



Jersey

DRUG TRAFFICKING OFFENCES (JERSEY) LAW 1988

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DRUG TRAFFICKING OFFENCES (JERSEY) LAW 1988

Arrangement

Article

1	Interpretation	5
2	Definition of principal terms used	9
3	Confiscation orders	10
4	Postponed determinations	11
5	Assessing the proceeds of drug trafficking	13
6	Statements relating to drug trafficking	14
7	Provision of information by defendant	15
8	Amount to be recovered under confiscation order	16
9	Powers of the Court where defendant has died or absconded	16
10	Effect of conviction where Court has acted under Article 9	17
11	Enforcement, etc. of confiscation orders	17
12	Reconsideration of case where Court has not proceeded under Article 3	18
13	Re-assessment of whether defendant has benefited from drug trafficking	19
14	Revised assessment of proceeds of drug trafficking	20
15	Cases in which <i>saisies judiciaires</i> may be made	22
16	<i>Saisies judiciaires</i>	23
17	Realisation of property	24
18	Interest on sums unpaid under confiscation orders	24
19	Increase in realisable property	25
20	Application of proceeds of realisation and other sums	25
21	Variation of confiscation orders	26
22	Bankruptcy of defendant, etc.	26
23	Viscount: exclusion of liability	27
24	Drug Trafficking Confiscations Fund	27
25	Compensation	28
26	Compensation etc. where absconder acquitted	29
27	Power to discharge confiscation order and order compensation where absconder returns	30
28	Variation of confiscation orders made by virtue of Article 9	30
29	Prohibition on importation or exportation of drug trafficking proceeds	32
30	Concealing or transferring proceeds of drug trafficking	32

31	Seizure and detention of drug trafficking money	32
32	Forfeiture	33
33	Appeal against forfeiture under Article 32	34
34	Interest	34
35	Procedure	34
36	Receipts.....	34
37	Assisting another to retain the benefit of drug trafficking.....	35
38	Acquisition, possession or use of property representing proceeds of drug trafficking	36
39	Enforcement of external confiscation orders	37
40	Failure to disclose knowledge or suspicion of drug money laundering	38
41	Tipping-off.....	40
42	Investigations into drug trafficking	41
43	Authority for search.....	42
44	Offence of prejudicing investigation	44
45	Offences on Jersey vessels.....	44
46	Ships used for illicit traffic	44
47	Enforcement powers	45
48	Jurisdiction and prosecutions.....	46
49	Rules of Court.....	46
50	Citation	46

SCHEDULE 47

ENFORCEMENT POWERS IN RESPECT OF SHIPS 47

1	Preliminary	47
2	Power to stop, board, divert and detain	47
3	Power to search and obtain information	47
4	Powers in respect of suspected offences.....	48
5	Assistants	48
6	Use of reasonable force	48
7	Evidence of authority.....	48
8	Protection of officers	48
9	Offences	49

Supporting Documents

ENDNOTES 50

Table of Legislation History	50
Table of Renumbered Provisions	50
Table of Endnote References	52



Jersey

DRUG TRAFFICKING OFFENCES (JERSEY) LAW 1988¹

A LAW to make provision for the recovery of the proceeds of drug trafficking and other provision in connection with drug trafficking

Commencement [[see endnotes](#)]

1 Interpretation²

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

“British ship” means a ship registered in the United Kingdom, Guernsey or the Isle of Man or a colony;³

“confiscation order” means an order under Article 3 and includes, in particular, an order under that Article which is made by virtue of Article 9, 12 or 13;⁴

“corresponding law” has the same meaning as in the Misuse of Drugs (Jersey) Law 1978;⁵

“Court” means the Royal Court;

“defendant” means a person against whom proceedings have been instituted for a drug trafficking offence (whether or not the person has been convicted);

“drug trafficking” means doing or being concerned in any of the following, whether in Jersey or elsewhere –

- (a) producing or supplying a controlled drug where the production or supply contravenes Article 5 of the Misuse of Drugs (Jersey) Law 1978 or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes Article 8(1) of that Law or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by Article 4(1) of that Law or a corresponding law;

- (d) manufacturing or supplying a scheduled substance within the meaning of Article 6 of the Misuse of Drugs (Jersey) Law 1978 where the manufacture or supply is an offence under that Article or would be such an offence if it took place in Jersey;
- (e) acquiring, having in possession or using property in circumstances which amount to the commission of an offence under Article 38 or which would be such an offence if it took place in Jersey;
- (f) conduct which is an offence under Article 30 or which would be such an offence if it took place in Jersey;
- (g) using a ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under Article 46,

and includes a person doing the following, whether in Jersey or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby –

- (i) the retention or control by or on behalf of another person of the other person's proceeds of drug trafficking is facilitated, or
- (ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person's disposal or are used for the other person's benefit to acquire property by way of investment;⁶

“Drug Trafficking Confiscations Fund” means the Drug Trafficking Confiscations Fund established under Article 24;⁷

“drug trafficking offence” means any of the following –

- (a) an offence under Article 5 or 8(2) of the Misuse of Drugs (Jersey) Law 1978⁸;
- (b) an offence under Article 6 of the Misuse of Drugs (Jersey) Law 1978;
- (c) an offence under Article 21(5) of the Misuse of Drugs (Jersey) Law 1978;
- (d) an offence under Article 61 of the Customs and Excise (Jersey) Law 1999⁹ in connection with a prohibition or restriction on importation or exportation having effect by virtue of Article 4 of the Misuse of Drugs (Jersey) Law 1978 or of Article 29 of this Law;
- (e) an offence under Article 30, 37, 38 or 46;
- (f) an offence of conspiracy to commit any of the offences in subparagraphs (a) to (e);
- (g) an offence of attempting to commit any of those offences;
- (h) an offence of inciting another to commit any of those offences; and
- (i) aiding, abetting or participating in the commission of any of those offences;¹⁰

“exported”, in relation to any money, includes its being brought to any place in Jersey for the purpose of being exported;¹¹

“external confiscation order” has the meaning given in Article 39(2);

“items subject to legal professional privilege” means –

- (a) communications between a professional legal adviser and client;
- (b) communications made in connection with, or in contemplation of, legal proceedings and for the purpose of those proceedings,

being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications but, for the avoidance of doubt, does not include communications held with the intention of furthering a criminal offence;

“Minister” means the Minister for Treasury and Resources;

“money” means cash (coins or notes in any currency) or any negotiable instrument;¹²

“police officer” means a member of the Honorary Police, the States of Jersey Police Force or an officer within the meaning of the Customs and Excise (Jersey) Law 1999;¹³

“premises” includes any place, and, in particular includes –

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

“property” means all property whether movable or immovable, vested or contingent and whether situated in Jersey or elsewhere;

“ship” includes any vessel used in navigation;¹⁴

“Vienna Convention” means the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed at Vienna on 20th December 1988.¹⁵

- (2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Law listed in the right hand column in relation to those expressions –¹⁶

Expression	Relevant provision
Benefited from drug trafficking	Article 3(3)
Convention State	Article 46(1)
Dealing with property	Article 16(9)
Gift caught by this Law	Article 2(7)
Jersey ship	Article 45
Making a gift	Article 2(8)
Proceeds of drug trafficking	Article 5(1)(a)
Realisable property	Article 2(1)
<i>Saisie judiciaire</i>	Article 16(1)
Value of gift, payment or reward	Article 2(5)
Value of proceeds of drug trafficking	Article 5(1)(b)
Value of property	Article 2(4)

- (3) References in this Law to offences include a reference to offences committed before the commencement of Article 3, but nothing in this Law imposes any duty or confers any power on the Court in or in connection with proceedings against a person for a drug trafficking offence instituted before the commencement of that Article.
- (4) References in this Law to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection.
- (5) Proceedings for an offence are instituted in Jersey when –
 - (a) the Bailiff issues a warrant in respect of the offence for the arrest of a person who is out of Jersey;
 - (b) a person is arrested and charged with the offence;
 - (c) a summons in respect of the offence is served on a person at the instance of the Attorney General;
 - (d) a summons in respect of the offence is served on a person in accordance with the provisions of Article 9 of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949,¹⁷

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.

- (6) Proceedings in Jersey for a drug trafficking offence are concluded –
 - (a) when the defendant is acquitted on all counts;
 - (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.¹⁸
- (7) 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.¹⁹
- (8) 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.²⁰
- (9) For the purposes of this Law a confiscation order is satisfied when no amount is due under it.²¹
- (10) An order is subject to appeal until (disregarding any power of the 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.
- (11) If in any proceedings under this Law any question arises whether any country or territory is a state or is a party to the Vienna Convention, a

certificate issued by the Secretary of State shall be conclusive evidence on that question.²²

2 Definition of principal terms used

- (1) In this Law, “realisable property” means, subject to paragraph (2) –
 - (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 this Law; and
 - (c) any property to which the defendant is beneficially entitled.
- (2) Property is not realisable if an order under Article 29 of the Misuse of Drugs (Jersey) Law 1978²³ or a forfeiture order under Article 26 of the Terrorism (Jersey) Law 2002²⁴ is in force in respect of the property.²⁵
- (3) For the purposes of this Law the amount that might be realised at the time a confiscation order is made against the defendant is the total of the values at that time of all the realisable property including the total value of any property to which the defendant is beneficially entitled, less –
 - (a) any amount due in respect of a fine or other order of the Royal Court, the Magistrate’s Court or the Youth Court, imposed or made on conviction of an offence, where the fine was imposed or made before the making of the confiscation order;
 - (b) 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 either preference (*préférence*) or privilege (*privilège*) as the case may be;
 - (c) 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 provisions of the Loi (1880) sur la Propriété Foncière²⁶ before the making of the confiscation order;
 - (d) any sum the payment of which is secured on all or any of the realisable property by a security interest created in accordance with the provisions of the Security Interests (Jersey) Law 1983,²⁷ before the making of the confiscation order,together with the total of the values at that time of all gifts caught by this Law.²⁸
- (4) Subject to the following provisions of this Article, for the purposes of this Law the value of property (other than cash) in relation to any person holding the property shall be the market value of the property.
- (5) Subject to paragraph (8), references in this Law to the value at any time (referred to in paragraph (6) as “the material time”) of a gift caught by this Law or of any payment or reward are references to –
 - (a) the value of the gift, payment or reward to the recipient when the recipient received 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 the greater.
- (6) Subject to paragraph (8), if at the material time the recipient holds –
 - (a) the property which the recipient received (not being cash); or
 - (b) property which, in whole or in part, directly or indirectly represents in the recipient's hands the property which the recipient received,the value referred to in paragraph (5)(b) is the value to the recipient at the material time of the property mentioned in sub-paragraph (b) so far as it so represents the property received.
- (7) A gift (including a gift made before the commencement of Article 3) is caught by this Law if –
 - (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against the defendant; or
 - (b) it was made by the defendant at any time and was a gift of property –
 - (i) received by the defendant in connection with drug trafficking carried on by the defendant or another, or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by the defendant in that connection.
- (8) For the purposes of this Law –
 - (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 consideration the value of which is significantly less than the value of the consideration 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 of consideration provided by the defendant.

3 Confiscation orders

- (1) Where a person appears before the Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of the conviction for the offence or, as the case may be, any of the offences concerned), then –
 - (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,

it may act as follows.²⁹

-
- (2) The Court may first determine whether the person has benefited from drug trafficking.
 - (3) For the purposes of this Law, a person who has at any time (whether before or after the commencement of this Article) received any payment or other reward in connection with drug trafficking carried on by the person or another has benefited from drug trafficking.
 - (4) If the Court determines that the person has so benefited, the Court 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, determine in accordance with Article 8 the amount to be recovered in the person's case by virtue of this Article.
 - (5) The Court may then, in respect of the offence or offences concerned –
 - (a) order the person to pay that amount;
 - (b) take account of the order before –
 - (i) imposing any fine on the person,
 - (ii) making any order involving any payment by the person, or
 - (iii) making any order under Article 29 of the Misuse of Drugs (Jersey) Law 1978;³⁰ and
 - (c) subject to sub-paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.
 - (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 the Court considers appropriate in respect of a drug trafficking offence.
 - (7) The standard of proof required to determine any question arising under this Law as to –
 - (a) whether a person has benefited from drug trafficking; or
 - (b) the amount to be recovered in the person's case by virtue of this Article,shall be that applicable in civil proceedings.³¹

4 Postponed determinations³²

- (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 drug trafficking; 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 making 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 which –
 - (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 the defendant's conviction, the Court may, on that account –
 - (a) postpone making 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 (1) or (4) shall not exceed the period ending 3 months after the date on which the appeal is determined or 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 relevant offences.
- (8) Where the Court has so proceeded, Article 3 shall have effect as if –
 - (a) in paragraph (4), the words from and including “before sentencing” to “offences concerned” were omitted; and
 - (b) in paragraph (5)(c), after the word “determining” there were inserted the words “in relation to any offence in respect of which the defendant has not been sentenced or otherwise dealt with”.
- (9) In sentencing, or otherwise dealing with, the defendant in respect of the relevant offence or any of the relevant offences at any time during the specified period, the Court shall not –
 - (a) impose any fine on the defendant; or
 - (b) make any such order as is mentioned in Article 3(5)(b)(ii).
- (10) Where the Court has sentenced the defendant under paragraph (7) during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in Article 3(5)(b)(ii), so long as it does so within 28 days beginning with the end of the specified period.
- (11) In this Article –

- (a) “the relevant offence” means the drug trafficking offence in respect of which the defendant appears (as mentioned in Article 3(1)) before the Court; and
- (b) “the date of conviction” means –
 - (i) the date on which the defendant was convicted, or
 - (ii) 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.

5 Assessing the proceeds of drug trafficking

- (1) For the purposes of this Law –
 - (a) any payments or other rewards received by a person at any time (whether before or after the commencement of Article 3) in connection with drug trafficking carried on by him or her or another are his or her proceeds of drug trafficking; and
 - (b) the value of the person’s proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.
- (2) The Court may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if the defendant has, of assessing the value of the defendant’s proceeds of drug trafficking, make the following assumptions, except to the extent that any of the assumptions are shown to be incorrect in the defendant’s case.
- (3) Those assumptions are –
 - (a) that any property appearing to the Court –
 - (i) to have been held by the defendant at any time since the defendant’s conviction, or
 - (ii) to have been transferred to the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against the defendant,was received by the defendant, at the earliest time at which the defendant appears to the Court to have held it, as a payment or reward in connection with drug trafficking carried on by the defendant;
 - (b) that any expenditure of the defendant since the beginning of that period was met out of payments received by the defendant in connection with drug trafficking carried on by the defendant; and
 - (c) that, for the purpose of valuing any property received or assumed to have been received by the defendant at any time as such a reward, the defendant received the property free of any other interests in it.
- (4) Paragraph (2) does not apply if the only drug trafficking offence in respect of which the defendant appears before the Court to be sentenced is an offence under Article 30, 37 or 38.³³

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

6 Statements relating to drug trafficking

- (1) Subject to the provisions of paragraphs (3) and (4), the Attorney General may at any time give to the Court a statement of matters which the Attorney General considers relevant in connection with –
- (a) determining whether the defendant has benefited from drug trafficking; or
 - (b) assessing the value of the defendant's proceeds of drug trafficking.³⁴
- (2) In this Article, such a statement is referred to as an "Attorney General's statement".³⁵
- (3) Where the Court proceeds under Article 3 without the Attorney General having asked it to do so, it may require him or her to give an Attorney General's statement within such period as it may determine.³⁶
- (4) Where the Attorney General applies to the Court under Article 9, 12, 13 or 14, he or she shall give to the Court within such time as it may direct, an Attorney General's statement.³⁷
- (5) Where the Attorney General has given such a statement –
- (a) the Attorney General may at any time give the Court a further such statement; and
 - (b) the Court may, at any time, require the Attorney General to give it a further such statement, within such further period as it may direct.³⁸
- (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.³⁹
- (7) Where the Court has given a direction under this Article it may at any time vary it by a further direction.⁴⁰
- (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 drug trafficking; or
 - (b) assessing the value of the defendant's proceeds of drug trafficking,

treat the defendant's acceptance as conclusive of the matters to which it relates.⁴¹

- (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 drug trafficking or that any payment or other reward was received by the defendant in connection with drug trafficking carried on by the defendant or another.⁴²
- (10) Where –
 - (a) there is tendered to the Court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
 - (b) 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, or particulars of any matter may be given, for the purposes of this Article in such manner as may be prescribed by Rules of Court or as the Court may direct.⁴³
- (12) No acceptance by the defendant under this Article that any payment or other reward was received by the defendant in connection with drug trafficking carried on by the defendant or another shall be admissible in evidence in any proceedings for an offence.

7 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 prescribed by Rules of Court or as the Court may direct.⁴⁴

8 Amount to be recovered under confiscation order

- (1) Subject to paragraph (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking.
- (2) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under Article 6 or otherwise) the Court may issue a certificate giving the Court's opinion as to the matters concerned and shall do so if satisfied as mentioned in paragraph (3).
- (3) If the Court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking, the amount to be recovered in the defendant's case under the confiscation order shall be –
 - (a) the amount appearing to the Court to be the amount that might be so realised; or
 - (b) a nominal amount, where it appears to the Court (on the information available at the time) that the amount that might be so realised is nil.⁴⁵

9 Powers of the Court where defendant has died or absconded⁴⁶

- (1) Paragraph (2) applies where a person has been convicted of one or more drug trafficking offences.
- (2) If the Attorney General asks it to proceed under this Article, the Court may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that the defendant has died or absconded.
- (3) Paragraph (4) applies where proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded.

- (4) If the Attorney General asks it to proceed under this Article the Court may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that the defendant has absconded.
- (5) The power conferred by paragraph (4) may not be exercised at any time before the end of the period of 2 years beginning with the date which 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(2) and 6(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 conviction where Court has acted under Article 9⁴⁷

- (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 1978;⁴⁸ 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.
- (2) Where the Court has made an order under 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, etc. of confiscation orders

- (1) Subject to paragraphs (2) and (3), where the Court orders the defendant to pay any amount under Article 3 the Court may, if it thinks fit, order the defendant to be imprisoned until such amount is paid.
- (2) The Court may, in its discretion, limit the period of such imprisonment.
- (3) The defendant shall not be imprisoned for more than 10 years for the non-payment of any amount under paragraph (1).
- (4) The term of imprisonment in default of payment imposed under paragraph (1) 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 said term of imprisonment.

- (5) The reference in paragraph (4) to the term of imprisonment which the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment or youth detention (as the case may be) which the defendant is liable to serve in respect of the offence or offences; and for the purposes of this paragraph consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.⁴⁹
- (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 paying any amount due under a confiscation order, the defendant's serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.⁵⁰

12 Reconsideration of case where Court has not proceeded under Article 3⁵¹

- (1) This Article applies where the defendant has appeared before the Court to be sentenced in respect of one or more drug trafficking offences but the Court has not proceeded under Article 3.
- (2) If the Attorney General has evidence –
 - (a) which was not available to him or her when the defendant appeared to be sentenced (and accordingly was not considered by the Court); but
 - (b) which the Attorney General believes would have led the Court to determine that the defendant had benefited from drug trafficking 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 shall 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, the Court shall have regard to all the circumstances of the case.
- (5) Where, having decided to proceed under Article 3, the Court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.
- (6) In considering the circumstances of any case the Court shall have regard, in particular, to the amount of any fine imposed on the defendant in respect of the offence or offences in question.

- (7) Where the Court is proceeding under Article 3, by virtue of this Article, paragraph (4) of that Article shall have effect as if the words “before sentencing or otherwise dealing with the defendant in respect of the offence or, as the case may be, any of the offences concerned” were omitted.
- (8) The Court may take into account any payment or other reward received by the defendant on or after the date of conviction, but only if the Attorney General shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.
- (9) In considering any evidence under this Article which relates to any payment or reward to which paragraph (8) applies, the Court shall not make any of the assumptions which it would otherwise be entitled to make under Article 5.
- (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) 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 Re-assessment of whether defendant has benefited from drug trafficking⁵²

- (1) This Article applies where the Court has made a determination (“the Article 3(2) determination”) under Article 3(2) that the defendant has not benefited from drug trafficking.
- (2) If the Attorney General has evidence –
 - (a) which was not considered by the Court in making the Article 3(2) determination; but
 - (b) which the Attorney General believes would have led the Court to determine that the defendant had benefited from drug trafficking 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 drug trafficking if that evidence had been available to it, the Court –
 - (a) shall –
 - (i) make a fresh determination under Article 3(2), and
 - (ii) make a determination under paragraph (4) of that Article of the amount to be recovered by virtue of that Article; and
 - (b) may make an order under that Article.

- (4) Where the Court is proceeding under Article 3, by virtue of this Article, paragraph (4) of that Article shall have effect as if the words “before sentencing or otherwise dealing with the person in respect of the offence or, as the case may be, any of the offences concerned” were omitted.
- (5) The Court may take into account any payment or other reward received by the defendant on or after the date of the Article 3(2) determination, but only if the Attorney General shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.
- (6) In considering any evidence under this Article which relates to any payment or reward to which paragraph (5) applies, the Court shall not make any of the assumptions which it would otherwise be entitled to make under Article 5.
- (7) Where the Court –
 - (a) has been asked to proceed under Article 9 in relation to a defendant who has absconded; but
 - (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 with –
 - (a) 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.

14 Revised assessment of proceeds of drug trafficking⁵³

- (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 Article 3(4) determination”).
- (2) Where the Attorney General is of the opinion that the real value of the defendant’s proceeds of drug trafficking was greater than their assessed value, the Attorney General may apply to the Court for the evidence on which he or she has formed the opinion to be considered by the Court.
- (3) In paragraph (2) –
 - “assessed value” means the value of the defendant’s proceeds of drug trafficking as assessed by the Court under Article 8(1); and
 - “real value” means the value of the defendant’s proceeds of drug trafficking which took place –
 - (a) in the period by reference to which the current Article 3(4) determination was made; or
 - (b) in any earlier period.

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- (4) If, having considered the evidence, the Court is satisfied that the real value of the defendant's proceeds of drug trafficking is greater than their assessed value (whether because the real value was higher at the time of the current Article 3(4) determination than was thought or because the value of the proceeds 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.
- (5) Where the Court is proceeding under Article 3, by virtue of this Article, paragraph (4) of that Article shall have effect as if the words "before sentencing or otherwise dealing with the defendant in respect of the offence or, as the case may be, any of the offences concerned" were omitted.
- (6) 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 the determination is made.
- (7) For any determination under Article 3(4) by virtue of this Article, Article 5(5) shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in respect of the current Article 3(4) determination.
- (8) In relation to any such determination –
- (a) Article 2(3) shall have effect as if –
 - (i) for the words "a confiscation order is made against the defendant" there were substituted the words "of the determination", and
 - (ii) in clauses (a), (b) and (c) of that paragraph, for the words "confiscation order" in each case where they occur, there were substituted the words "determination";
 - (b) Articles 6(10)(a) and 8(2) shall have effect as if for the words "confiscation order" there were substituted the word "determination"; and
 - (c) Article 8(3) shall have effect as if for the words "confiscation order is made" there were substituted the words "determination is made".
- (9) The Court may take into account any payment or other reward received by the defendant on or after the current Article 3(4) determination, but only if the Attorney General shows that it was received by the defendant in connection with drug trafficking carried on by the defendant or another on or before that date.
- (10) In considering any evidence under this Article which relates to any payment or reward to which paragraph (9) applies, the Court shall not make any of the assumptions which it would otherwise be entitled to make under Article 5.
- (11) If, as a result of making the fresh determination required by paragraph (4), the amount to be recovered exceeds the amount set by the current Article 3(4) determination, the Court may substitute for the amount to be recovered under the confiscation order which was made by

reference to the current Article 3(4) determination such greater amount as it thinks just in all the circumstances of the case.

- (12) Where the Court varies a confiscation order under paragraph (11), it shall substitute for the term of imprisonment or of detention fixed in respect of the amount to be recovered under the order a longer term in respect of the greater amount substituted under paragraph (11).
- (13) 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.
- (14) 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 –
 - (a) 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.

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; or
 - (b) proceedings have been instituted in Jersey against the defendant for a drug trafficking offence or an application has been made by the Attorney General in respect of the defendant under Article 9, 12, 13, 14 or 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(4) or, as the case may be, Article 19(2), or
 - (B) in any other case, that the defendant has benefited from drug trafficking; or
 - (c) the Court is satisfied –
 - (i) that proceedings are to be instituted in Jersey against a person for a drug trafficking offence, or that an application of a kind mentioned in sub-paragraph (b) is to be made against the defendant, and
 - (ii) is also satisfied as mentioned in sub-paragraph (b)(ii).⁵⁴
- (2) For the purposes of Article 16, at any time when those powers are exercisable before proceedings have been instituted –
 - (a) references in this Law to the defendant shall be construed as references to the person referred to in paragraph (1)(c);
 - (b) references in this Law to realisable property shall be construed as if, immediately before that time, proceedings had been instituted

against the person referred to in paragraph (1)(c) for a drug trafficking offence.

- (3) Where the Court has made an order under Article 16 by virtue of paragraph (1)(c), 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), the Court shall discharge the order if the application is not made within such time as the Court considers reasonable.⁵⁵
- (5) The Court shall not exercise powers under Article 16, by virtue of paragraph (1)(a) or (b), if it is satisfied that –
 - (a) there has been undue delay in continuing the proceedings or application in question; or
 - (b) the Attorney General does not intend to proceed.⁵⁶

16 *Saisies judiciaires*

- (1) The Court may, subject to such conditions and exceptions as may be specified therein, make an order (in this Law 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 on an *ex parte* application 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; and
 - (b) shall be discharged on satisfaction of the confiscation order.
- (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.⁵⁷
- (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 any realisable property being removed 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

Where –

- (a) in proceedings instituted for a drug trafficking offence, a confiscation order is made;
- (b) the order is not subject to appeal;
- (c) the proceedings have not been concluded; and
- (d) the Court has made a *saisie judiciaire*,

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

18 Interest on sums unpaid under confiscation orders⁵⁸

- (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from the person under the confiscation order.
- (2) The Court may, on the application of the Attorney General, increase the term of imprisonment fixed in respect of the confiscation order under Article 11(1) when paragraph (1) applies and interest has accrued.

- (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 property⁵⁹

- (1) This Article has effect where by virtue of Article 8(3), the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of the person's proceeds of drug trafficking.
- (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 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 amount assessed as the value referred to in paragraph (1)) as appears to the Court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment fixed in respect of the confiscation order under Article 11(1).

20 Application of proceeds of realisation and other sums

- (1) Subject to paragraph (3) the following sums in the hands of the Viscount, that is –
- (a) money which has vested in the Viscount or come into the Viscount's possession pursuant to Article 16;
- (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, be applied after payment of the Viscount's fees and expenses, 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 Drug Trafficking Confiscations Fund.⁶⁰
- (3) If, after payment of the Viscount's fees and expenses and of the amount payable under the confiscation order, any such sums remain in the hands of the Viscount, the Viscount shall distribute those sums –

- (a) among such of those who held the property which has been realised under this Law; and
 - (b) in such proportions,
- as the Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

21 Variation of confiscation orders

- (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.⁶¹
- (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 which appears to the Court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Law from any risk of realisation under this Law.
- (3) Where a certificate has been issued under 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.⁶²
- (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) substitute for the term of imprisonment fixed under Article 11 in respect of the amount to be recovered under the order a shorter term in respect of the lesser amount.
- (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 the opportunity to make representation to the Court.⁶³

22 Bankruptcy of defendant, etc.

- (1) Where a person who holds realisable property becomes bankrupt –
 - (a) property for the time being subject to a *saisie judiciaire* made before the order adjudging the person bankrupt; and

- (b) any proceeds of property realised by virtue of Article 16(4) or 17 for the time being in the hands of the Viscount,

shall not 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 to 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*);
 - (d) property which has been adjudged renounced (*adjudé renoncé*).
- (3) Paragraph (2) does not affect the enforcement of a *saisie judiciaire* –
 - (a) made before the person becomes bankrupt; or
 - (b) on property which was subject to a *saisie judiciaire* when the person became bankrupt.

23 Viscount: exclusion of liability

Where the Viscount takes any action –

- (a) in relation to property which is not realisable property, being action which the Viscount would be entitled to take if it were such property;
- (b) believing, and having reasonable grounds for believing, that he or she 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 action except insofar as the loss or damage is caused by the Viscount's negligence.

24 Drug Trafficking Confiscations Fund⁶⁴

- (1) There shall be established a Fund to be called the Drug Trafficking Confiscations Fund ("the Fund") which, subject to this Article, shall be managed and controlled by the Minister.
- (2) All amounts –
 - (a) recovered under, or in satisfaction of, a confiscation order; or
 - (b) received under an assets-sharing agreement,

shall be included amongst the monies which are paid into the Fund.
- (3) Monies paid into the Fund shall not form part of the annual income of the States.
- (4) Subject to paragraph (5), monies in the Fund shall be applied by the Minister for the purposes of –

- (a) promoting or supporting measures which, in the opinion of the Minister, may assist in –
 - (i) preventing, suppressing or otherwise dealing with drug trafficking or the misuse of controlled drugs,
 - (ii) dealing with the consequences of the misuse of controlled drugs, or
 - (iii) without prejudice to the generality of clauses (i) and (ii), facilitating the enforcement of any enactment dealing with drug trafficking or the misuse of controlled drugs;
 - (b) discharging Jersey's obligations under assets-sharing agreements;
 - (c) meeting the expenses incurred by the Minister in administering the Fund.
- (5) Before promoting or supporting any measure under paragraph (4)(a), the Minister shall consult with the Attorney General and with such other persons or bodies (including other Ministers) as he or she considers appropriate.
- (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 Minister, in a current or deposit account with one or more banks selected by the Minister,
- and any interest earned on such monies while held in such an account shall be paid by the Minister into the Fund.
- (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 –
- “assets-sharing agreement” means an agreement entered into between the Attorney General and the appropriate authority of a country or territory outside Jersey whereby arrangements are made for the sharing of the proceeds of drug-trafficking which, as a result of mutual assistance, have been confiscated either in Jersey or elsewhere;
- “controlled drug” has the same meaning as in the Misuse of Drugs (Jersey) Law 1978.⁶⁵

25 Compensation

- (1) If proceedings are instituted against a person for a drug trafficking offence or offences and either –
 - (a) the proceedings do not result in the person's conviction for any drug trafficking offence; or
 - (b) where the person is convicted of one or more drug trafficking 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 which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

- (2) The Court shall not order compensation to be paid in any case unless the Court is satisfied –
 - (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned; and
 - (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of 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 Compensation etc. where absconder acquitted⁶⁶

- (1) Where –
 - (a) the Court has made a confiscation order in the exercise of its powers under Article 9(4); 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 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.
- (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 affected by any exercise of its powers under this Article to be given an opportunity to make representations to the Court.
- (5) Any compensation payable under this Article shall be paid out of the annual income of the States.

- (6) Where the Court cancels a compensation order it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

27 Power to discharge confiscation order and order compensation where absconder returns⁶⁷

- (1) This Article applies where –
- (a) the Court has made a confiscation order by virtue of Article 9(4) in relation to 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 an opportunity to make representations to the Court.
- (6) Any 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 orders made by virtue of Article 9⁶⁸

- (1) This Article applies where –
- (a) the Court has made a confiscation order by virtue of Article 9(4); and
 - (b) the defendant has ceased to be an absconder.
- (2) If the defendant alleges that –

(a) the value of the defendant's proceeds of drug trafficking 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 any determination under Article 3 by virtue of this Article, Article 5(5) shall not apply in relation to any of the defendant's proceeds of drug trafficking taken into account in determining the original value.

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

(a) it shall substitute for the term of imprisonment or of detention fixed under Article 11 in respect of the amount to be recovered under the order a shorter term in respect of the lesser amount; and

(b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant 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 section to be given an opportunity to make representations to the Court.

(8) Any 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.

29 Prohibition on importation or exportation of drug trafficking proceeds

The importation or exportation of goods intended by any person for use in drug trafficking or of the proceeds of drug trafficking is hereby prohibited.⁶⁹

30 Concealing or transferring proceeds of drug trafficking⁷⁰

- (1) A person is guilty of an offence if the person –
 - (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, the person's proceeds of drug trafficking; or
 - (b) converts or transfers that property or removes it from the jurisdiction,for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in the person's case of a confiscation order.
- (2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, the person –
 - (a) conceals or disguises that property; or
 - (b) converts or transfers that property or removes it from the jurisdiction,for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.
- (3) In paragraphs (1)(a) and (2)(a) the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.
- (4) A person guilty of an offence under this Article is liable to a fine or to imprisonment for a term not exceeding 14 years, or to both.

31 Seizure and detention of drug trafficking money⁷¹

- (1) A police officer may seize and, in accordance with this Article, detain any money which is imported into or exported from Jersey if the police officer has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.
- (2) Money seized by virtue of this Article shall not be detained for more than 48 hours unless its continued detention is authorized by an order made by the Bailiff and no such order shall be made unless the Bailiff is satisfied that –
 - (a) there are reasonable grounds for the suspicion mentioned in paragraph (1); and
 - (b) the continued detention of the money is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in Jersey or elsewhere) of criminal proceedings

against any person for an offence with which the money is connected.

- (3) Any order under paragraph (2) shall authorize the continued detention of the money to which it relates for such period, not exceeding 3 months beginning with the date of the order, as may be specified in the order; and the Bailiff, if satisfied as to the matters mentioned in that paragraph, may thereafter from time to time authorize the further detention of the money but so that –
 - (a) no period of detention specified in such an order shall exceed 3 months beginning with the date of the order; and
 - (b) the total period of detention shall not exceed 2 years from the date of the first order made in respect of the money under paragraph (2).
- (4) An application for an order under paragraph (2) or (3) may only be made by or with the consent of the Attorney General.
- (5) At any time while money is detained by virtue of the foregoing provisions of this Article –
 - (a) the Bailiff may direct its release if satisfied –
 - (i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in paragraph (2), or
 - (ii) on an application made by any other person, that detention of the money is not for that or any other reason justified; and
 - (b) a police officer may release the money if satisfied that its detention is no longer justified but shall first obtain the consent of the Attorney General.
- (6) If at any time when money is being detained by virtue of the foregoing provisions of this Article –
 - (a) an application for its forfeiture under Article 32 is made; or
 - (b) proceedings are instituted (whether in Jersey or elsewhere) against any person for an offence with which the money is connected,

the money shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence, have been concluded.

32 Forfeiture⁷²

- (1) The Royal Court may order the forfeiture of any money which has been seized under Article 31 if satisfied, on an application made while the money is detained under that Article, that the money directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.
- (2) Any application under this Article shall be made by or on behalf of the Attorney General.

- (3) The standard of proof in proceedings on any application under this Article shall be that applicable to civil proceedings; and an order may be made under this Article whether or not proceedings are brought against any person for an offence with which the money in question is connected.

33 Appeal against forfeiture under Article 32⁷³

- (1) Where an order for forfeiture of money (“the forfeiture order”) has been made under Article 32, any party to the proceedings in which the order was made (other than the Attorney General) may, before the end of the period of 30 days beginning on which it is made, appeal to the Court of Appeal.
- (2) The Court may, on an application made by the appellant, order the release of so much of the money to which the forfeiture order relates as it considers appropriate to enable the appellant to meet legal expenses in connection with the appeal.
- (3) The Court of Appeal on hearing an appeal under this Article may make such order as it considers appropriate.
- (4) If it upholds the appeal, the Court of Appeal may release the money, or (as the case may be) the remaining money, together with any accrued interest.
- (5) Article 32(3) applies in relation to a rehearing on an appeal under this Article as it applies to proceedings under that Article.

34 Interest⁷⁴

Money seized under this Law and detained for more than 48 hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such money shall be added to that money on its forfeiture or release.

35 Procedure⁷⁵

- (1) An order under Article 31(2) shall provide for notice to be given to persons affected by the order.
- (2) Provision may be made by Rules of Court with respect to applications to the Court under Article 32 or appeals under Article 33, for the giving of notice of such applications or appeals to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under Articles 31, 32 and 33.

36 Receipts⁷⁶

- (1) Money forfeited under Article 32, together with any interest thereon, shall be disposed of in such manner as the Minister may direct.

- (2) Where an appeal against forfeiture is made under Article 33, paragraph (1) shall not apply until the appeal is determined or otherwise disposed of.

37 Assisting another to retain the benefit of drug trafficking

- (1) Subject to paragraph (3), if a person enters into or is otherwise concerned in an arrangement whereby –
- (a) the retention or control by or on behalf of another (in this Article referred to as “A”) of A’s proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
 - (b) A’s proceeds of drug trafficking –
 - (i) are used to secure that funds are placed at A’s disposal, or
 - (ii) are used for A’s benefit to acquire property by way of investment,
- knowing or suspecting that A is a person who carried on or has carried on drug trafficking or has benefited from drug trafficking, the person is guilty of an offence.
- (2) In this Article, references to any person’s proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in the person’s hands the person’s proceeds of drug trafficking.
- (3) Where a person discloses to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with drug trafficking or any matter on which such a suspicion or belief is based –
- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute, contract or otherwise; and
 - (b) if the person does any action in contravention of paragraph (1) and the disclosure related to the arrangement concerned, the person does not commit an offence under this Article if the disclosure is made in accordance with this paragraph, that is –
 - (i) it is made before the person does the act concerned, being an act done with the consent of the police officer, or
 - (ii) it is made after the person does the act, but is made on the person’s initiative and as soon as it is reasonable to make it.⁷⁷
- (4) In proceedings against a person for an offence under this Article, it is a defence to prove –
- (a) that the person did not know or suspect that the arrangement related to any person’s proceeds of drug trafficking;
 - (b) that the person did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was

facilitated or, as the case may be, that by the arrangement any property was used as mentioned in paragraph (1); or

- (c) that –
 - (i) the person intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in paragraph (3) in relation to the arrangement, but
 - (ii) there is a reasonable excuse for the person's failure to make disclosure in accordance with paragraph (3)(b).
- (5) In the case of a person who was in employment at the relevant time, paragraphs (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.⁷⁸
- (6) A person guilty of an offence under this Article shall be liable on conviction to imprisonment for a term not exceeding 14 years or to a fine or to both.

38 Acquisition, possession or use of property representing proceeds of drug trafficking⁷⁹

- (1) A person who, knowing that any property is, or in whole or in part directly or indirectly represents, another's proceeds of drug trafficking, acquires that property or has possession or use of it, is guilty of an offence.
- (2) It is a defence to a charge of committing an offence under this Article that the person charged acquired or used the property or had possession of it for adequate consideration.
- (3) For the purposes of paragraph (2) –
 - (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
 - (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of the person's use or possession of the property.
- (4) The provision for any person of services or goods which are of assistance to the person in drug trafficking shall not be treated as consideration for the purposes of paragraph (2).
- (5) Where a person discloses to a police officer a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, or discloses to a police officer any matter on which such a suspicion or belief is based –
 - (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute, contract or otherwise; and

- (b) if the person does any act in relation to the property in contravention of paragraph (1), the person does not commit an offence under this Article if –
 - (i) the disclosure is made before the person does the act concerned and the act is done with the consent of the police officer, or
 - (ii) the disclosure is made after the person does the act, but on the person's initiative and as soon as it is reasonable to make it.
- (6) For the purposes of this Article, having possession of any property shall be taken to be doing an act in relation to it.
- (7) In proceedings against a person for an offence under this Article, it is a defence to prove that –
 - (a) the person intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in paragraph (5); but
 - (b) there is reasonable excuse for the person's failure to make the disclosure in accordance with paragraph (5)(b).
- (8) In the case of a person who was in employment at the relevant time, paragraphs (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by the person's employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.
- (9) A person guilty of an offence under this Article shall be liable on conviction to imprisonment for a term not exceeding 14 years or to a fine or to both.
- (10) No police officer shall be guilty of an offence under this Article in respect of anything done by him or her in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.

39 Enforcement of external confiscation orders

- (1) The States may by Regulations –
 - (a) direct in relation to a country or territory outside Jersey designated by the Regulations ("a designated country") that, subject to such modifications as may be specified, this Law shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
 - (b) make –
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order,

- (ii) such provision as to evidence or proof of any matter for the purposes of this Article, and
 - (iii) such incidental, consequential and transitional provision, as appears to the States to be expedient; and
 - (c) without prejudice to the generality of this paragraph direct that, in such circumstances as may be specified, proceeds which arise out of action taken in the designated country 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.
- (2) In this Law –
- “external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value; and
- “modifications” includes additions, alterations and omissions.
- (3) Regulations under this Article may make different provision for different cases or classes of case.
- (4) On an application made by or on behalf of the Government of a designated country, the Court may register an external confiscation order made there if –
- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
 - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable him or her 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.
- (5) In paragraph (4), “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.
- (6) The Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by 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.

40 Failure to disclose knowledge or suspicion of drug money laundering⁸⁰

- (1) A person shall be guilty of an offence if –
- (a) the person knows, or suspects, that another person is engaged in drug money laundering;
 - (b) the information, or other matter, on which that knowledge or suspicion is based came to the person’s attention in the course of his or her trade, profession, business or employment; and

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- (c) the person does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his or her attention.
 - (2) Paragraph (1) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him or her in privileged circumstances.
 - (3) It is a defence to a charge of committing an offence under this Article that the person charged had a reasonable excuse for not disclosing the information or other matter in question.
 - (4) Where a person discloses to a police officer –
 - (a) the person's suspicion or belief that another person is engaged in drug 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.
 - (5) Without prejudice to paragraph (3) or (4), 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 this Article 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.
 - (6) A disclosure to which paragraph (5) applies shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.
 - (7) In this Article "drug money laundering" means doing any act which constitutes an offence under Article 30, 37 or 38 or in the case of an act done outside Jersey would constitute such an offence if done in Jersey.
 - (8) For the purposes of paragraph (7), having possession of any property shall be taken to be doing an act in relation to it.
 - (9) For the purposes of this Article, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to the legal adviser –
 - (a) by, or by a representative of, a client of the legal adviser in connection with the giving by the adviser of legal advice to the client;
 - (b) by, or by a representative of, a person seeking legal advice from the adviser; or
 - (c) by any person –
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purpose of those proceedings.

- (10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.
- (11) This Article shall not apply –
 - (a) to any person designated by Regulations made by the States for the purposes of this sub-paragraph; 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 sub-paragraph.
- (12) Regulations made for the purposes of paragraph (11)(a) may designate any person appearing to the States to be performing regulatory, supervisory, investigative or registration functions.
- (13) The categories of person specified in Regulations made for the purposes of paragraph (11)(b) shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions.
- (14) A person guilty of an offence under this Article shall be liable on conviction to imprisonment for a term not exceeding 5 years or to a fine or to both.

41 Tipping-off⁸¹

- (1) A person is guilty of an offence if –
 - (a) the person knows, or suspects that a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into drug money laundering; and
 - (b) the person discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.
- (2) A person is guilty of an offence if –
 - (a) the person knows or suspects that a disclosure (“the disclosure”) has been made to a police officer under Article 37, 38 or 40; and
 - (b) the person discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person is guilty of an offence if –
 - (a) the person knows or suspects that a disclosure of a kind mentioned in Article 37(5), 38(8) or 40(5) (“the disclosure”) has been made; and
 - (b) the person discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (4) Nothing in paragraphs (1) to (3) makes it an offence for a professional legal adviser to disclose any information or other matter –

- (a) to, or to a representative of, a client of the legal adviser in connection with the giving by the adviser of legal advice to the client; or
 - (b) to any person –
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purpose of those proceedings.
- (5) Paragraph (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (6) In proceedings against a person for an offence under paragraph (1), (2) or (3), it is a defence to prove that the person did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that paragraph.
- (7) In this Article “drug money laundering” has the same meaning as in Article 40.
- (8) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 5 years or to a fine or to both.
- (9) No police officer or other person shall be guilty of an offence under this Article in respect of anything done by the officer or 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 drug trafficking or the proceeds of such trafficking.

42 Investigations into drug trafficking

- (1) A police officer may, for the purpose of an investigation into drug trafficking, 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 (3) are fulfilled, the Bailiff may make an order that the person who appears to the Bailiff to be in possession of the material to which the application related shall –
 - (a) produce it to a police officer for the police officer to take away; or
 - (b) give a police officer access to it,within 7 days or such longer or shorter period as appears to the Bailiff to be appropriate.
- (3) The conditions referred to in paragraph (2) are –
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
 - (b) that there are reasonable grounds for suspecting that the material to which the application relates –
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, and

- (ii) does not consist of or include items subject to legal professional privilege; and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard to –
 - (i) the benefit likely to accrue to the investigation if the material is obtained, and
 - (ii) the circumstances under which the person in possession of the material holds it,that the material should be produced or that access to it should be given.
- (4) Where the Bailiff makes an order under paragraph (2)(b) in relation 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.
- (5) Provision may be made by Rules of Court as to –
 - (a) the discharge and variation of orders under this Article; and
 - (b) proceedings relating to such order.
- (6) Where the material to which an application under paragraph (1) relates consists of information contained in a computer –
 - (a) an order under paragraph (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order under paragraph (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.⁸²
- (7) An order under paragraph (2) –
 - (a) shall not confer any right to production of, or access to, items subject to legal professional privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
 - (c) may be made in relation to material in the possession of a States' Department.
- (8) An application under paragraph (1) or (4) may be made *ex parte* to the Bailiff in Chambers.⁸³

43 Authority for search

- (1) A police officer may, for the purpose of an investigation into drug trafficking, apply to the Bailiff for a warrant under this Article in relation to specified premises.
- (2) On such application the Bailiff may issue a warrant authorising any 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 42 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.⁸⁴
- (3) The conditions referred to in paragraph (2)(b) are –
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
 - (b) that the conditions in Article 42(3)(b) and (c) are fulfilled in relation to any material on the premises; and
 - (c) that it would not be appropriate to make an order under that Article in relation to the material because –
 - (i) it is not practicable to communicate with any person entitled to produce the material,
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated, or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.
- (4) The conditions referred to in paragraph (2)(c) are –
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
 - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and
 - (c) that –
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises,
 - (ii) entry to the premises will not be granted unless a warrant is produced, or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless 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 professional privilege, which is likely to be of substantial value (whether by itself or together with other

material) to the investigation for the purpose of which the warrant was issued.

44 Offence of prejudicing investigation

- (1) Where, in relation to an investigation into drug trafficking, an order under Article 42 has been made or has been applied for and has not been refused or a warrant under Article 43 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation, is guilty of an offence.
- (2) In proceedings against a person for an offence under this Article, it is a defence to prove –
 - (a) that the person did not know or suspect that the disclosure was likely to prejudice the investigation; or
 - (b) that the person had lawful authority or reasonable excuse for making the disclosure.
- (3) Nothing in paragraph (1) makes it an offence for a professional legal adviser to disclose any information or other matter –
 - (a) to, or to a representative of, a client of the legal adviser in connection with the giving by an adviser of legal advice to the client; or
 - (b) to any person –
 - (i) in contemplation of, or in connection with, legal proceedings, and
 - (ii) for the purpose of those proceedings.⁸⁵
- (4) Paragraph (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.⁸⁶
- (5) A person guilty of an offence under this Article shall be liable on conviction to imprisonment for a term not exceeding 5 years or to a fine or to both.

45 Offences on Jersey vessels⁸⁷

Anything which would constitute a drug trafficking offence if done on land in Jersey shall constitute that offence if done on a ship registered in Jersey (a “Jersey ship”).

46 Ships used for illicit traffic⁸⁸

- (1) This Article applies to a Jersey ship, a British ship, a ship registered in a state other than the United Kingdom which is a party to the Vienna Convention (a “Convention state”) and a ship not registered in any country or territory.

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- (2) A person is guilty of an offence if on a ship to which this Article applies, wherever it may be, the person –
- (a) has a controlled drug in the person's possession; or
 - (b) is in any way knowingly concerned in the carrying or concealing of a controlled drug on that ship,
- knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to Article 4 of the Misuse of Drugs (Jersey) Law 1978⁸⁹ or the law of any other state or territory.
- (3) A certificate purporting to be issued by or on behalf of the government of any state to the effect that the importation or export of a controlled drug is prohibited by the law of that state shall be evidence of the matters stated.
- (4) A person guilty of an offence under this Article is liable –
- (a) in a case where the controlled drug is a Class A drug, to a fine or to imprisonment for life, or to both;
 - (b) in a case where the controlled drug is a Class B drug, to a fine or to imprisonment for a term not exceeding 14 years, or to both;
 - (c) in a case where the controlled drug is a Class C drug, to a fine or to imprisonment for a term not exceeding 5 years, or to both.
- (5) In this Article a “controlled drug” and the references to controlled drugs of a specified class have the same meaning as in the Misuse of Drugs (Jersey) Law 1978;⁹⁰ and an offence under this Article shall be included in the offences to which Article 24 of the Misuse of Drugs (Jersey) Law 1978 applies.

47 Enforcement powers⁹¹

- (1) The powers conferred on an enforcement officer by the Schedule to this Law (“the powers”) shall be exercisable in relation to any ship to which Article 45 or 46 applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those Articles.
- (2) The powers shall not be exercised outside the territorial sea of Jersey in relation to a ship registered in a Convention state except with the authority of the Attorney General and he or she shall not give the Attorney General's authority unless that state has in relation to that ship –
- (a) requested the assistance of Jersey for the purpose mentioned in paragraph (1); or
 - (b) authorized Jersey to act for that purpose.
- (3) In giving the Attorney General's authority pursuant to a request or authorization from a Convention state, the Attorney General shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that state.

- (4) The Attorney General may, either of his or her own motion or in response to a request from a Convention state, authorize a Convention state to exercise, in relation to a Jersey ship, powers corresponding to the powers, but subject to such conditions or limitations, if any, as the Attorney General may impose.
- (5) The powers shall not be exercised in the territorial sea of any other country or territory without the authority of the Attorney General and the Attorney General shall not give authority unless that country or territory has consented to the exercise of those powers.
- (6) The Attorney General may, by instrument in writing, delegate to the Agent of the Impôts all or any of the Attorney General's functions under this Article, subject to such conditions, exceptions or qualifications as may be specified in the instrument.

48 Jurisdiction and prosecutions⁹²

- (1) Proceedings under this Law in respect of an offence on a ship may be taken, and the offence may be treated as having been committed, within Jersey.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 of the United Kingdom shall not apply to any proceedings under this Law.

49 Rules of Court

The power to make Rules of Court under the Royal Court (Jersey) Law 1948,⁹³ shall include a power to make Rules for the purposes of this Law and proceedings thereunder.

50 Citation

This Law may be cited as the Drug Trafficking Offences (Jersey) Law 1988.

SCHEDULE

(Article 47)

ENFORCEMENT POWERS IN RESPECT OF SHIPS⁹⁴**1 Preliminary**

- (1) In this Schedule “an enforcement officer” means –
 - (a) a police officer; and
 - (b) such other person of a description specified in an Order made for the purposes of this Schedule by the Minister.
- (2) The Subordinate Legislation (Jersey) Law 1960⁹⁵ shall apply to Orders made under this paragraph.
- (3) In this Schedule “the ship” means the ship in relation to which the powers conferred by this Schedule are exercised.

2 Power to stop, board, divert and detain

- (1) An enforcement officer may stop the ship, board it and, if the officer thinks it necessary for the exercise of the officer’s functions, require it to be taken to a port in Jersey and detain it there.
- (2) Where an enforcement officer is exercising powers with the authority of the Attorney General given under Article 47(2), the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested, in any other country or territory willing to accept it.
- (3) For any of those purposes the officer may require the master or any member of the crew to take such action as may be necessary.
- (4) If an enforcement officer detains a vessel the officer shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by an enforcement officer.

3 Power to search and obtain information

- (1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.
- (2) An enforcement officer may require any person on the ship to give information concerning the person or anything on the ship.
- (3) Without prejudice to the generality of those powers an enforcement officer may –

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

4 Powers in respect of suspected offences

- (1) If an enforcement officer has reasonable grounds to suspect that an offence mentioned in Article 45 or 46 has been committed on a ship to which that Article applies the officer may –
 - (a) arrest anyone whom the officer has reasonable grounds for suspecting to be guilty of the offence; and
 - (b) seize and detain anything found on the ship which appears to the officer to be evidence of the offence.
- (2) The powers conferred by this paragraph shall be in addition to and not in derogation of any other powers conferred on a police officer apart from this paragraph.

5 Assistants

- (1) An enforcement officer may take with him or her, to assist in exercising the officer's powers –
 - (a) any other persons; and
 - (b) any equipment or materials.
- (2) A person whom an enforcement officer takes to assist the officer may perform any of the officer's functions but only under the officer's supervision.

6 Use of reasonable force

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

7 Evidence of authority

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

8 Protection of officers

An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his or her functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

9 Offences

- (1) A person is guilty of an offence if the person –
 - (a) intentionally obstructs an enforcement officer in the performance of any of the officer's functions under this Schedule;
 - (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or
 - (c) in purporting to give information required by an enforcement officer for the performance of those functions –
 - (i) makes a statement which the person knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
 - (ii) intentionally fails to disclose any material particular.
- (2) A person guilty of an offence under this paragraph is liable to a fine not exceeding level 4 on the standard scale or to imprisonment for a term not exceeding 3 months, or to both.

ENDNOTES**Table of Legislation History**

Legislation	Year and Number	Commencement
Drug Trafficking Offences (Jersey) Law 1988	L.1/1989	27 January 1989
Companies (Jersey) Law 1991	L.30/1991	30 March 1992 (R&O.8308)
Criminal Justice (Young Offenders) (Jersey) Law 1994	L.6/1994	1 June 1994 (R&O.8649)
Prevention of Terrorism (Jersey) Law 1996	L.21/1996	1 July 1996 (R&O.8944)
Drug Trafficking (Miscellaneous Provisions) (Jersey) Law 1996	L.36/1996	15 October 1997 (R&O.9147)
Customs and Excise (Jersey) Law 1999	L.33/1999	1 November 1999 (R&O.92/2000)
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
States of Jersey (Amendments and Construction Provisions No. 12) (Jersey) Regulations 2005	R&O.133/2005	9 December 2005

Table of Renumbered Provisions

Original	Current
1(12), (13), (14)	spent, omitted from this revised edition
1 (6A)	1 (7)
(6B)	(8)
(6C)	(9)
(7)	(10)
(7A)	(11)
(8)	(12)
(9)	(13)
(10)	(14)
3A	4
4	5
5	6
(1A)	(2)
(1B)	(3)
(1C)	(4)
(1D)	(5)
(1E)	(6)

Original	Current
(1F)	(7)
(2)	(8)
(3)	(9)
(4)	(10)
(4A)	(11)
(5)	(12)
5A	7
6	8
6A	9
6B	10
7	11
7A	12
7B	13
7C	14
8	15
9	16
10	17
10A	18
10B	19
11	20
(1A)	(2)
(2)	(3)
12	21
13	22
14	23
14A	24
15	25
15A	26
15B	27
15C	28
16	29
16A	30
16B	31
16C	32
16D	33
16E	34
16F	35
16G	36
17	37
(4A)	(5)
(5)	(6)
17A	38
18	39
18A	40
18B	41
19	42
20	43

Original	Current
21	44
(2A)	(3)
(2B)	(4)
(3)	(5)
21A	45
21B	46
21C	47
21D	48
23	49
24	50

Table of Endnote References

- ¹ This Law has been amended by the States of Jersey (Amendments and Construction Provisions No. 2) (Jersey) Regulations 2005 and the States of Jersey (Amendments and Construction Provisions No. 12) (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 Article 1(1) definition “company” omitted by L.30/1991
- ³ Article 1(1) definition “British ship” inserted by L.36/1996
- ⁴ Article 1(1) definition “confiscation order” substituted by L.36/1996
- ⁵ chapter 08.680
- ⁶ Article 1(1) definition “drug trafficking” amended by L.36/1996
- ⁷ Article 1(1) definition “Drug Trafficking Confiscations Fund” inserted by L.36/1996
- ⁸ chapter 08.680
- ⁹ chapter 24.660
- ¹⁰ Article 1(1) definition “drug trafficking offence” amended by L.36/1996, L.33/1999
- ¹¹ Article 1(1) definition “exported” inserted by L.36/1996
- ¹² Article 1(1) definition “money” inserted by L.36/1996
- ¹³ Article 1(1) definition “police officer” inserted by L.36/1996, amended by L.33/1999
- ¹⁴ Article 1(1) definition “ship” inserted by L.36/1996
- ¹⁵ Article 1(1) definition “Vienna Convention” inserted by L.36/1996
- ¹⁶ Article 1(2) amended by L.36/1996
- ¹⁷ chapter 07.595
- ¹⁸ Article 1(6) substituted by L.36/1996
- ¹⁹ Article 1(7) inserted by L.36/1996
- ²⁰ Article 1(8) inserted by L.36/1996
- ²¹ Article 1(9) inserted by L.36/1996
- ²² Article 1(11) inserted by L.36/1996
- ²³ chapter 08.680
- ²⁴ chapter 17.860
- ²⁵ Article 2(2) amended by L.21/1996
- ²⁶ chapter 18.495
- ²⁷ chapter 13.775
- ²⁸ Article 2(3) amended by L.36/1996
- ²⁹ Article 3(1) substituted by L.36/1996
- ³⁰ chapter 08.680
- ³¹ Article 3(7) inserted by L.36/1996
- ³² Article 4 inserted by L.36/1996

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- ³³ Article 5(4) *amended by L.36/1996*
- ³⁴ Article 6(1) *substituted by L.36/1996*
- ³⁵ Article 6(2) *inserted by L.36/1996*
- ³⁶ Article 6(3) *inserted by L.36/1996*
- ³⁷ Article 6(4) *inserted by L.36/1996*
- ³⁸ Article 6(5) *inserted by L.36/1996*
- ³⁹ Article 6(6) *inserted by L.36/1996*
- ⁴⁰ Article 6(7) *inserted by L.36/1996*
- ⁴¹ Article 6(8) *substituted by L.36/1996*
- ⁴² Article 6(9) *amended by L.36/1996*
- ⁴³ Article 6(11) *inserted by L.36/1996*
- ⁴⁴ Article 7 *inserted by L.36/1996*
- ⁴⁵ Article 8(3) *amended by L.36/1996*
- ⁴⁶ Article 9 *inserted by L.36/1996*
- ⁴⁷ Article 10 *inserted by L.36/1996*
- ⁴⁸ *chapter 08.680*
- ⁴⁹ Article 11(5) *amended by L. 6/1994*
- ⁵⁰ Article 11(7) *inserted by L.36/1996*
- ⁵¹ Article 12 *inserted by L.36/1996*
- ⁵² Article 13 *inserted by L.36/1996*
- ⁵³ Article 14 *inserted by L.36/1996*
- ⁵⁴ Article 15(1) *substituted by L.36/1996*
- ⁵⁵ Article 15(4) *inserted by L.36/1996*
- ⁵⁶ Article 15(5) *inserted by L.36/1996*
- ⁵⁷ Article 16(7) *substituted by L.36/1996*
- ⁵⁸ Article 18 *inserted by L.36/1996*
- ⁵⁹ Article 19 *inserted by L.36/1996*
- ⁶⁰ Article 20(2) *inserted by L.36/1996*
- ⁶¹ Article 21(1) *amended by L.36/1996*
- ⁶² Article 21(3) *amended by L.36/1996*
- ⁶³ Article 21(5) *inserted by L.36/1996*
- ⁶⁴ Article 24 *inserted by L.36/1996*
- ⁶⁵ *chapter 08.680*
- ⁶⁶ Article 26 *inserted by L.36/1996*
- ⁶⁷ Article 27 *inserted by L.36/1996*
- ⁶⁸ Article 28 *inserted by L.36/1996*
- ⁶⁹ Article 29 *amended by L.36/1996*
- ⁷⁰ Article 30 *inserted by L.36/1996*
- ⁷¹ Article 31 *inserted by L.36/1996*
- ⁷² Article 32 *inserted by L.36/1996*
- ⁷³ Article 33 *inserted by L.36/1996*
- ⁷⁴ Article 34 *inserted by L.36/1996*
- ⁷⁵ Article 35 *inserted by L.36/1996*
- ⁷⁶ Article 36 *inserted by L.36/1996*
- ⁷⁷ Article 37(3) *amended by L.36/1996*
- ⁷⁸ Article 37(5) *inserted by L.36/1996*
- ⁷⁹ Article 38 *inserted by L.36/1996*
- ⁸⁰ Article 40 *inserted by L.36/1996*
- ⁸¹ Article 41 *inserted by L.36/1996*
- ⁸² Article 42(6) *amended by L.36/1996*
- ⁸³ Article 42(8) *inserted by L.36/1996*
- ⁸⁴ Article 43(2) *amended by L.36/1996*
- ⁸⁵ Article 44(3) *inserted by L.36/1996*
- ⁸⁶ Article 44(4) *inserted by L.36/1996*
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- ⁸⁷ *Article 45* *inserted by L.36/1996*
⁸⁸ *Article 46* *inserted by L.36/1996*
⁸⁹ *chapter 08.680*
⁹⁰ *chapter 08.680*
⁹¹ *Article 47* *inserted by L.36/1996*
⁹² *Article 48* *inserted by L.36/1996*
⁹³ *chapter 07.770*
⁹⁴ *Schedule* *inserted by L.36/1996*
⁹⁵ *chapter 15.720*