reasonable grounds for suspecting that there is on the premises any such material relating –

(i) to the specified person, or

(ii) to the question whether that person has benefited from any criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct,

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

(c) that –

(i) it is not practicable to communicate with any person entitled to grant entry to the premises,

(ii) entry to the premises will not be granted unless a warrant is produced, or

(iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer arriving at the premises could secure immediate entry to them.

(5) Where a police officer has entered premises in the execution of a warrant issued under this Article, the police officer may seize and retain any material, other than items subject to legal privilege, that is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the warrant was issued.

(6) [90]

(7) A person who, without reasonable excuse, obstructs a police officer who is executing or attempting to execute a warrant issued under this Article is guilty of an offence and liable to imprisonment for a term not exceeding 2 years or to a fine or to both.

41A Financial information and monitoring[91]

(1) Part 1 of Schedule 3 shall have effect in respect of the obtaining of financial information.

(2) Part 2 of Schedule 3 shall have effect in respect of account monitoring orders.

41B Financial intelligence gathering etc.[92]

(1) The States may by Regulations prescribe that there shall be a body (a "financial intelligence unit") to carry out functions of gathering, analysing

and transmitting financial information, in accordance with and as further provided by such Regulations.

(2) Without derogation from the generality of Article 42A or of paragraph (1) of this Article, Regulations made for the purpose mentioned in that paragraph may, in particular –

(a) designate an existing body, or establish a new body, to be a financial intelligence unit;

(b) specify more precisely the functions of the financial intelligence unit;

(c) make provision as to its operation and resources and as to the appointment and employment of its officers;

(d) confer powers on the financial intelligence unit to require the provision of financial information from such persons as may be specified in the Regulations and in such manner and at such times as the financial information unit may reasonably determine;

(e) specify more precisely the nature of the financial information which may be so sought;

(f) specify more precisely the persons to whom the financial information may be transmitted; and

(g) create offences for failure to comply with a requirement of the Regulations and impose penalties for such offences.

(3) The power to make consequential provision conferred by Article 42A(2) may be exercised, in Regulations made for the purpose mentioned in paragraph (1), so as to further amend this Law or any other enactment.

42 [93]

42A Regulations[94]

(1) The States may make Regulations not inconsistent with this Law, for or with respect to any matter that by this Law is required or permitted to be prescribed by Regulations or that is necessary or convenient to be prescribed by Regulations for carrying out or giving effect to this Law.

(2) Regulations made under this Law may contain such transitional, consequential, incidental or supplementary provisions, or such savings, as appear to the States to be necessary or expedient for the purposes of the Regulations.

43 Orders

(1) The Chief Minister shall consult the Commission before making any Order under this Law.[95]

(2) The Subordinate Legislation (Jersey) Law 1960[96] shall apply to Orders made under this Law.

44 Rules of Court

The power of the Superior Number of the Royal Court to make Rules of Court under the Royal Court (Jersey) Law 1948[97] includes a power to make Rules for the purposes of this Law and, in particular, for the purposes of Articles 7(11), 8(4) and (7), 18(3), 21(5), 26(4), 27(5), 28(7), 40(11) and 41A and Schedule 3.[98]

45 Citation

This Law may be cited as the Proceeds of Crime (Jersey) Law 1999.

SCHEDULE 1[99]

(Articles 1(1), 3(1), (6), (9), 5(2)(a), (5)(a)(ii), (5)(b), 9(1), (3), 12(1), 15(1)(b), (c)(i), (2)(b), (3), 25(1), 34(1), (2) and 35(8))

OFFENCES FOR WHICH CONFISCATION ORDERS MAY BE MADE

Any offence in Jersey for which a person is liable on conviction to imprisonment for a term of one or more years (whether or not the person is also liable to any other penalty).

SCHEDULE 2[100]

(Article 36(1) and (2))

FINANCIAL SERVICES BUSINESS

PART A[101] [102]

BUSINESS REGULATED BY THE COMMISSION UNDER REGULATORY LAWS

1. Any deposit-taking business as defined in Article 1 of the Banking Business (Jersey) Law 1991[103] except the doing of anything described in Article 8(2)(a) to (c) of that Law.

2. Any long-term business as defined in Article 1(1) of the Insurance Business (Jersey) Law 1996[104] except –

   (a) insurance business described in Article 5(5)(a) of that Law;

   (b) insurance business described in Article 1 of the Insurance Business (General Provisions) (Jersey) Order 1996.

3.(1) Any of the following within the meaning of the Collective Investment Funds (Jersey) Law 1988[105] –

   (a) the business of being a functionary;

   (b) the business of a recognized fund;

   (c) the business of an unclassified fund.

(2) However, business referred to in sub-paragraph (1) does not include the business of a company, being a company issuing units that is within Article 1A of the Collective Investment Funds (Permits) (Exemptions) (Jersey) Order 1994[106].

4. Financial service business as defined in Article 1(1) of the Financial Services (Jersey) Law 1998[107] –

   (a) including the activities described in Schedule 2 to that Law except those mentioned in –

      (i) paragraphs 1, 3B, 3C, 4, 9, 10, 14, 15, 18A and 21,

      (ii) paragraph 7 where a person accepts or becomes a party to an instrument as principal,

      (iii) paragraph 8 (other than the activities of persons referred to in paragraph 8(1)(c), (2)(c) or (3)(c)),

      (iv) paragraph 16 except where a person is acting as a protector of a trust by way of business,

      (v) paragraph 18, where the relevant special purpose vehicle is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business;

(b) excluding general insurance mediation business;

(c) excluding investment business carried on by an overseas person mentioned in Article 1 of the Financial Services (Investment Business (Overseas Persons – Exemption)) (Jersey) Order 2001[108] where that business is carried on in the circumstances described in that Order;

(ca) excluding special purpose investment business carried on in accordance with the exemption set out in the Financial Services (Investment Business (Special Purpose Investment Business – Exemption)) (Jersey) Order 2001[109] by a person who –

(i) is acting as a functionary within the meaning of that Order, and

(ii) is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business or is provided with any service within fund services business (within the meaning of that Law) by a person who is registered under that Law to carry on fund services business;

(cb) excluding restricted investment business carried on in accordance with the exemption set out in the Financial Services (Investment Business (Restricted Investment Business – Exemption)) (Jersey) Order 2001[110] by a person who –

(i) is acting as a functionary within the meaning of that Order, and

(ii) is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business or is provided with any service within fund services business (within the meaning of that Law) by a person who is registered under that Law to carry on fund services business;

(d) excluding trust company business carried on by a person specified in any of the paragraphs in the Schedule to the Financial Services (Trust Company Business (Exemptions)) (Jersey) Order 2000[111] specified below where the business is carried on in the circumstances described in that paragraph –

(i) paragraph 4 (private trust company business),

(ia) paragraph 7 (incidental providers of services),

(ii) paragraph 8 (address providers),

(iii) paragraph 11(connected company),

(iv) paragraph 12 (introducer),

(v) paragraph 13 (director),

(vi) paragraph 15 (director – registered person),

(vii) paragraph 16 (liquidators and trustees in bankruptcy of persons other than registered persons),

(viii) paragraph 18 (recruitment agents);

(e) excluding trust company business carried on by a person specified in any of the paragraphs in the Schedule to the Financial Services

(Trust Company Business (Exemptions No. 2) (Jersey) Order 2000[112] specified below where that business is carried on in the circumstances described in that paragraph –

(i) paragraph 1 (overseas persons),

(ii) paragraph 2 (unit holding nominee company),

(iii) paragraph 3 (electronic communications service providers);

(f) excluding trust company business carried on by a person specified in any of the paragraphs of the Schedule to the Financial Services (Trust Company Business (Exemptions No. 3)) (Jersey) Order 2001[113] specified below where that business is carried on in the circumstances described in that paragraph –

(i) paragraph 1 (private protector company),

(ii) paragraph 2 (general partner),

(iii) paragraph 4 (investment company subsidiary);

(g) excluding trust company business carried on by a person specified in paragraph 1 (connected persons) of the Schedule to the Financial Services (Trust Company Business (Exemptions No. 4)) (Jersey) Order 2001[114] where that business is carried on in the circumstances mentioned in that paragraph;

(h) excluding trust company business carried on in accordance with the exemption set out in the Financial Services (Trust Company Business (Exemptions No. 5)) (Jersey) Order 2001[115] by a person who –

(i) is specified in the Schedule to that Order, and

(ii) is provided with any service that falls within Article 2(3) and (4) of the Financial Services (Jersey) Law 1998 by a person registered under that Law to carry on trust company business;

(i) excluding money service business specified in Article 3 of the Financial Services (Money Service Business) (Exemptions) (Jersey) Order 2007[116].

PART B[117] [118]

OTHER BUSINESS

1 Lawyers

(1) The business of providing services by independent legal professionals.

(2) In this paragraph "independent legal professionals" means those who by way of business provide legal or notarial services to third parties when participating in financial, or immovable property, transactions concerning any of the following –

(a) the buying and selling of immovable property or business entities;

(b) the buying and selling of shares the ownership of which entitles the owner to occupy immovable property;

(c) the managing of client money, securities or other assets;

(d) the opening or management of bank, savings or securities accounts;

(e) the organization of contributions necessary for the creation, operation or management of companies; or

(f) the creation, operation or management of trusts, companies or similar structures.

(3) Sub-paragraph (2) does not include legal professionals employed by public authorities or undertakings which do not by way of business provide legal services to third parties.

(4) For the purposes of this paragraph, a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a third party in the transaction.

2 Accountants

(1) The business of providing any of the following –

(a) external accountancy services;

(b) advice about the tax affairs of another person;

(c) audit services; or

(d) insolvency services.

(2) "External accountancy services" means accountancy services provided to third parties and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide accountancy services to third parties.

(3) "Audit services" are audit services provided by way of business pursuant to any function under any enactment.

(4) "Insolvency services" are services provided by a person if, by way of business, that person accepts appointment as –

(a) a liquidator under Chapter 4 of Part 21 of the Companies (Jersey) Law 1991[119];

(b) an insolvency manager appointed under Part 5 of the Limited Liability Partnerships (Jersey) Law 1997[120] as that Law has effect in its application to insolvent limited liability partnerships pursuant to the Limited Liability Partnerships (Insolvent Partnerships) (Jersey) Regulations 1998[121]; or

(c) as agent of an official functionary appointed in the case of a *remise de biens*, *cession*, or *désastre*.

3 Estate agency services

(1) The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of freehold (including flying freehold) or leasehold property (including commercial and agricultural property), whether the property is situated in Jersey or overseas.

(2) The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of shares the ownership of which entitles the owner to occupy immovable property, whether the property is situated in Jersey or overseas.

4 High value dealers

(1) The business of providing services as a high value dealer.

(2) A high value dealer is a person who, by way of business, trades in goods and receives in respect of any transaction (whether executed in a single operation, or in several operations which appear to be linked) payment of at least €15,000 in total.

(3) For the purposes of this paragraph, payment refers to payment in or by means of –

(a) cash, including notes, coins, travellers' cheques, and bearer negotiable instruments; and

(b) any virtual currency.

(4) "Virtual currency" means any currency which (whilst not itself being issued by, or legal tender in, any jurisdiction) –

(a) digitally represents value;

(b) is a unit of account;

(c) functions as a medium of exchange; and

(d) is capable of being digitally exchanged for money in any form.

(5) For the avoidance of doubt, virtual currency does not include any instrument which represents or stores (whether digitally or otherwise) value that can be used only to acquire goods and services in or on the premises of, or under a commercial agreement with, the issuer of the instrument.

5 Casinos (including internet casinos)

(1) The business of operating a casino, and for the purposes of this Law, a person operates a casino if, by way of business, the person provides a service that –

(a) is a gambling service, within the meaning of Article 2 of the Gambling (Jersey) Law 2012[122]; and

(b) consists of giving people an opportunity to participate in one or more casino games.

(2) For the purposes of this Law, a casino is an arrangement whereby people are given an opportunity to participate in one or more casino games.

(3) "Casino game" means a game of chance –

(a) that involves playing or staking against a bank (whether described as a "bank" and whether or not controlled or administered by a player); and

(b) where the chances are not equally favourable to all participants.

(4) For the avoidance of doubt, the provision of the game commonly known as Crown and Anchor does not fall within sub-paragraph (1) if it is provided at an event where gambling is not the only inducement, or the only substantial inducement, to persons to attend that event.

6 Unregulated funds

The business of an unregulated fund, being an unregulated fund within the meaning of the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008[123].

7 Other services

(1) The business of providing any of the following services to third parties, where the business is not otherwise included in this Schedule –

(a) acceptance of deposits and other repayable funds from the public;

(b) lending, including consumer credit, mortgage credit, factoring (with or without recourse), financing of commercial transactions (including forfeiting);

(c) financial leasing;

(d)

(e) issuing and administering means of payment (such as credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and electronic money);

(f) guarantees and commitments;

(g) trading for the account of third parties in –

(i) money market instruments (cheques, bills, certificates of deposit, derivatives etc.),

(ii) foreign exchange,

(iii) futures and options (financial and commodity),

(iv) exchange, interest rate and index instruments,

(v) transferable securities;

(h) participation in securities issues (and the provision of services related to such issues) except in the course of business excluded by the operation of paragraph 4(ca), (cb) or (h) of Part A;

(i) advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings;

(j) money broking;

(k) portfolio management and advice;

(l) safekeeping and administration of securities;

(m) safe custody services;

(n) otherwise investing, administering or managing funds or money on behalf of third parties.

(2) A reference in this paragraph to providing services to third parties shall not include –

(a) the provision of the services of collecting, administering and disbursing service or maintenance charges (however described) in connection with immovable property situated in Jersey (including such property when it is occupied under a contractual lease or licence); nor

(b) the provision of a service by a company to a connected company.

(3) For the purposes of this Part of this Schedule, a company is connected with another company if –

(a) the companies are in the same group;

(b) one is entitled, either alone or with any other company in the same group, to exercise or control the exercise of a majority of the voting rights (other than as nominee shareholder) which are attributable to the share capital and are exercisable in all circumstances at any general meeting of the other company or of its holding company; or

(c) the first-mentioned company holds, or a company in the same group as the first-mentioned company holds, an interest in the equity share capital of the other company carrying rights to vote in all circumstances at general meetings for the purpose of securing a contribution to the activities of the first-mentioned company or the company in the same group as that company respectively by the exercise of control or influence arising from that interest.

(4) In this paragraph, "group" and "holding company" have the same meanings as in the Financial Services (Jersey) Law 1998.

8 The business of forming and administering legal persons or arrangements

The business of providing services to or in respect of types of legal person or arrangement other than those described in Article 2(5)(a) and (b) of the Financial Services (Jersey) Law 1998, in the course of which services are provided that are similar or equivalent to those described in Article 2(4) of that Law as if Article 2(4) referred to that type of legal person or arrangement.

9 Virtual currency exchange

(1) The business of providing, to third parties, the service of virtual currency exchange, where the business is not otherwise included in this Schedule.

(2) In this paragraph –

(a) "virtual currency exchange" means the exchange of virtual currency for money in any form, or vice versa; and

(b) a reference to providing a service to third parties shall not include a company's providing that service to a connected company.

10 Express trusts

(1) Acting, otherwise than by way of business, as trustee of an express trust.

(2) In this paragraph, "express trust" has the same meaning as is given to that expression by Article 1(1) of the Financial Services (Jersey) Law 1998[124].

SCHEDULE 3[125]

(Article 41A)

FINANCIAL INFORMATION AND MONITORING ORDERS

PART 1[126]

(Article 41A(1))

ORDERS FOR PROVISION OF FINANCIAL INFORMATION

1 Order to provide customer information

(1) Where an order is made under this Part of this Schedule in relation to an investigation into money laundering a police officer named in the order may require a person carrying on a financial services business to whom the order applies to provide customer information for the purposes of the investigation.

(2) An order under this Part of this Schedule may provide that it applies to –

(a) all persons carrying on a financial services business;

(b) a particular description, or particular descriptions, of persons carrying on a financial services business; or

(c) a particular person, or particular persons, carrying on a financial services business.

(3) The information shall be provided –

(a) in such manner and within such time as the police officer may specify; and

(b) notwithstanding any restriction on the disclosure of information imposed by any statute or contract or otherwise.

(4) A person carrying on a financial services business who fails to comply with a requirement under this paragraph is guilty of an offence.

(5) It is a defence for a person carrying on a financial services business who is charged with an offence under sub-paragraph (4) to prove –

(a) that the information required was not in the possession of the person carrying on the financial services business; or

(b) that it was not reasonably practicable for the person carrying on the financial services business to comply with the requirement.

(6) A person carrying on a financial services business who is guilty of an offence under sub-paragraph (4) shall be liable to a fine of level 3 on the standard scale.

(7) Where an individual is convicted of an offence under paragraph 1(4), the individual shall be liable to imprisonment for a term of 6 months and to a fine of level 3 on the standard scale.

2 Who may apply for order

An order under this Part of this Schedule may be made on the application of a police officer of at least the rank of chief inspector or, in the case of an officer of the Impôts, such an officer of at least the rank of assistant director.

3 Who may make order

An order under this Part of this Schedule may be made by the Bailiff.

4 Consent required for application

An application for an order under this Part of this Schedule may only be made with the consent of the Attorney General.

5 Criteria for making order

The Bailiff may only make an order under this Part of this Schedule if satisfied that –

(a) the order is sought for the purposes of an investigation into money laundering;

(b) there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;

(c) there are reasonable grounds for believing that customer information that 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; and

(d) there are 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, and to the circumstances under which the person in possession of the information holds it.

6 Customer information

(1) In this Part of this Schedule "customer information" means (subject to sub-paragraph (3)) –

(a) information whether a business relationship exists or existed between a person carrying on a financial services business and a particular person ("a customer");

(b) a customer's account number;

(c) a customer's full name;

(d) a customer's date of birth;

(e) a customer's address or former address;

(f) the date on which a business relationship between a financial services business and a customer begins or ends;

(g) any evidence of a customer's identity obtained by a financial services business in pursuance of or for the purposes of any legislation relating to money laundering; and

(h) the identity of a person sharing an account with a customer.

(2) For the purposes of this Part of this Schedule 'business relationship' means a business, professional or commercial relationship between a person carrying on a financial services business and a customer where that relationship is expected by the first person, at the time when contact is established, to have an element of duration.

(3) The States may by Regulations –

(a) provide for a class of information to be customer information, or to cease to be customer information, for the purposes of this Part of this Schedule; or

(b) extend the meaning of the expression 'business relationship' for the purposes of this Part of this Schedule.

7 Self-incrimination

(1) Customer information provided by a person carrying on a financial services business under this Schedule shall not be admissible in evidence in criminal proceedings against the person carrying on a financial services business or any of its employees.

(2) Sub-paragraph (1) shall not apply in relation to proceedings for an offence under paragraph 1(4).

PART 2[127]

(Article 41A(2))

ACCOUNT MONITORING ORDERS

1 Account monitoring orders

(1) The Bailiff may, on an application made to him or her by a police officer of at least the rank of chief inspector, make an account monitoring order against a person carrying on a financial services business if the Bailiff is satisfied that –

(a) the order is sought for the purposes of an investigation into money laundering;

(b) there are reasonable grounds for suspecting that the person specified in the application for the order has committed a money laundering offence;

(c) there are reasonable grounds for believing that account information that 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; and

(d) there are 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, and to the circumstances under which the person in possession of the information holds it.

(2) An application for an order under sub-paragraph (1) may only be made with the consent of the Attorney General.

(3) The application for an account monitoring order must state that the order is sought against the person specified in the application carrying on a financial services business in relation to information which –

(a) relates to an account or accounts held with the person carrying on a financial services business by the person specified in the application (whether solely or jointly with another); and

(b) is of the description so specified.

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

(a) all accounts that the person specified in the application for the order holds with the other person specified in the application carrying on the financial services business;

(b) a particular description, or particular descriptions, of accounts so held; or

(c) a particular account, or particular accounts, so held.

(5) An account monitoring order is an order that the person specified in the application for the order carrying on a financial services business must –

(a) for the period specified in the order;

(b) in the manner so specified;

(c) at or by the time or times so specified; and

(d) at the place or places so specified,

provide information of the description specified in the application to a police officer named in the order.

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

2 Applications

(1) An application for an account monitoring order may be made *ex parte* to the Bailiff in chambers.

(2) The description of information specified in an application for an account monitoring order may be varied by the police officer who applied for the order or another police officer of at least the rank of chief inspector.

3 Discharge or variation

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

(a) the police officer who applied for the order or another police officer of at least the rank of chief inspector; or

(b) any person affected by the order.

(2) The Bailiff may confirm, vary or discharge the order.

4 Effect of orders

(1) An account monitoring order has effect in spite of any restriction on the disclosure of information (however imposed).

(2) An account monitoring order has effect as if it were an order of the Court.

5 Statements

(1) A statement made by a person carrying on a financial services business in response to an account monitoring order may not be used in evidence against that person in criminal proceedings.

(2) However, sub-paragraph (1) does not apply –

(a) in the case of proceedings for contempt of court;

(b) in the case of proceedings for or in respect of a confiscation order; or

(c) on a prosecution for an offence where, in giving evidence, the person carrying on a financial services business makes a statement inconsistent with the statement mentioned in sub-paragraph (1).

(3) A statement may not be used by virtue of sub-paragraph (2)(c) against a person carrying on 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 person carrying on a financial services business in the proceedings arising out of the prosecution.

ENDNOTES

Table of Legislation History

Legislation	Year and Number	Commencement
Proceeds of Crime (Jersey) Law 1999	L.8/1999	1 July 1999 (R&O.9400)
Terrorism (Jersey) Law 2002	L.40/2002	1 September 2003 (R&O.56/2003)
States of Jersey (Amendments and Construction Provisions No. 2) (Jersey) Regulations 2005	R&O.43/2005	9 December 2005
Proceeds of Crime (Substitution of Schedule 2) (Jersey) Regulations 2008	R&O.25/2008	19 February 2008
Proceeds of Crime (Cash Seizure) (Jersey) Law 2008	L.11/2008	29 February 2008
Proceeds of Crime (Amendment) (Jersey) Law 2008	L.20/2008	4 April 2008
Proceeds of Crime (Amendment of Schedule 2) (Jersey) Regulations 2008	R&O.113/2008	19 September 2008
Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008	L.32/2008	19 September 2008 (R&O.115/2008)
Proceeds of Crime (Amendment No. 2) (Jersey) Law 2009	L.16/2009	10 April 2009
Proceeds of Crime (Amendment of Schedule 2) (No. 2) (Jersey) Regulations 2009	R&O.119/2009	25 November 2009
Terrorist Asset-Freezing (Jersey) Law 2011	L.8/2011	1 April 2011
Gambling (Jersey) Law 2012	L.14/2012	1 January 2013 (R&O.133/2012)
States of Jersey (Transfer of Functions No. 6) (Economic Development and Treasury and Resources to Chief Minister) (Jersey) Regulations 2013	R&O.107/2013	19 July 2013
Security Interests (Jersey) Law 2012	L.24/2012	2 January 2014 (R&O.104/2013)
Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 2014	L.7/2014	4 August 2014 (R&O.102/2014)
Proceeds of Crime and Terrorism (Tipping Off – Exceptions) (Jersey) Regulations 2014	R&O.101/2014	4 August 2014
Proceeds of Crime (Amendment – Financial Intelligence) (Jersey) Law 2015	L.2/2015	20 February 2015

Legislation	Year and Number	Commencement
Proceeds of Crime (Amendment of Law) (Jersey) Regulations 2015	R&O.30/2015	17 March 2015
Criminal Justice (Miscellaneous Provisions) (Jersey) Law 2016	L.1/2016	20 September 2016 (R&O.98/2016)
Proceeds of Crime (Miscellaneous Amendments) (Jersey) Regulations 2016	R&O.63/2016	26 September 2016 (R&O.99/2016)
Proceeds of Crime (Amendment No. 3) (Jersey) Law 2018	L.30/2018	26 October 2018

Table of Renumbered Provisions

Original	Current
1(9), (10), (11)	spent, omitted from this revised edition
PART I	Part 1
PART II	Part 2
PART III	Part 3
PART IV	Part 4
PART V	Part 5
FIRST SCHEDULE	SCHEDULE 1
SECOND SCHEDULE	SCHEDULE 2

Table of Endnote References

[1] *This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 2) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government*

[2] *Long title* — *amended by L.20/2008*

[3] *chapter 13.250*

[4] *chapter 08.640*

[5] *chapter 08.680*

[6] *chapter 17.860*

[7] *Article 1(1)* — *amended by L.40/2002, L.20/2008, L.16/2009, L.8/2011, R&O.107/2013, L.7/2014, R&O.30/2015, R&O.63/2016*

[8] *Article 1(2A)* — *inserted by L.7/2014*

[9] *Article 1(2B)* — *inserted by L.7/2014*

[10] *chapter 07.595*

[11] *Article 1(9)* — *inserted by L.8/2011*

[12] *chapter 08.680*

[13] *chapter 17.860*

[14] *Article 2(2)* — *substituted by L.11/2008, amended by L.7/2014*

[15] *chapter 18.495*

[16] *chapter 13.775*

[17] *chapter 13.776*

[18] *Article 2(3)* — *amended by L.24/2012*

[19] *Article 2(11)* — *inserted by L.8/2011*

[20] *chapter 08.770*

[21] *Article 3(5)* — *amended by L.11/2008, L.7/2014*

[22]		*chapter 08.200*
[23]	*Article 3(9)*	*amended by L.11/2008, L.7/2014*
[24]	*Article 4*	*substituted by L.7/2014*
[25]	*Article 5(1)*	*substituted by L.30/2018*
[26]		*chapter 08.770*
[27]	*Article 10(1)*	*amended by L.11/2008*
[28]		*chapter 08.200*
[29]	*Article 15(1A)*	*inserted by L.7/2014*
[30]	*Article 15(5)*	*amended by L.7/2014*
[31]	*Article 16(6)*	*substituted by L.7/2014*
[32]	*Article 24(1)*	*amended by R&O.107/2013*
[33]	*Article 24(2)*	*amended by L.20/2008*
[34]		*chapter 24.900*
[35]	*Article 24(3A)*	*inserted by L.20/2008*
[36]	*Article 24(4)*	*amended by L.20/2008, R&O.107/2013*
[37]	*Article 24(4A)*	*inserted by L.7/2014*
[38]	*Article 24(5)*	*amended by R&O.107/2013*
[39]	*Article 24(6)*	*amended by R&O.107/2013*
[40]	*Article 24(8)*	*substituted by L.20/2008*
[41]	*Article 28A*	*inserted by L.20/2008*
[42]	*Article 29*	*substituted by L.7/2014*
[43]	*Article 29(1)*	*substituted by L.30/2018*
[44]	*Article 30*	*substituted by L.7/2014*
[45]	*Article 31*	*substituted by L.7/2014*
[46]	*Article 32*	*substituted by L.7/2014*
[47]	*Article 33*	*substituted by L.7/2014*
[48]	*Article 33(2)*	*amended by L.1/2016*
[49]	*Article 34*	*substituted by L.7/2014*
[50]		*chapter 08.785*
[51]	*Article 34A*	*inserted by L.20/2008*
[52]	*Article 34A(1)*	*substituted by L/7/2014*
[53]	*Article 34A(1A)*	*inserted by L/7/2014*
[54]	*Article 34A(1B)*	*inserted by L/7/2014*
[55]	*Article 34A(3)*	*amended by L.7/2014*
[56]	*Article 34B*	*inserted by L.20/2008*
[57]	*Article 34C*	*inserted by L.20/2008*
[58]	*Article 34D*	*inserted by L.20/2008*
[59]	*Article 34D*	*heading amended by L.16/2009*
[60]	*Article 34D(1)*	*substituted by L.7/2014*
[61]	*Article 34D(2)*	*substituted by L.7/2014*
[62]	*Article 34D(3)*	*substituted by L.7/2014*
[63]	*Article 34D(4)*	*substituted by L.7/2014*
[64]	*Article 34D(4A)*	*inserted by L.7/2014*
[65]	*Article 34D(7)*	*substituted by L.16/2009*
[66]		*chapter 08.785*
[67]	*Article 34D(7A)*	*inserted by L.16/2009*
[68]	*Article 34D(9)*	*amended by L.16/2009, L.7/2014*
[69]	*Article 34E*	*inserted by L.16/2009*
[70]	*Article 35*	*substituted by L.7/2014*
[71]	*Article 35(6)*	*amended by R&O.101/2014*
[72]	*Article 36(1)*	*substituted by L.7/2014*
[73]	*Article 37*	*heading amended by L.20/2008*
[74]	*Article 37(1)*	*substituted by L.20/2008, amended by R&O.107/2013*
[75]	*Article 37(1A)*	*inserted by L.20/2008*
[76]	*Article 37(2)*	*substituted by L.20/2008*
[77]	*Article 37(3)*	*substituted by L.20/2008*
[78]	*Article 37(8)*	*substituted by L.32/2008*

[79]	*chapter 08.785*
[80] *Article 37(9)*	*substituted by L.32/2008, amended by L.7/2014*
[81]	*chapter 17.910.16*
[82]	*chapter 17.861*
[83] *Article 37(11)*	*substituted by L.7/2014*
[84] *Article 38*	*substituted by L.20/2008*
[85] *Article 38(1)*	*amended by L.7/2014*
[86] *Article 39(1)*	*amended by L.20/2008*
[87] *Article 40(10)*	*deleted by L.7/2014*
[88] *Article 40(11)*	*substituted by L.7/2014*
[89] *Article 41(2)*	*amended by L.7/2014*
[90] *Article 41(6)*	*deleted by L.7/2014*
[91] *Article 41A*	*inserted by L.20/2008*
[92] *Article 41B*	*inserted by L.2/2015*
[93] *Article 42*	*repealed by L.7/2014*
[94] *Article 42A*	*inserted by L.8/2011*
[95] *Article 43(1)*	*amended by R&O.107/2013*
[96]	*chapter 15.720*
[97]	*chapter 07.770*
[98] *Article 44*	*amended by L.20/2008*
[99] *Schedule 1*	*amended by L.40/2002, L.11/2008, L.7/2014*
[100] *Schedule 2*	*substituted by R&O.25/2008*
[101] *Schedule 2*	*Part A heading substituted by R&O.113/2008*
[102] *Schedule 2*	*Part A amended by R&O.113/2008, R&O.119/2009*
[103]	*chapter 13.075*
[104]	*chapter 13.425*
[105]	*chapter 13.100*
[106]	*chapter 13.100.30*
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[108]	*chapter 13.225.25*
[109]	*chapter 13.225.40*
[110]	*chapter 13.225.35*
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[117] *Schedule 2*	*Part B heading substituted by R&O.113/2008*
[118] *Schedule 2*	*Part B amended by R&O.113/2008, R&O.119/2009, L.14/2012, R&O.63/2016*
[119]	*chapter 13.125*
[120]	*chapter 13.475*
[121]	*chapter 13.475.10*
[122]	*chapter 11.300*
[123]	*R&O.28/2008*
[124]	*chapter 13.225*
[125] *Schedule 3*	*inserted by L.20/2008*
[126] *Schedule 3*	*Part 1 amended by L.16/2009, L.7/2014, L.2/2015, L.1/2016*
[127] *Schedule 3*	*Part 2 amended by L.16/2009*