

# STATES OF JERSEY



## **DRAFT PROCEEDS OF CRIME AND TERRORISM (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 201-**

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**Lodged au Greffe on 13th December 2013  
by the Chief Minister**

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**STATES GREFFE**





Jersey

**DRAFT PROCEEDS OF CRIME AND TERRORISM  
(MISCELLANEOUS PROVISIONS) (JERSEY)  
LAW 201-**

**European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Chief Minister has made the following statement –

In the view of the Chief Minister the provisions of the Draft Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

*Chief Minister*

Dated: 11th December 2013

## REPORT

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### Introduction

The draft Law has 4 aims, namely to –

- (a) ensure that Jersey has one set of provisions that relate to the laundering of the proceeds of criminal conduct, including the restraint and confiscation of such proceeds. Currently Jersey has anti-money laundering provisions in each of these Laws – the Proceeds of Crime (Jersey) Law 1999, the Terrorism (Jersey) Law 2002 and the Drug Trafficking Offences (Jersey) Law 1988. At present, drug money laundering is dealt with under the Drug Trafficking Offences (Jersey) Law 1988, the money laundering of terrorist property under the Terrorism (Jersey) Law 2002, and any other form of money laundering under the Proceeds of Crime (Jersey) Law 1999;
- (b) address outstanding technical issues identified in Jersey’s 2009 IMF Assessment Report;
- (c) address an identified gap against the revised Financial Action Task Force (“FATF”) standards, issued in February 2012. Jersey will be assessed against the revised standards when the next but one assessment of the Island takes place, probably in 2017 (the next assessment being due to take place in 2014 under the 2004 standards); and
- (d) align specific provisions with requirements of the United Nations Convention against Transnational Organized Crime (“Palermo Convention”) and Council of Europe Convention 141 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (“Strasbourg Convention”), to allow for these Conventions to be extended to Jersey.

The main thrust of the draft is to separate provisions dealing with proceeds of crime of all kinds, including the proceeds of crime relating to drug trafficking, and to have these all in one place (the Proceeds of Crime (Jersey) Law 1999), whilst retaining separate provision in the Terrorism (Jersey) Law 2002 and the Misuse of Drugs (Jersey) Law 1978, to deal with property used instrumentally in, or in facilitating, certain crimes. The Proceeds of Crime (Jersey) Law 1999 and the Terrorism (Jersey) Law 2002 are also being updated to reflect IMF recommendations.

The draft contains provisions amending the Proceeds of Crime (Jersey) Law 1999 and the Terrorism (Jersey) Law 2002, which are each contained in separate Parts of the draft Law. Alongside this, there is another Part of the draft Law repealing the Drug Trafficking Offences (Jersey) Law 1988 and placing certain provisions of that Law which remain to be preserved, into the Misuse of Drugs (Jersey) Law 1978 (other provisions of the Drug Trafficking Offences (Jersey) Law 1988 are preserved by an extension of the scope of the Proceeds of Crime (Jersey) Law 1999). There is another Part dealing with transitional arrangements, and the Schedule makes the necessary consequential amendments to other pieces of legislation.

### One set of anti-money laundering provisions

The key rationale for creating one set of anti-money laundering provisions is that, under the existing provisions, the prosecuting authorities must establish at any early stage whether the Proceeds of Crime (Jersey) Law 1999, the Terrorism (Jersey) Law

2002 or the Drug Trafficking Offences (Jersey) Law 1988 provisions apply in respect of the proceeds of criminal conduct, in any given case. At the early stages of an investigation, there may not be sufficient evidence to establish whether the proceeds of criminal conduct in question relate to a drug trafficking offence or another form of criminal conduct. Currently, decisions have to be made as to which of the 3 Laws' powers are to be exercised under. In addition to the practical issues highlighted above, the money laundering offences vary in scope and material elements across the 3 Laws. The prosecuting authorities are also of the view that the current money laundering offences are too numerous and specific. The opportunity has thus been taken to revise the existing money laundering offences in order to address the concerns raised above, and to produce a single statute which addresses the requirements of the jurisdiction more effectively.

### **IMF Recommendations**

The full text of the IMF Assessment is available at –

[http://www.jerseyfsc.org/pdf/Jersey\\_IMF\\_Assessment\\_DAR\\_AML\\_CFT.pdf](http://www.jerseyfsc.org/pdf/Jersey_IMF_Assessment_DAR_AML_CFT.pdf).

A summary table setting out the recommendations made by the IMF can be found in the IMF Action Plan, available at –

[http://www.jerseyfsc.org/the\\_commission/international\\_co-operation/evaluations/jerseys\\_action\\_plan.asp](http://www.jerseyfsc.org/the_commission/international_co-operation/evaluations/jerseys_action_plan.asp)

Listed below are the amendments proposed in order to address particular technical issues identified by the IMF, with references to the relevant parts of the Assessment Report:

Align what is currently Article 34 of the Proceeds of Crime (Jersey) Law 1999 with the purpose requirements in Article 6(1)(a) of the Palermo Convention [see para. 97 and recommendations at 2.1.2 of the IMF Report]. New Article 31 of the Proceeds of Crime (Jersey) Law 1999 will eliminate the purpose requirements for the acts of converting and transferring proceeds of criminal conduct (i.e. it will be an offence to convert and transfer proceeds no matter what your purpose), and will also eliminate the purpose requirement for the acts of concealing or disguising proceeds of criminal conduct;

Limit the defence of payment of adequate consideration in what is currently Article 33(2) of the Proceeds of Crime (Jersey) Law 1999, as it is beyond the standard set out in Article 6(1)(b) of the Palermo Convention [para. 99 and recommendations at 2.1.2 of the IMF Report]. New Article 30 of the Proceeds of Crime (Jersey) Law 1999 will retain the defence of adequate consideration where property is acquired, used, possessed or controlled, but will provide that this defence shall not be available where property or services provided to a person assist that person in criminal conduct, where a person providing property or services to another person knows, suspects or has reasonable grounds to suspect that the property or services will or may assist the other person in criminal conduct or where the value of the consideration is significantly less than the value of the property acquired or, as the case may be, the value of its use or possession. This is intended to ensure that where criminal conduct has actually been assisted or there is a risk that it may be so assisted, the defence of adequate consideration will not apply;

Broaden the remit of Article 33 of the Proceeds of Crime (Jersey) Law 1999 to cover self-laundering – the acquisition, possession or use of the proceeds of criminal conduct by the launderer, as opposed to another person on behalf of the launderer [recommendations at 2.1.2 of the IMF Report]. New Article 29 of the Proceeds of Crime (Jersey) Law 1999 defines criminal property so that it is clear that, where a

person is guilty of acquiring, possessing or using property under new Article 30 of the Proceeds of Crime (Jersey) Law 1999, it does not matter whether the person who benefitted from the criminal conduct was the alleged offender or another person;

Provide that property, or its equivalent value, is to be restrained from the beginning of an investigation. The present requirements for a saisie judiciaire (see Article 15 of the Proceeds of Crime (Jersey) Law 1999, for example) are only triggered if criminal proceedings have been, or are to be, issued [para. 208 and recommendations at 2.3.2 of the IMF Report]. Articles 15 and 16 of the Proceeds of Crime (Jersey) Law 1999 are extended to address this requirement;

Amend all reporting requirements to limit protection for those reporting suspicious transactions to those acting in good faith [para. 544 and recommendations at 3.7.2 of the IMF Report]. All the reporting requirements in the Proceeds of Crime (Jersey) Law 1999 and the Terrorism (Jersey) Law 2002 are so amended by the draft Law;

Broaden the tipping-off provisions by removing the limitation referring to situations that might prejudice an investigation [para. 546 and recommendations at 3.7.2 of the IMF Report]. The tipping-off provisions at Article 35 of the Proceeds of Crime (Jersey) Law 1999 and Article 35 of the Terrorism (Jersey) Law 2002 are so amended and are brought into line with each other. The draft Law provides that Regulations may be made in due course, setting out circumstances in which it shall not be an offence to disclose information (such as, for example, sharing information intra-group or with the JFSC). It is proposed that industry consultation will occur on the proposal for draft Regulations in due course;

Extend the restraint and confiscation provisions in the Terrorism (Jersey) Law 2002 so that they apply to property of an equivalent value [para. 177, 183 and recommendations at 2.3.2 of the IMF Report]. Proceeds of terrorism now fall within the scope of the Proceeds of Crime (Jersey) Law 1999, which applies to property of equivalent value (property is criminal property if it constitutes proceeds of criminal conduct or represents such proceeds, whether in whole or in part and whether directly or indirectly);

Ensure the terrorist financing offences cover support to terrorists in the form of paying for education, living or similar expenses [para. 154 and 156 of the IMF Report]. New Article 15(3)(c) of the Terrorism (Jersey) Law 2002 specifically addresses this; and

Amend the definition of “terrorism” in Article 2 of the Terrorism (Jersey) Law 2002 to make reference to the offences defined in the 9 Conventions and Protocols listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism. Although all the offences defined therein have been criminalised in Jersey, the definition of “terrorism” in Article 2 further requires that the “use or threat” of action listed in paragraph (2) be for the purposes set out in sub-paragraphs (1)(b) and (c). The commission of an offence listed in the Annex should, by itself, amount to an act of terrorism without the additional purposive requirements [para. 149 of the IMF Report]. The definition of terrorism in Article 2 of the Terrorism (Jersey) Law 2002 has been so amended.

### **Revised FATF Standards**

The revised standards require ancillary offences to include participation, conspiracies and attempts to commit money laundering offences, aspects not currently expressly mentioned in Article 42 of the Proceeds of Crime (Jersey) Law 1999. However, the requirements in the Criminal Offences (Jersey) Law 2009 are sufficiently broad to cover all aspects of the revised standards. Article 42 of the Proceeds of Crime (Jersey) Law 1999 is therefore repealed, and reliance is placed on the provisions of the Criminal Offences (Jersey) Law 2009.

### **Palermo and Strasbourg Conventions**

No amendments other than those set out above are required to be made to the Proceeds of Crime (Jersey) Law 1999, the Terrorism (Jersey) Law 2002 or the Misuse of Drugs (Jersey) Law 1978 in connection with compliance with the Palermo and Strasbourg Conventions. Separately, an amendment to the Shipping (Jersey) Law 2002 is also being progressed in order to comply with the Conventions. It is anticipated this amendment will be lodged for debate by the States Assembly in the near future.

### **Financial and manpower implications**

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

### **Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX

### **Human Rights Note on the Draft Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 201-**

1. This Note has been prepared in respect of the Draft Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 201- (“**the draft Law**”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

#### **Article 8 ECHR**

2. Article 8 ECHR provides that “*Everyone has the right to respect for his private and family life, his home and his correspondence.*”
3. This right is potentially engaged by certain search and entry powers contained in Articles in the Proceeds of Crime (Jersey) Law 1999 (“**the POCL**”) and the Misuse of Drugs (Jersey) Law 1978 (“**the MDL**”) which are amended by the draft Law. For example, search and entry powers may be seen to interfere with the right to respect for the home, or the right to respect for private life.
4. Article 8 ECHR is a qualified right and is thus capable of being interfered with to the extent that such interference is in accordance with the law and in pursuit of a legitimate aim (e.g. national security, public health, prevention of disorder or crime). The draft Law clearly satisfies these first 2 tests. The third and final test though, is the one which receives most scrutiny from the European Court of Human Rights (“**ECtHR**”), i.e. whether the interference is necessary in a democratic society.
5. The necessity test essentially asks whether or not the measures envisaged are a proportionate way in which to achieve the legitimate aims. The ECtHR has long accepted that entry and search (and if relevant seizure) powers are necessary to obtain physical evidence to prosecute criminals, and *à fortiori* exercising such powers to prevent crime will also be justified. What is essential is the existence of procedural safeguards, and in particular judicial oversight. This is provided for in both the POCL and the MDL and the draft Law does not purport to remove this. The requirement to obtain the Attorney General’s consent for applying to the Bailiff for a warrant under the POCL is being removed, but this does not render the powers disproportionate as the vital oversight of the judiciary remains.

#### **6. The draft Law is therefore compatible with Article 8 ECHR.**

#### **Article 10 ECHR**

7. Article 10 provides that –  

*“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...”*

(emphasis added)
8. Provisions in the POCL, the MDL and the Terrorism (Jersey) Law 2002 (“**the TL**”), as amended by the draft Law, place restrictions on the ability of persons to make disclosures and “tip off” others, thus affecting the rights of persons to receive and impart information.



9. However, Article 10 is also a qualified right, and the interferences will be in accordance with law and may be justified on the grounds of one or more legitimate aims (set out in Article 10(2) ECHR) similar to Article 8 as described above.
10. As to proportionality, the draft Law does not radically change the existing provisions in force. Procedural safeguards for these restrictions include the ability for a legal adviser to disclose in certain circumstances, the ability to disclose in the course of acting in connection with the enforcement or intended enforcement of enactments relating to criminal conduct or the proceeds of criminal conduct, and Regulations may also provide for further situations in which disclosure is permitted. On balance therefore, the interference with the Article 10 right to impart and receive information is not disproportionate.

**11. The draft Law is therefore compatible with Article 10 ECHR.**

**Article 1, Protocol 1 ECHR (“A1, P1”)**

12. A1, P1 provides that –

*“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*

*The preceding provisions shall not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

13. The POCL, the TL and the MDL all provide for restrictions on a person’s enjoyment of property, and the draft Law purports to amend some of these existing provisions.
14. The result of A1,P1 is that, as with other qualified rights, there may be permitted interference so long as any such interference is –
  - in accordance with the law;
  - justified by a legitimate aim; and
  - proportionate, i.e. there is a reasonable relationship between the means employed and the aim pursued.
15. The first 2 limbs are straightforward, i.e. the interferences will be prescribed in primary legislation, and the “in the general interest” or “in the public interest”<sup>1</sup> provide wide scope for legitimate aims which can justify such interference.
16. Regarding the proportionality of interferences with peaceful enjoyment of possessions, the significant difference between a deprivation of property and a control of use of property is that, for a deprivation to be proportionate, reasonable compensation will usually be required, whereas this is not generally required for a control of use. The jurisprudence of the ECtHR however, indicates that even though the effect of, for example, a *Saisie Judiciaire* or a confiscation order might be to vest the defendant’s property in

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<sup>1</sup> There is no distinction in ECHR law between general interest and public interest

- another (e.g. the Viscount), this is actually a control of use as opposed to a deprivation of property.
17. Contracting States have a considerable margin of appreciation in implementing measures interfering with property to meet a public problem, particularly the prevention of crime. With that in mind, the measures in the POCL, the TL and the MDL, as amended by the draft Law, may be considered proportionate given the safeguards which exist. For example, *Saisies* are not absolute and final orders but interim ones vesting the property of a defendant in the Viscount pending the progression and determination of an investigation and/or proceedings.
  18. The draft Law extends the exercise of the power to order a *Saisie* to the point where an investigation has begun, and this brings the POCL into line with the UK's Proceeds of Crime Act 2002, which allows restraining orders to be imposed when an investigation has begun. The aim of this is to prevent a defendant from dissipating or hiding assets before proceedings have begun. It is considered that the A1, P1 compatibility of the POCL shall not be undermined by this revision. Safeguards remain, i.e. a *Saisie* is ordered at the discretion of the Royal Court, which is an Article 6 compliant body. Furthermore, a person affected by a *Saisie* may apply to the Bailiff in Chambers for a discharge, or the Royal Court may discharge it on satisfaction of a confiscation order, or where there has been undue delay, or where the Attorney General does not wish to proceed. The general oversight of the Royal Court thus provides an adequate safeguard for *Saisies*.
  19. As regards confiscation orders made under the TL, as amended, such orders are only made following a conviction and this is clearly proportionate as it provides the person affected with the full protections of a criminal trial. Persons with an interest in the property but who have not been convicted may be heard before the Court before such order is made, thus mitigating any burdensome effect on innocent bystanders.
  20. **The draft Law is therefore compatible with Article 1, Protocol 1 to the ECHR.**
  21. No other provisions of the ECHR are engaged by the draft Law.

## Explanatory Note

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This draft Law would give further effect, in Jersey, to the United Nations Convention against Transnational Organised Crime (“Palermo Convention”) and Council of Europe Convention 141 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (“Strasbourg Convention”), following recommendations made in the Assessment Report of Jersey by the International Monetary Fund (“IMF”) in 2009. The full text of the IMF Assessment Report can be viewed at: [http://www.jerseyfsc.org/pdf/Jersey\\_IMF\\_Assessment\\_DAR\\_AML\\_CFT.pdf](http://www.jerseyfsc.org/pdf/Jersey_IMF_Assessment_DAR_AML_CFT.pdf). The draft Law would also address gaps against revised Financial Action Task Force (“FATF”) standards issued in February 2012.

A summary table setting out the recommendations made by the IMF can also be viewed in the IMF Action Plan, available at:

[http://www.jerseyfsc.org/the\\_commission/international\\_co-operation/evaluations/jerseys\\_action\\_plan.asp](http://www.jerseyfsc.org/the_commission/international_co-operation/evaluations/jerseys_action_plan.asp) (“FATF 40+9 Recommendations”).

The overall scheme proposed by the draft Law is the rationalization of existing provisions relating to the laundering of the proceeds of criminal conduct, by bringing these together as far as possible in a single framework. To this end, the draft Law would substantially amend the Proceeds of Crime (Jersey) Law 1999 (the “1999 Law” for the purposes of Part 2, see *Article 22*), and would repeal the Drug Trafficking (Jersey) Law 1988 (“1988 Law”). Both those Laws currently contain provisions relating to the proceeds of criminal conduct, which creates some difficulty for enforcers and potentially leads to inconsistency where the proceeds of drug trafficking are dealt with under a legal regime separate to that governing the treatment of proceeds of other types of criminal conduct. Where provisions in the 1988 Law are largely duplicated in the 1999 Law, the 1999 Law has been amended to the extent necessary to encompass proceeds of drug trafficking (which at present are expressly excluded from the 1999 Law). In the case of some provisions of the 1988 Law dealing with the investigation and prosecution of offences of drug trafficking on ships, the draft Law proposes that such powers would be most efficiently conferred on police and customs officers who currently have the role of investigation and enforcement under the Misuse of Drugs (Jersey) Law 1978 (the “1978 Law” for the purposes of Part 3, see *Article 42*), and accordingly makes draft amendments to that Law too.

The proceeds of terrorism are currently dealt with under the Terrorism (Jersey) Law 2002 (the “2002 Law” for the purposes of Part 1, see *Article 1*), and so for greater consistency across the board, and as recommended by the IMF, the proposed amendments to the 1999 Law made by this draft Law are intended also to encompass the regime for dealing with the proceeds of terrorism.

In removing provisions relating to proceeds of terrorism from the 2002 Law, the opportunity would be taken to amend the 2002 Law to strengthen its ability to counter the financing of terrorism. These amendments to the 2002 Law are contained in Part 1 of this draft Law.

*Article 3* would substitute a new *Article 2* into the 2002 Law to define the meaning of terrorism for the purposes of that Law, which includes for the first time (in draft *Article 2(1)(a)*) reference to a list of offences under Jersey law which are to be regarded in themselves as acts of terrorism. These would be added to the 2002 Law as Schedule 10 (see *Article 21*), which may be amended by Order of the Minister (draft *Article 2(5)*). This is in line with the IMF recommendation that Jersey’s legislation

should refer directly to offences listed in the Annex to the International Convention for the Suppression of the Financing of Terrorism (“Terrorist Financing Convention”). The new definition of terrorism would also adopt, from precedents in the Irish and Singapore jurisdictions in turn based on the Terrorist Financing Convention, slightly amplified wording in relation to other acts listed in draft Article 2(2) of the 2002 Law.

*Article 4* would substitute a new Article 3 into the 2002 Law, to give a new meaning of “terrorist property” which (in keeping with the scheme described above) excludes the proceeds of terrorism, but extends the definition to include property used for the support of a “terrorist entity”. This follows an IMF recommendation (paragraphs 154 and 156 of the 2009 Report) to extend the terrorist financing offences in this respect. A “terrorist entity” is a new concept, which would be introduced (by *Article 5* of this draft Law) in new Article 4 of the 2002 Law, and would encompass individuals as well as organizations (including proscribed organizations, in relation to which specific provision is already made by Part 2 of the 2002 Law) which commit, prepare or instigate an act of terrorism, or facilitate the commission, preparation, or instigation of an act of terrorism, regardless of whether a specific act of terrorism is in fact committed.

Part 2 of the 2002 Law would be amended by *Article 7* of the draft. *Article 7(1)(c)* would add a new sub-paragraph (1)(c) to Article 6 of the 2002 Law. This widens the application of Part 2 to include organizations proscribed by or under the Terrorism Act 2000 of the United Kingdom. *Article 7* would also in part make minor amendments consequential upon the more significant changes to Part 3 of the 2002 Law which would be made by *Article 8*.

Part 3 of the 2002 Law as amended by this draft Law would apply to offences relating to terrorist financing. For Articles 15 to 22 of the 2002 Law there would be substituted new Articles 15 to 20 (*Article 8(2)*). Article 15(1) provides that it is an offence to use any property (not necessarily terrorist property within the definition) for the purposes of terrorism or for the support of a terrorist entity. Article 15(2) makes it an offence to possess property, to provide or invite another to provide property or a financial service, or to collect or receive property, intending that the property or service be used, or knowing, suspecting or having reasonable grounds to suspect that it may be used for the purposes of terrorism or the support of a terrorist entity. Article 16 retains offences similar to those within the money laundering regime, but in relation to “terrorist property” i.e. property used instrumentally for the furtherance of terrorism rather than to the proceeds of terrorist crime: it is an offence to conceal or disguise property, to remove it from Jersey or transfer it to nominees, where this facilitates the retention or control of terrorist property. Offences under both Articles 15 and 16 carry a penalty of up to 14 years’ imprisonment, or an unlimited fine, or both. By Article 17, prosecution for an offence under Article 15 or 16 may also be brought in respect of acts committed outside Jersey.

New draft Article 18(1) provides that it is not an offence where something which would otherwise be an offence under Article 15 or 16 is done with the express consent of a police or customs officer. Other defences are provided where a person involved in a transaction or arrangement discloses their suspicion or belief that property is terrorist property, or that a financial service is being provided or to be provided for the purposes of terrorism or the support of a terrorist entity, on certain conditions set out in Article 18(4). By Article 18(6) it is also a defence for a person to show that he or she intended to make such a disclosure but has a reasonable excuse for failing to do so. An employed person may also rely on a defence of disclosure in good faith and in accordance with the employer’s procedures (Article 18(7) and (8)).

A general duty of disclosure is imposed by draft Article 19 where a person believes or suspects that another person has committed an offence under Article 15 or 16, on the basis of information which has come to the first person in the course of their trade, profession, business or employment (except in the course of business of a financial institution, where slightly different provisions apply, see Article 19(2)). It is an offence if the person does not disclose their belief or suspicion, and the relevant information to a police or customs officer in good faith and as soon as reasonably practicable. There are defences of reasonable excuse, and of legal privilege. Again, an employed person may rely on a defence of disclosure in good faith and in accordance with the employer's procedures.

Draft Article 20 provides that certain disclosures shall not be treated as breach of any restriction imposed by statute, contract or otherwise on disclosure of information.

Existing Articles 23 to 24D of the 2002 Law would be consequentially amended and renumbered accordingly, and Article 25 of the 2002 Law, which is now spent, would be repealed. (*Article 8(3)–(9)*).

The provisions on the forfeiture of property in existing Article 26 of the 2002 Law would be revised to remove the references to proceeds of terrorism, and restated (as to terrorist property) in draft Article 27 (*Article 8(10)*).

*Article 9* would substitute a new draft Article 35 to broaden the scope of offences of tipping off and interference with material by removing the limitation which restricts these offences to matters likely to prejudice an investigation, in line with IMF recommendations to do so (at paragraphs 546 and 3.7.2 of the 2009 Report). The defences of reasonable excuse and professional legal privilege remain, and a new defence would be added in respect of anything done in connection with law enforcement.

*Article 10* would amend Article 36 to bring the definition of “terrorist” for the purposes of the counter-terrorism provisions in Part 6 of the 2002 Law in line with other amendments which would be made by this draft Law. *Articles 12, 16, 18, and 19* would make consequential amendments to cross-references in Article 61 of, and Schedules 3, 7, and 8 to, the 2002 Law respectively. *Article 11* would remove a superfluous reference to an ‘authorizing officer’ from Article 57 of the 2002 law, corresponding to a similar change in Schedule 8. *Article 13* would repeal Articles 62, 66 and 67 of the 2002 Law. The provision in Article 62 is rendered otiose by Article 1 of the Criminal Offences (Jersey) Law 2009, and the latter 2 Articles are now spent.

*Article 14* would amend Article 63 of the 2002 Law, to update it by including reference to a separate limited partnership as well as the other bodies already mentioned in these provisions relating to corporate and similar liability. *Article 15* would correct a minor typographical point in Article 68 of the 2002 Law. *Article 20* would amend Schedule 9 to the 2002 Law to reflect amendments which would be made by Part 3 of this draft Law.

*Article 17* would add to Schedule 5 of the 2002 Law a provision relating to the interpretation of the expression “items relating to legal professional privilege” which is used only in that Schedule. *Article 6* would correspondingly repeal Article 5 of the 2002 Law where that expression is currently defined. The general interpretation provisions in Article 1 of the 2002 Law would be substituted, to reflect the changes envisaged by the scheme of amendment in Part 1 of this draft Law, by *Article 1*.

Part 2 of this draft Law would amend the 1999 Law. The extension of the scope of the 1999 Law to cover the proceeds of drug trafficking would be achieved by amendments to Article 3(9) (*Article 25(b)*) and Schedule 1 (*Article 40*). The consequences of these

apparently minor amendments and of the removal of a separate legislative regime to deal with proceeds of drug trafficking would, however, need to be reflected in other changes running throughout the 1999 Law.

Thus Article 4 of the 1999 Law, for example (which deals with the amount which may be recovered under a confiscation order of the Royal Court) would be replaced (*Article 26*) by provisions incorporating a discretionary power of the Court currently existing only in Article 8 of the 1988 Law (which deals with similar subject matter in the context of that Law but would be repealed under Part 3). Similarly as part of the substitution of Articles 29 to 34 of the 1999 Law which would be effected by *Article 30*, new provision at Article 31(5) is needed to preserve the aspect of a prohibition on the importation or exportation of property constituting or representing the proceeds of drug trafficking (which is currently in Article 29 of the 1988 Law, and which again would be repealed).

*Articles 29, 37 and 41* would also insert material deriving from the 1988 Law into, respectively, Articles 24 and 40 of, and Schedule 3 to, the 1999 Law. The amendment to Article 24 would be a consequence of the cessation of the Drug Trafficking Confiscations Fund, upon repeal of the 1988 Law.

The new Articles which would be substituted in Part 3 of the 1999 Law would introduce the concept of “criminal property”, defined in draft new Article 29 as property which constitutes proceeds of criminal conduct, whether in whole or in part, directly or indirectly and which the alleged offender knows or suspects constitutes or represents such proceeds. Article 29 goes on to provide that the criminal conduct in question may be that of the alleged offender as well as that of another person, and similarly it does not matter whether the person benefiting from the conduct is the alleged offender or another. This is somewhat broader than the position in current Articles 33 and 34 of the 1999 Law, and is in line with the relevant IMF recommendation (at 2.1.2 of the 2009 Report). Draft new Articles 30 and 31 would clarify offences of dealing with criminal property (Article 30, encompassing acquisition, use, possession or control of criminal property, or facilitating such acquisition, use, etc.) and concealment of criminal property (Article 31, encompassing concealment, disguise, conversion, transfer or removal from Jersey of criminal property) to provide a single regime for countering money laundering. Article 31 contains an amplified defence where a person acquires, uses, possesses or controls the property for adequate consideration, based on similar provisions in section 329 of the Proceeds of Crime Act 2002 of the United Kingdom. Both Articles 30 and 31 also contain a defence in respect of anything done in carrying out law enforcement.

Draft new Articles 32 to 34 contain provisions relating to the protection of certain disclosures, which would be re-enacted but combined in one place for greater certainty and ease of reference (in the 1999 Law as unamended, such provisions are repeated, for example in Articles 32(3) and 33(5)). Article 35 of the 1999 Law would also be substituted (by *Article 33*), aligning provisions relating to tipping off, or interference with material, in connection with an investigation into money laundering, with similar provisions in connection with a terrorist investigation, and thus again (as with Article 35 of the 2002 Law) would respond to the IMF recommendations in this regard.

As well as amendments relating to this central scheme of combining and simplifying the primary legislation relating to money laundering offences, this draft Law would also make amendments to the 1999 Law to provide that property may be restrained by way of a *saisie judiciaire* from the beginning of a criminal investigation in Jersey, in line with IMF recommendation 2.1.2, and paragraph 99 of the 2009 Report (*Articles 27 and 28*, amending Articles 15 and 16 of the 1999 Law respectively). Sub-

paragraph (1)(b) of Article 38 of the 1999 Law would be widened to facilitate the same situation with regard to external confiscation orders (*Article 36*). Amendments to Articles 34A and 34D of the 1999 Law (*Articles 31 and 32*) would add a further limit (to persons acting in good faith) to protection for those reporting suspicious transactions under these Articles, following IMF recommendation 3.7.2 and paragraph 544 of the 2009 Report. (Such a limit is also incorporated in the rewritten reporting provisions of the 2002 Law and those in draft new Article 32 of the 1999 Law.)

Amendments consequential on changes which would be made to the 2002 Law, would be made to Articles 2 and 3 of the 1999 Law by *Articles 24 and 25* respectively. *Article 35(b)* would make amendments to the definition of “money laundering” for the purposes of Article 37, which are consequential both upon the proposed changes to the 2002 Law and the 1999 Law itself, and upon the proposed repeal of the 1988 Law.

*Article 35(a)* would correct an inadvertent omission in Article 37(9) of the 1999 Law and *Article 34* would make a minor technical change to Article 36, bringing into effect Schedule 2 to that Law. A definition of “financial services business” would be substituted in Article 1 of the 1999 Law, along with other changes to definitions in that interpretation Article which would be necessitated by the proposed substantive changes (in particular, new definitions of “criminal investigation” and “money laundering”: *Article 23*). *Article 39* would repeal Article 42 of the 1999 Law, again because (as with the proposed repeal of Article 62 of the 2002 Law) the provisions of Article 42 have been superseded by Article 1 of the Criminal Offences (Jersey) Law 2009.

Part 3 of this draft Law would effect the repeal of the 1988 Law (*Article 50*), and make corresponding amendments inserting into the 1978 Law those provisions which are not capable of being absorbed within the 1999 Law but must nevertheless be preserved. The great majority of the repealed provisions, however, are consolidated with their equivalents in the 1999 Law by the extension of the provisions of that Law to include drug trafficking.

*Article 43* would insert, into Article 1(1) of the 1978 Law, a new definition of “drug trafficking”, and also a new definition of “premises” to encompass ships and offshore installations. The latter is necessary because most of the residual provisions to be introduced into the 1978 Law from the 1988 Law concern offences on or using ships. Draft new Articles 11A, 11B and 11C of the 1978 Law would be inserted by *Article 45*: these would re-enact provisions in Articles 45 to 48 of the 1988 Law. Draft new Articles 19A and 19B would be inserted by *Article 48*, to reflect the particular enforcement powers in respect of ships in Schedule 1 to the 1988 Law.

The general enforcement powers in Article 19 of the 1988 Law would be expanded, by amendments to be made by *Article 47*, to ensure that the wide powers of search, seizure and detention which are available under the 1978 Law to police and customs officers acting in the investigation and prosecution of drug-related offences, would remain available following the latter Law’s repeal.

(The concepts of a “corresponding law” and “corresponding law certificate” would also be defined in the 1978 Law by virtue of amendments made to Article 1 of that Law by *Article 43*, in order to facilitate investigations and prosecutions in Jersey arising from or relating to offences committed under laws providing for control and regulation of illegal drugs in a country or territory other than Jersey.)

*Article 45* would insert a new Article 10A into the 1978 Law to preserve the prohibition on importation and exportation of goods intended for use in drug

trafficking (currently covered by Article 29 of the 1988 Law, which again would be repealed).

Other minor and consequential amendments to the 1978 Law would be made by *Articles 44 and 49*. In particular the latter Article (by paragraph (6)) would amend Schedule 4 to that Law to insert penalties for the offences which would be introduced into it.

*Article 50* which repeals the 1988 Law also contains provisions for saving existing liabilities, investigations, legal proceedings, penalties, and protection etc. against liability under that Law. It would provide (paragraph (5)) for the transfer of any remaining monies in the Drug Trafficking Confiscation Fund to the Criminal Offences Confiscation Fund established under Article 24 of the 1999 Law.

Part 4 of this draft Law would contain provisions providing for its citation and commencement (*Article 52*). *Article 51* would bring into force the Schedule of consequential amendments of cross-references in other legislation to the 3 Laws which would be consolidated by this draft (paragraph (1)); and would also (paragraph (2)) confer Regulation-making powers for the purpose of further bringing this draft Law into full effect.





Jersey

## **DRAFT PROCEEDS OF CRIME AND TERRORISM (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 201-**

### **Arrangement**

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Jersey

## **DRAFT PROCEEDS OF CRIME AND TERRORISM (MISCELLANEOUS PROVISIONS) (JERSEY) LAW 201-**

**A LAW** to amend further the Terrorism (Jersey) Law 2002, the Proceeds of Crime (Jersey) Law 1999 and the Misuse of Drugs (Jersey) Law 1978; to repeal the Drug Trafficking Offences (Jersey) Law 1988 and make consequential provision; and for connected purposes.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **PART 1**

#### **TERRORIST FINANCING: AMENDMENT OF THE TERRORISM (JERSEY) LAW 2002**

##### **1 Interpretation**

In this Part, the “2002 Law” means the Terrorism (Jersey) Law 2002<sup>1</sup>.

##### **2 Article 1 substituted**

(1) For the heading to Part 1 of the 2002 Law there shall be substituted the heading –

“INTERPRETATION”.

(2) For Article 1 of the 2002 Law there shall be substituted the following Article –

##### **“1 General interpretation**

(1) In this Law –

‘act of terrorism’ means an act or threat of a kind described in Article 2;

‘association’ includes an unincorporated body;

‘customs officer’ means the Agent of the Impôts and any other officer of the Impôts appointed pursuant to Article 4 of the Customs and Excise (Jersey) Law 1999<sup>2</sup>;

‘designated customs officer’ means an officer of the Impôts who is designated under Article 26(2) or, if no such officer is designated for the time being, the Agent of the Impôts;

‘designated police officer’ means an officer of the Force who is designated under Article 26(1) or, if no such officer is designated for the time being, the Chief Officer of the Force;

‘explosive’ means –

- (a) an article or substance manufactured for the purpose of producing a practical effect by explosion, or intended for that purpose by a person possessing the article or substance;
- (b) materials for making an article or substance within paragraph (a);
- (c) anything used or intended to be used for causing or assisting in causing an explosion;
- (d) a part of anything within sub-paragraph (a) or (c);

‘financial institution’ means a person carrying on any business described in Schedule 2 to the Proceeds of Crime (Jersey) Law 1999<sup>3</sup>;

‘financial services’ has the meaning given by the Terrorist Asset-Freezing (Jersey) Law 2011<sup>4</sup>;

‘firearm’ includes a gun or an air pistol;

‘Force’ means the States of Jersey Police Force;

‘Immigration Act 1971’ means the Immigration Act 1971 of the United Kingdom Parliament as it is extended to Jersey by Order in Council;

‘immigration officer’ means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971;

‘Islands’ means the Bailiwick of Guernsey and the Isle of Man;

‘legal representative’ means an advocate, solicitor, or any person who, not being an advocate or solicitor, is employed by a firm of advocates or solicitors and notified by that employer to the Chief Officer of the Force as a legal representative for the purposes of this Law;

‘Minister’ means the Minister for Home Affairs;

‘organization’ includes any association, group or combination of persons;

‘police officer’ means an officer of the Force or a member of the Honorary Police;

‘premises’ includes a place and in particular includes a vehicle, installation, tent or moveable structure;

‘property’ includes all property whether movable or immovable, vested or contingent, and situated in Jersey or elsewhere;

‘proscribed organization’ shall be construed in accordance with Article 6;

‘road’ has the meaning given by Article 1 of the Road Traffic (Jersey) Law 1956<sup>5</sup>;

‘terrorism’ has the meaning given by Article 2;

‘terrorist entity’ has the meaning given by Article 4;

‘terrorist investigation’ means an investigation of any of the following –

- (a) the commission, preparation or instigation of an act of terrorism or of any offence under this Law;
- (b) action facilitating the commission, preparation or instigation of such an act or offence;
- (c) property which is or is alleged to be terrorist property; or
- (d) action which appears to have been taken for the purposes of terrorism;

‘terrorist property’ has the meaning given by Article 3;

‘vehicle’, except in Articles 44 to 48 and Schedule 8, includes an aircraft, hovercraft, or vessel.

- (2) A reference in this Law to an Act of the United Kingdom is a reference to that enactment as amended from time to time.
- (3) A reference in this Law to action taken for the purposes of terrorism includes a reference to action taken for the benefit or support (as defined by Article 15(3)(c)) of a terrorist entity.”.

### 3 Article 2 substituted

For Article 2 of the 2002 Law there shall be substituted the following Article –

#### “2 Meaning of ‘terrorism’

- (1) In this Law, ‘terrorism’ means –
  - (a) an act which constitutes an offence under the laws of Jersey and is listed in Schedule 10 to this Law; or
  - (b) an act falling within paragraph (2), where the act or threat of such an act is intended or may reasonably be regarded as intended –
    - (i) to influence, coerce or compel the States of Jersey or the government of any other place or country, or an

- international organization, to do or refrain from doing any act, or
- (ii) to intimidate the public or a section of the public, and the act is done or the threat is made for the purpose of advancing a political, racial, religious or ideological cause.
- (2) An act falls within this paragraph if it is an act other than one referred to in paragraph (1)(a) which –
- (a) is intended to cause the death of, or serious injury to, a person not taking an active part in hostilities in a situation of armed conflict;
- (b) creates a serious risk to the health or safety of the public or a section of the public;
- (c) involves serious damage to property;
- (d) seriously disrupts or seriously interferes with any electronic system or the provision of any service directly relating to communications infrastructure, banking and financial services, public utilities, transportation or other infrastructure;
- (e) seriously disrupts or seriously interferes with the provision of emergency police, fire and rescue or medical services; or
- (f) involves prejudice to national security or national defence.
- (3) An act or the threat of an act falling within paragraph (2) which involves the use of firearms or explosives is terrorism whether or not sub-paragraph (i) or (ii) of paragraph (1)(b) is satisfied.
- (4) For the purposes of this Article –
- (a) a reference to an act includes an act carried out in a place or country other than Jersey;
- (b) a reference to a person or to property is a reference to any person or to property wherever situated;
- (c) a reference to the public includes reference to the public in a place or country other than Jersey.
- (5) The Minister may by Order amend Schedule 10 to add or delete an offence for the purposes of this Article.”.

#### 4 Article 3 substituted

For Article 3 of the 2002 Law there shall be substituted the following Article –

##### “3 Meaning of ‘terrorist property’

- (1) In this Law, ‘terrorist property’ –
- (a) means property which is intended to be used or likely to be used, in whole or in part, directly or indirectly, for the purposes of terrorism or for the support of a terrorist entity; and



- (b) includes, but is not limited to, the resources of a terrorist entity.
- (2) Reference in paragraph (1)(b) to resources includes reference to any property which is applied or made available, or is intended to be applied or made available, for use by a terrorist entity.”.

**5 Article 4 substituted**

For Article 4 of the 2002 Law there shall be substituted the following Article –

**“4 Meaning of ‘terrorist entity’**

- (1) In this Law, a ‘terrorist entity’ is an entity which –
  - (a) commits, prepares or instigates an act of terrorism; or
  - (b) facilitates the commission, preparation or instigation of an act of terrorism.
- (2) For the purposes of paragraph (1) it does not matter –
  - (a) whether a specific act of terrorism is committed or not; nor
  - (b) whether, if an act of terrorism is in fact committed, it is committed by an entity charged with an offence under this Law or any other enactment, or by a related entity.
- (3) In this Article –
  - (a) ‘entity’ includes an organization (whether or not proscribed), and a legal or natural person;
  - (b) one entity is related to another where –
    - (i) one entity directs or controls another,
    - (ii) one entity participates as an accomplice in the acts of another, or
    - (iii) one entity contributes to the commission of acts by the other intentionally and with the knowledge of the intention of the other to commit such acts.”.

**6 Article 5 repealed**

Article 5 of the 2002 Law shall be repealed.

**7 Part 2 amended**

- (1) In Article 6(1) of the 2002 Law –
  - (a) at the end of sub-paragraph (a), the word “or” shall be deleted;
  - (b) at the end of sub-paragraph (b), for the full stop there shall be substituted “; or”; and
  - (c) after sub-paragraph (b) there shall be added the following sub-paragraph –

“(c) it is proscribed by virtue of or under section 3 of the Terrorism Act 2000 (c. 11) of the United Kingdom Parliament.”.

- (2) In Articles 10(1)(c) and 11(1) of the 2002 Law, for the words “12 to 18” in each place in which they occur, there shall be substituted the words “12 to 16”.
- (3) In Article 13(1)(b) of the 2002 Law, for the word “16” there shall be substituted the word “15”.

## **8 Part 3 amended**

- (1) For the heading to Part 3 of the 2002 Law there shall be substituted the heading –

“OFFENCES RELATING TO TERRORIST FINANCING”.

- (2) For Articles 15 to 22 there shall be substituted the following Articles –

### **“15 Use and possession etc. of property for purposes of terrorism**

- (1) It is an offence for a person to use property for the purposes of terrorism or for the support of a terrorist entity.
- (2) It is an offence for a person –
  - (a) to possess property;
  - (b) to provide, or invite another to provide, property or a financial service; or
  - (c) to collect or receive property,  
intending that the property or service be used, or knowing, suspecting, or having reasonable grounds to suspect that it may be used, for the purposes of terrorism or for the support of a terrorist entity.
- (3) In this Article –
  - (a) reference to the use of property includes use in whole or in part, directly or indirectly;
  - (b) reference to the provision of property or a financial service is a reference to the property or service being given, lent, or otherwise made available, whether or not for consideration; and
  - (c) ‘support of a terrorist entity’ includes, but is not limited to, support by way of providing or subsidizing educational or other day-to-day living expenses.
- (4) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.

**16 Dealing with terrorist property**

- (1) It is an offence for a person to do any act (including but not limited to an act listed in paragraph (3)) which facilitates the retention or control of terrorist property.
- (2) It is a defence for a person charged with an offence under paragraph (1) to prove that the person did not know or suspect or had no reasonable grounds to suspect that –
  - (a) the purpose of the act was to facilitate the retention or control of terrorist property; or
  - (b) the property in question was terrorist property.
- (3) The following acts are those mentioned in paragraph (1) –
  - (a) concealing or disguising the property;
  - (b) removing the property from Jersey;
  - (c) transferring the property to nominees.
- (4) In paragraph (1), reference to doing an act includes reference to omitting to do something.
- (5) In paragraph (3)(a), reference to concealing or disguising property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.
- (6) A person guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or a fine, or both.

**17 Articles 15 and 16: jurisdiction**

- (1) A person who does anything outside Jersey which, if it were done in Jersey, would constitute an offence under Article 15 or 16, may be charged with that offence and if found guilty shall be liable to the penalty provided for that offence.
- (2) For the purposes of this Article, Article 16(3)(b) shall be read as if for ‘Jersey’ there were substituted ‘a country or place outside Jersey’.

**18 Offences under Articles 15 and 16: co-operation with police**

- (1) No offence is committed under Article 15 or 16 if a person acting with the express consent of an officer of the Force or customs officer does anything which would, apart from this paragraph, amount to the commission of an offence under either of those Articles.
- (2) No offence is committed under Article 15 or 16 if a person involved in a transaction or arrangement relating to property discloses, in accordance with the conditions set out in paragraph (4) –

- (a) a suspicion or belief that the property is terrorist property; and
  - (b) the information on which the suspicion or belief is based.
- (3) No offence is committed under Article 15(2)(b) if a person involved in a transaction or arrangement relating to the provision of a financial service discloses, in accordance with the conditions set out in paragraph (4) –
- (a) a suspicion or belief that the service is being or to be provided for the purposes of terrorism or for the support of a terrorist entity; and
  - (b) the information on which the suspicion or belief is based.
- (4) The conditions mentioned in paragraph (2) and (3) are that the disclosure is made –
- (a) after the person became involved in the transaction or arrangement to which the disclosure relates ('the relevant transaction');
  - (b) to an officer of the Force or a customs officer;
  - (c) in good faith and on the person's own initiative; and
  - (d) as soon as reasonably practicable.
- (5) The defences provided by paragraphs (2) and (3) cease to apply if –
- (a) an officer of the Force or customs officer forbids the person to continue involvement in the relevant transaction; but
  - (b) the person continues to be involved.
- (6) It is a defence for a person charged with an offence under Article 15 or 16 to prove that the person –
- (a) intended to make a disclosure to which paragraph (2) or (3) applies; and
  - (b) has reasonable excuse for failing to do so.
- (7) Paragraph (8) applies where –
- (a) a person is employed by any other person ('the employer'); and
  - (b) the employer has established procedures for the making of disclosures to which paragraph (2) or (3) would apply if such disclosure were made to an officer of the Force or customs officer.
- (8) Where this paragraph applies, it is a defence for the employed person, if charged with an offence under Article 15 or 16, to prove that a disclosure was made by the person in good faith and in accordance with the employer's procedures.

## **19 General duty of disclosure of information**

- (1) This Article applies, subject to paragraph (2), where –
- (a) a person ('A') believes or suspects that another person ('B') has committed an offence under Article 15 or 16; and

- (b) the basis for that belief or suspicion is information which comes to A's attention in the course of a trade, profession, business or employment.
- (2) This Article does not apply where the information mentioned in paragraph (1)(b) comes to A in the course of business of a financial institution (in which case Article 21 shall apply).
- (3) It is an offence if A does not disclose, in accordance with the conditions set out in paragraph (4) –
  - (a) the belief or suspicion mentioned in paragraph (1)(a); and
  - (b) the information on which the belief or suspicion is based.
- (4) The conditions mentioned in paragraph (3) are that the disclosure is made –
  - (a) to an officer of the Force or a customs officer;
  - (b) in good faith; and
  - (c) as soon as reasonably practicable after the information came to A's attention.
- (5) A does not commit an offence under paragraph (3) if –
  - (a) A has a reasonable excuse for not making a disclosure of information; or
  - (b) A is a professional legal adviser and the information or other matter comes to A in privileged circumstances.
- (6) Where A is a professional legal adviser, nothing in this Article requires A to disclose information obtained by A in privileged circumstances, or any belief or suspicion based on such information.
- (7) Information or any other matter comes to A in privileged circumstances if it is communicated or given –
  - (a) by a person seeking legal advice from A;
  - (b) by a client or a client's representative in connection with the provision of legal advice by A to the client; or
  - (c) by any person in connection with actual or contemplated legal proceedings.
- (8) Paragraph (7) does not apply to information communicated or given to A with a view to furthering a criminal purpose.
- (9) Paragraph (10) applies where –
  - (a) a person is employed by any other person except a financial institution ('the employer'); and
  - (b) the employer has established procedures for the making of disclosures of the matters specified in paragraph (3).
- (10) Where this paragraph applies, it is a defence for the employed person, if charged with an offence under paragraph (3), to prove that a disclosure of matters specified in that paragraph was made by the person in good faith and in accordance with the employer's procedures.

- (11) 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 both.

**20 Disclosure of information: immunity**

- (1) This Article applies to a disclosure made in good faith to which either paragraph (2) or paragraph (3) applies, and which is made –
- (a) to an officer of the Force or a customs officer; or
  - (b) where the person making the disclosure is employed by another person, in accordance with any procedures established by the employer for the making of such disclosures.
- (2) This paragraph applies to a disclosure made in the circumstances mentioned in Article 19(1)(a) and (b).
- (3) This paragraph applies to a disclosure of –
- (a) a person’s suspicion or belief that any property is, or is derived from, terrorist property; and
  - (b) any matter on which that suspicion or belief is based.
- (4) A disclosure to which this Article applies shall not be treated as a breach of any restriction on the disclosure of information imposed by any enactment or contract or otherwise.”.
- (3) Article 23 of the 2002 Law shall be renumbered Article 21, and –
- (a) for paragraph (2) there shall be substituted the following paragraph –
- “(2) The first condition is that the person knows, suspects, or has reasonable grounds for suspecting that –
- (a) another person has committed an offence under Article 15 or 16; or
  - (b) any property is or may be terrorist property.”;
- (b) in paragraph (4), after the words “nominated officer” there shall be inserted the words “in good faith and”;
  - (c) in paragraph (5A)(d), for the words “any of Articles 15 to 18” in each place there shall be substituted the words “Article 15 or 16”;
  - (d) in paragraph (6A), after the words “ ‘supervisory body’ ” there shall be inserted the words “, ‘supervisory functions’ ”.
- (4) Article 24 of the 2002 Law shall be renumbered Article 22, and –
- (a) in paragraph (3), for the words “any of Articles 15 to 18” there shall be substituted the words “Article 15 or 16”;
  - (b) in paragraph (4) after the words “nominated officer” there shall be inserted the words “in good faith and”.
- (5) Article 24A of the 2002 Law shall be renumbered Article 23, and in paragraph (1) –

- (a) for the words “under Article 20, 21, 22, 23 or 24” there shall be substituted the words “as described in any provision of Articles 18, 19, 20 or 22”;
  - (b) for the words “Article 24B or 24C” there shall be substituted the words “Article 24 or 25”.
- (6) Article 24B of the 2002 Law shall be renumbered Article 24, and –
- (a) in paragraphs (1) and (2), for the word “24A” in each place there shall be substituted the word “23”;
  - (b) after paragraph (2), there shall be inserted the following paragraph –
- “(3) In this Article, ‘Jersey Financial Services Commission’ means the Commission established under the Financial Services Commission (Jersey) Law 1998<sup>6</sup>.”.
- (7) Article 24C of the 2002 Law shall be renumbered Article 25, and in paragraph (1) for the word “24A” there shall be substituted the word “23”.
- (8) Article 24D of the 2002 Law shall be renumbered Article 26, and in paragraphs (1) and (2) for the words “Articles 23 and 24” in each place there shall be substituted the words “Articles 21 and 22”.
- (9) Article 25 of the 2002 Law shall be repealed.
- (10) For Article 26 of the 2002 Law, there shall be substituted the following Article –

**“27 Forfeiture of property used for purposes of terrorism**

- (1) The court by or before which a person is convicted of an offence under Article 15 or 16 may make a forfeiture order in accordance with the provisions of this Article.
- (2) Where the offence of which the person is convicted is an offence under Article 15, the court may order the forfeiture of any property which, at the time of the offence –
  - (a) was possessed or controlled by that person; and
  - (b) was intended to be used, or there is reasonable cause to suspect would be used, for the purposes of terrorism or for the support of a terrorist entity.
- (3) Where the offence of which the person is convicted is an offence under Article 16, the court may order the forfeiture of the terrorist property in question.
- (4) Where a person other than the convicted person claims to be the owner of or otherwise interested in any property which may be forfeit by virtue of an order under this Article, the court shall give that person an opportunity to be heard before making such an order.
- (5) Schedule 3 shall have effect to make further provision as to orders under this Article.”.

**9 Article 35 substituted**

For Article 35 of the 2002 Law there shall be substituted the following Article –

**“35 Tipping off and interference with material**

- (1) Paragraph (2) applies where a person knows or suspects that the Attorney General or any police officer is acting or proposing to act in connection with a terrorist investigation or proposed terrorist investigation.
- (2) It is an offence for the person –
  - (a) to disclose to another person any information relating to the investigation; or
  - (b) to interfere with material which is likely to be relevant to the investigation.
- (3) Paragraph (4) applies where a person knows or suspects that a disclosure has been or will be made under any of Articles 18, 19 or 21.
- (4) It is an offence for the person –
  - (a) to disclose to another person –
    - (i) the fact that such a disclosure has been or will be made, or
    - (ii) any information otherwise relating to such a disclosure;or
  - (b) to interfere with material which is likely to be relevant to an investigation resulting from such a disclosure.
- (5) The States may by Regulations specify cases in which a disclosure or interference to which paragraph (2) or (4) would otherwise apply shall not amount to the commission of an offence.
- (6) Paragraphs (2) and (4) do not apply to a disclosure which –
  - (a) is made by a professional legal adviser –
    - (i) to a client, or to the client’s representative, in connection with the provision of legal advice to the client, or
    - (ii) to any person for the purpose of actual or contemplated legal proceedings;and
  - (b) is not made with a view to furthering a criminal purpose.
- (7) For the purposes of paragraphs (2) and (4), interference with material includes falsifying, concealing, destroying or disposing of the material or part of it.
- (8) A person shall not be guilty of an offence under paragraph (2) or (4) in respect of anything done by the person in the course of acting in connection with the enforcement, or intended



enforcement, of any provision of this Law or of any other enactment relating to terrorism or the investigation of terrorism.

- (9) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding 5 years or to a fine, or both.
- (10) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.”.

**10 Article 36 amended**

In Article 36 of the 2002 Law, for paragraphs (1) and (2) there shall be substituted the following –

“In this Part, ‘terrorist’ means a person who –

- (a) has committed an offence under any of Articles 12, 13, 15, 16, or 50 to 55;
- (b) is or has been concerned in the commission, preparation or instigation of an act of terrorism; or
- (c) is or has been concerned in action facilitating the commission, preparation or instigation of such an act.”.

**11 Article 57 amended**

In Article 57 of the 2002 Law, the words “authorized officer or an” shall be deleted.

**12 Article 61 amended**

In Article 61 of the 2002 Law –

- (a) in paragraph (1), for the words “15 to 24, 26 and 35” there shall be substituted the words “15 to 22, 27 and 35”;
- (b) in paragraph (2), for the words “Articles 21 and 34” there shall be substituted the words “Articles 19 and 34”.

**13 Articles repealed**

Articles 62, 66 and 67 of the 2002 Law shall be repealed.

**14 Article 63 amended**

In Article 63 of the 2002 Law, in paragraph (1) after the words “limited liability partnership” there shall be inserted the words “, separate limited partnership”.

**15 Article 68 amended**

In Article 68 of the 2002 Law, after the word “as” there shall be inserted the word “the”.

**16 Schedule 3 amended**

- (1) For the sub-sub-heading to Schedule 3 to the 2002 Law, there shall be substituted the following sub-sub-heading –

“(Article 27(5))”.
- (2) In Schedule 3 to the 2002 Law –
  - (a) in paragraph 3, in sub-paragraphs (3)(a) and (4)(a) for the words “any of Articles 15 to 18” in each place there shall be substituted the words “Article 15 or 16”;
  - (b) in paragraph 5, in sub-paragraphs (3)(a) and (b) for the words “any of Articles 15 to 18” in each place there shall be substituted the words “Article 15 or 16”;
  - (c) in paragraph 8, in sub-paragraph (1)(b) for the words “any of Articles 15 to 18” there shall be substituted the words “Article 15 or 16”.

**17 Schedule 5 amended**

In Schedule 5 to the 2002 Law, at the end there shall be added the following paragraph –

**“11 Interpretation**

- (1) In this Schedule, ‘items subject to legal privilege’ means, subject to paragraph (2) –
  - (a) communications between a professional legal adviser (‘A’) and the adviser’s client (‘B’) or any person representing B (‘C’), made in connection with the giving of legal advice by A to B;
  - (b) communications between A, B or C or between A, B or C and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings;
  - (c) items enclosed with or referred to in any such communications and made in connection with the giving of legal advice, or in connection with or in contemplation of legal proceedings and for the purposes of such proceedings, when such items are in the possession of a person who is entitled to possession of them.
- (2) An item cannot be subject to legal privilege if it is held with the intention of furthering a criminal purpose.
- (3) In this Schedule, ‘dwelling’ means a building or part of a building used as a dwelling, and includes a vehicle which is habitually stationary and is so used.”.

**18 Schedule 7 amended**

In Schedule 7 to the 2002 Law, in paragraph 6(2)(b) –

- (a) for the word “26” there shall be substituted the word “27”;
- (b) for the words “any of Articles 15 to 18” there shall be substituted the words “Article 15 or 16”.

**19 Schedule 8 amended**

In Schedule 8 to the 2002 Law –

- (a) in paragraph 2(1) and (4) and paragraph 6(1) for the words “Article 36(1)(b)” in each place in which they occur there shall be substituted the words “Article 36(b) or (c)”;
- (b) in paragraph 10(2)(b), for the words “authorized officer” there shall be substituted the words “officer of the Force, customs officer or immigration officer”.

**20 Schedule 9 amended**

In Schedule 9 to the 2002 Law, in paragraph 9(2)(c), for the words “ ‘drug trafficking offence’ in Article 1(1) of the Drug Trafficking Offences (Jersey) Law 1988” there shall be substituted the words “ ‘drug trafficking’ in Article 1(1) of the Misuse of Drugs (Jersey) Law 1978”.

**21 Schedule 10 added**

After Schedule 9 to the 2002 Law, there shall be added the following Schedule –

**“SCHEDULE 10**

(Article 2(1))

**TERRORISM OFFENCES**

**1 Aviation Security (Jersey) Order 1993**

- (a) An offence under any of sections 1, 2, 3, 4 or 6 of the Aviation Security Act 1982 as extended to Jersey by Article 2(1) of the Aviation Security (Jersey) Order 1993<sup>9</sup>.
- (b) An offence under section 1 of the Aviation and Maritime Security Act 1990 as extended to Jersey by Article 2(2) of that Order.

**2 Internationally Protected Persons Act 1978 (Jersey) Order 1979**

An offence under section 1 of the Internationally Protected Persons Act 1978 as extended to Jersey by Article 3 of the Internationally Protected Persons Act 1978 (Jersey) Order 1979<sup>10</sup>.

**3 Nuclear Material (Offences) Act 1983 (Jersey) Order 1991**

An offence under section 1 or 2 of the Nuclear Material (Offences) Act 1983 as extended to Jersey by Article 2 of the Nuclear Material (Offences) Act 1983 (Jersey) Order 1991<sup>11</sup>.

**4 Maritime Security (Jersey) Order 1996**

An offence under any of sections 9 to 14 of the Aviation and Maritime Security Act 1990 as extended to Jersey by Article 2 of the Maritime Security (Jersey) Order 1996<sup>12</sup>.

**5 Taking of Hostages (Jersey) Order 1982**

An offence under section 1 of the Taking of Hostages Act 1982 as extended to Jersey by Article 3 of the Taking of Hostages (Jersey) Order 1982<sup>13</sup>.

**PART 2**

**PROCEEDS OF CRIME: AMENDMENT OF THE PROCEEDS OF CRIME (JERSEY) LAW 1999**

**22 Interpretation**

In this Part, the “1999 Law” means the Proceeds of Crime (Jersey) Law 1999<sup>14</sup>.

**23 Article 1 amended**

(1) In Article 1(1) of the 1999 Law –

- (a) the first definition paragraph, relating to the expression “to benefit from criminal conduct” and to similar expressions, shall be deleted;
- (b) after the definition “criminal conduct” there shall be inserted the following definition –

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

- (c) for the definition “drug trafficking offence” there shall be substituted the following definition –

“‘drug trafficking’ has the same meaning as is given to that expression by Article 1(1) of the Misuse of Drugs (Jersey) Law 1978<sup>15</sup>;”;

- (d) for the definition “financial services business”, there shall be substituted the following definition –

“‘financial services business’ means a business specified, or of a description specified, in Schedule 2;”;

- 
- (e) for the definition “money laundering” there shall be substituted the following definition –
- “ ‘money laundering’ means –
- (a) conduct which is an offence under any provision of Articles 30 and 31 of this Law or of Articles 15 and 16 of the Terrorism (Jersey) Law 2002<sup>16</sup>; or
- (b) conduct outside Jersey which, if occurring in Jersey, would be an offence specified in sub-paragraph (a);”;
- (f) the definition “relevant criminal conduct” shall be deleted.
- (2) After Article 1(2) of the 1999 Law there shall be inserted the following paragraphs –
- “(2A) For the purposes of this Law –
- (a) a person benefits from any criminal conduct if that person obtains property as a result of or in connection with the conduct; and
- (b) in particular, but without derogation from sub-paragraph (a), a person benefits from criminal conduct if the person receives any payment or other reward in connection with such conduct, whether carried on by that person or by another.
- (2B) For the purposes of Part 2, ‘relevant criminal conduct’, in relation to a defendant, means the offences for which the defendant appears to be sentenced, together with any other offences which the Court may take into consideration in sentencing the defendant.”.

#### **24 Article 2 amended**

In Article 2(2) of the 1999 Law, for the words “Article 26 of the Terrorism (Jersey) Law 2002” there shall be substituted the words “Article 27 of the Terrorism (Jersey) Law 2002”.

#### **25 Article 3 amended**

In Article 3 of the 1999 Law –

- (a) in paragraph (5), in sub-paragraph (a)(iii) for the words “Article 26 of the Terrorism (Jersey) Law 2002” there shall be substituted the words “Article 27 of the Terrorism (Jersey) Law 2002”;
- (b) in paragraph (9), the words “(not being a drug trafficking offence)” shall be deleted.

#### **26 Article 4 substituted**

For Article 4 of the 1999 Law there shall be substituted the following Article –

**“4 Amount to be recovered under confiscation order**

- (1) Subject to paragraphs (2) and (3), the amount which a defendant is required by a confiscation order to pay (in this Article, ‘the penalty’) shall be the amount assessed by the Court to be the value of the defendant’s benefit from the relevant criminal conduct (in paragraph (2), the ‘assessed value’).
- (2) Where the Court is satisfied that the amount which might be realised at the time when the confiscation order is made is less than the assessed value, the penalty shall be the amount which appears to the Court might be so realised (or, if that amount is nil, a nominal amount).
- (3) Where the Court is satisfied that a victim of the relevant criminal conduct has instituted or intends to institute civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct, the penalty may be of such lesser amount as the Court thinks fit.”.

**27 Article 15 amended**

- (1) After Article 15(1) of the 1999 Law, there shall be inserted the following paragraph –
  - “(1A) The powers conferred on the Court by Article 16 are also exercisable where –
    - (a) a criminal investigation has been started in Jersey in respect of alleged criminal conduct; and
    - (b) the Court is satisfied that there is reasonable cause to believe that the alleged offender has benefited from the criminal conduct.”.
- (2) In Article 15(5) of the 1999 Law –
  - (a) for the words “paragraph (1)(a) or (b)” there shall be substituted the words “paragraphs (1)(a) and (b) or (1A)”;
  - (b) in sub-paragraph (a), for the words “continuing the proceedings” there shall be substituted the words “commencing proceedings or, as the case may be, continuing the proceedings”.

**28 Article 16 amended**

In Article 16 of the 1999 Law, for paragraph (6) there shall be substituted the following paragraph –

- “(6) A *saisie judiciaire* –
  - (a) may be discharged or varied in relation to any property;
  - (b) in a case falling within paragraph (1A) of Article 15 –
    - (i) may be discharged, on the application of the alleged offender and before the commencement of any proceedings against the alleged offender, where the Court is satisfied that there has been undue delay in

commencing proceedings in pursuance of the criminal investigation;

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

and

- (c) shall be discharged on satisfaction of the confiscation order.”.

## 29 Article 24 amended

After Article 24(4) of the 1999 Law, there shall be inserted the following paragraph –

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

## 30 Articles 29 to 34 substituted

For Articles 29 to 34 of the 1999 Law there shall be substituted the following Articles –

### “29 Criminal property

- (1) For the purposes of this Part of this Law, property is criminal property if –
  - (a) it constitutes proceeds of criminal conduct or represents such proceeds, whether in whole or in part and whether directly or indirectly; and
  - (b) the alleged offender knows or suspects that it constitutes or represents such proceeds.
- (2) For such purposes it does not matter –
  - (a) whether the criminal conduct was conduct of the alleged offender or of another person;
  - (b) whether the person who benefited from the criminal conduct was the alleged offender or another person; nor
  - (c) whether the criminal conduct occurred before or after the coming into force of this provision.

### 30 Offences of dealing with criminal property

- (1) A person who –
  - (a) acquires criminal property;

- (b) uses criminal property; or
  - (c) has possession or control of criminal property,is guilty of an offence.
- (2) For the purposes of paragraph (1) –
  - (a) having possession or control of property includes doing an act in relation to the property; and
  - (b) it does not matter whether the acquisition, use, possession or control is for the person’s own benefit or for the benefit of another.
- (3) A person who –
  - (a) enters into or becomes concerned in an arrangement; and
  - (b) knows or suspects that the arrangement facilitates, by any means, the acquisition, use, possession or control of criminal property by or on behalf of another person,is guilty of an offence.
- (4) A person who is guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine, or both.
- (5) A person shall not be guilty of an offence under this Article in respect of anything done by the person in carrying out any function relating to the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.
- (6) Subject to paragraph (7), a person shall not be guilty of an offence under paragraph (1) if the person acquired, used, possessed or controlled the property for adequate consideration.
- (7) The defence of adequate consideration in paragraph (6) shall not be available where –
  - (a) property or services provided to a person assist that person in criminal conduct;
  - (b) a person providing property or services to another person knows, suspects, or has reasonable grounds to suspect that the property or services will or may assist the other person in criminal conduct; or
  - (c) the value of the consideration is significantly less than the value of the property acquired or, as the case may be, the value of its use or possession.
- (8) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

### **31 Concealment etc. of criminal property**

- (1) A person who –
  - (a) conceals criminal property;



- (b) disguises criminal property;
  - (c) converts or transfers criminal property; or
  - (d) removes criminal property from Jersey,
- is guilty of an offence.

- (2) In paragraph (1), reference to concealing or disguising property includes reference to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it.
- (3) A person who is guilty of an offence under this Article shall be liable to imprisonment for a term not exceeding 14 years or to a fine or to both.
- (4) A person shall not be guilty of an offence under this Article in respect of anything done by the person in carrying out any function relating to the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.
- (5) Without prejudice to any provision in the preceding paragraphs of this Article, the importation or exportation for any purpose of criminal property which constitutes or represents the proceeds of drug trafficking is prohibited.
- (6) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

### **32 Protection for disclosures, and defence of intended disclosure**

- (1) Paragraphs (2) and (3) apply where a person makes a disclosure to a police officer –
  - (a) of a suspicion or belief that any property constitutes or represents proceeds of criminal conduct and of any matter on which such suspicion or belief is based; or
  - (b) of information, for the purposes of a criminal investigation or criminal proceedings in Jersey.
- (2) The disclosure –
  - (a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by any enactment or contract or otherwise; and
  - (b) shall not involve the person making it in liability of any kind.
- (3) Where the person making the disclosure does any act, or deals with the property in any way which apart from this provision would amount to the commission of an offence under Article 30 or 31, the person shall not be guilty of such an offence if the conditions set out in paragraph (4) are fulfilled.
- (4) The conditions mentioned in paragraph (3) are that the disclosure is made in good faith and either –

- (a) if the disclosure is made before the person does the act in question, the act is done with the consent of a police officer; or
  - (b) if the disclosure is made after the person does the act in question, it is made on the person's own initiative and as soon as reasonably practicable after the person has done the act in question.
- (5) In the case of a person ('P') who was in employment at the time of making the disclosure, a disclosure by P to an appropriate person shall be treated as though it were a disclosure to a police officer, and paragraphs (1) to (3) shall have effect as though references to the police officer were references to the appropriate person.
- (6) In paragraph (5) and in Article 34B, the 'appropriate person' is the person designated by P's employer in accordance with the procedure established by the employer for such disclosures to be made.
- (7) In proceedings against a person for an offence under Article 30, it shall be a defence to prove that –
- (a) the alleged offender intended to disclose, to a police officer, the suspicion or belief that property constitutes or represents proceeds of criminal conduct; and
  - (b) there is reasonable excuse for the alleged offender's failure to make such a disclosure.

### **33 Restrictions on further disclosure**

- (1) Information that is disclosed –
- (a) to a police officer under Article 32 or 34A or any Order made under Article 37; or
  - (b) to a designated police officer or designated customs officer,
- shall not be disclosed by that officer or by any person who obtains information directly or indirectly from that officer, unless such further disclosure is permitted by Article 34.
- (2) A person who discloses information in contravention of paragraph (1) is guilty of an offence and shall be liable to imprisonment for a term not exceeding 6 months or to a fine of level 4 on the standard scale, or both.
- (3) In proceedings against a person for an offence under this Article, it shall be a defence to prove that the person took all reasonable steps and exercised due diligence to avoid committing the offence.
- (4) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.

### **34 Further disclosure permitted for certain purposes**

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

- 
- (a) to a person in Jersey for the purposes of a criminal investigation or criminal proceedings in Jersey; or
  - (b) for other purposes in Jersey; to –
    - (i) the Attorney General,
    - (ii) the Financial Services Commission,
    - (iii) a police officer,
    - (iv) any other person who is for the time being authorized in writing by the Attorney General to obtain the information, or
    - (v) any supervisory body designated as such by the Chief Minister under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>17</sup>.
- (2) Where the Attorney General has consented to disclosure of information and has not withdrawn that consent, Article 33 does not prohibit the disclosure of information –
- (a) for the purposes of the investigation of crime outside Jersey or of criminal proceedings outside Jersey; or
  - (b) to a competent authority outside Jersey.
- (3) The Attorney General may give consent –
- (a) generally or specifically; and
  - (b) unconditionally or subject to such conditions as the Attorney General may stipulate.
- (4) Without prejudice to the generality of paragraph (3), the Attorney General’s consent may be given in terms that permit the disclosure from time to time (as the occasion requires) of such a class of information as is specified in the consent to such a person or authority, or class of persons or authority, as is so specified.
- (5) Without prejudice to the generality of paragraph (3), a condition –
- (a) may be expressed generally or in respect of any specified information;
  - (b) may provide that information may only be disclosed in specified circumstances or for a specified purpose; or
  - (c) may provide that any person or authority to whom information is disclosed shall not disclose it to any other person without the prior consent of the Attorney General.”.

**31 Article 34A amended**

In Article 34A of the 1999 Law, in paragraph (3) after the words “Where a person discloses to a police officer” there shall be inserted the words “in good faith”.

**32 Article 34D amended**

In Article 34D of the 1999 Law –

- (a) for paragraph (2) there shall be substituted the following paragraph –
  - “(2) The first condition is that the person knows, suspects, or has reasonable grounds for suspecting that –
    - (a) another person is engaged in money laundering; or
    - (b) any property constitutes or represents proceeds of criminal conduct.”;
- (b) in paragraph (9) after the word “discloses” there shall be inserted the words “in good faith”.

### 33 Article 35 substituted

For Article 35 of the 1999 Law, there shall be substituted the following Article –

#### “35 Tipping off and interference with material

- (1) Paragraph (2) applies where a person knows or suspects that the Attorney General or any police officer is acting or proposing to act in connection with an investigation that is being or is about to be conducted into money laundering.
- (2) It is an offence for the person –
  - (a) to disclose to another person any information relating to the investigation; or
  - (b) to interfere with material which is likely to be relevant to the investigation.
- (3) Paragraph (4) applies where a person knows or suspects that a disclosure –
  - (a) under Article 32; or
  - (b) to which Article 34A(3) or Article 34D(9) applies, has been or will be made.
- (4) It is an offence for the person –
  - (a) to disclose to another person –
    - (i) the fact that such a disclosure has been or will be made, or
    - (ii) any information otherwise relating to such a disclosure;
  - or
  - (b) to interfere with material which is likely to be relevant to an investigation resulting from such a disclosure.
- (5) The States may by Regulations specify cases in which a disclosure or interference to which paragraph (2) or (4) would otherwise apply shall not amount to the commission of an offence.
- (6) Paragraphs (2) and (4) do not apply to a disclosure which –
  - (a) is made by a professional legal adviser –

- (i) to a client, or to the client's representative, in connection with the provision of legal advice to the client, or
  - (ii) to any person for the purpose of actual or contemplated legal proceedings;
- and
- (b) is not made with a view to furthering a criminal purpose.
- (7) For the purposes of paragraphs (2) and (4), interference with material includes falsifying, concealing, destroying or disposing of the material or part of it.
- (8) A person shall not be guilty of an offence under paragraph (2) or (4) in respect of anything done by the person in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.
- (9) A person who is guilty of an offence under this Article is liable to imprisonment for a term not exceeding 5 years or to a fine, or both.
- (10) No prosecution shall be instituted for an offence under this Article without the consent of the Attorney General.”.

#### **34 Article 36 amended**

In Article 36 of the 1999 Law, for paragraph (1) there shall be substituted the following paragraph –

- “(1) Schedule 2 shall have effect to specify what is financial services business for the purposes of this Law.”.

#### **35 Article 37 amended**

In Article 37 of the 1999 Law –

- (a) in paragraph (9), after the words “ ‘supervisory body’ ” there shall be inserted the words “, ‘supervisory functions’ ”;
- (b) for paragraph (11) there shall be substituted the following paragraph –
  - “(11) For the purposes of this Article, ‘money laundering’ includes, in addition to the matters comprised in the definition of that term in Article 1(1) –
    - (a) conduct that is an offence under any of the following provisions –
      - (i) Articles 34A and 34D of this Law,
      - (ii) Articles 7, 8 and 10 of the Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002<sup>18</sup>, or
      - (iii) Articles 13–17 and 19 of the Terrorist Asset-Freezing (Jersey) Law 2011<sup>19</sup>;

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

**36 Article 38 amended**

In Article 38(1) of the 1999 Law, for sub-paragraph (b) there shall be substituted the following sub-paragraph –

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

**37 Article 40 amended**

In Article 40 of the 1999 Law –

- (a) paragraph (10) shall be deleted;
- (b) for paragraph (11) there shall be substituted the following paragraph –

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

- (a) the manner in which applications may be made under this Article;
- (b) the discharge and variation of orders under this Article; and
- (c) proceedings related to orders under this Article.”.

**38 Article 41 amended**

In Article 41 of the 1999 Law –

- (a) in paragraph (2) for the words “to enter and search the premises if the Bailiff is satisfied” there shall be substituted the words “together with any other person named in the warrant to enter (if necessary by force) and search the premises, if the Bailiff is satisfied”;
- (b) paragraph (6) shall be deleted.

**39 Article 42 repealed**

Article 42 of the 1999 Law shall be repealed.

**40 Schedule 1 amended**

In Schedule 1 to the 1999 Law, the words “but not being a drug trafficking offence” shall be deleted.

**41 Schedule 3 amended**

In Part 1 of Schedule 3 to the 1999 Law, at the end of paragraph 2 the full stop shall be deleted and there shall be added the words “or, in the case of an officer of the Impôts, such an officer of at least the rank of assistant director.”.

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### PART 3

#### DRUG TRAFFICKING: AMENDMENT OF THE MISUSE OF DRUGS (JERSEY) LAW 1978 AND REPEAL OF THE DRUG TRAFFICKING OFFENCES (JERSEY) LAW 1988

#### 42 Interpretation

In this Part, “the 1978 Law” means the Misuse of Drugs (Jersey) Law 1978<sup>20</sup>.

#### 43 Article 1 amended

(1) In Article 1(1) of the 1978 Law –

(a) after the definition “controlled drug” there shall be inserted the following definition –

“ ‘Convention state’ means a state other than the United Kingdom which is a party to the Vienna Convention;”;

(b) the definition “corresponding law” shall be deleted;

(c) after the definition “doctor” there shall be inserted the following definition –

“ ‘drug trafficking’ means carrying out, or being concerned in, any of the following activities, whether in Jersey or elsewhere –

(a) producing or supplying a controlled drug in contravention of Article 5 of this Law or a corresponding law;

(b) transporting or storing a controlled drug where possession of the drug contravenes Article 8(1) of this Law or a corresponding law;

(c) importing or exporting goods where the importation or exportation is prohibited by Article 10A of this Law, Article 31(5) of the Proceeds of Crime (Jersey) Law 1999<sup>21</sup>, or a corresponding law;

(d) manufacturing or supplying a scheduled substance where such manufacture or supply –

(i) amounts to the commission of an offence under Article 6 of this Law or a corresponding law, or

(ii) would be such an offence if it took place in Jersey;

(e) illicit traffic in a controlled drug by means of a ship in circumstances which amount to the commission of an offence under Article 11B of this Law;”;

(d) for the definition “premises” there shall be substituted the following definition –

“ ‘premises’ includes a vessel, any offshore installation, and any tent or movable structure;”;

(e) after the definition “veterinary surgeon” there shall be added the following definition –

“‘Vienna Convention’ means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December 1988.”.

(2) At the end of Article 1 of the 1978 Law there shall be added the following paragraphs –

“(5) In this Law, ‘corresponding law’ means a law stated in a certificate purporting to be issued by or on behalf of the government of a country outside Jersey (in paragraph (6), ‘a corresponding law certificate’) to be a law in force and providing for the control and regulation in that country –

- (a) of the production, supply, use, export, or import of drugs and other substances, in accordance with the Single Convention on Narcotic Drugs signed at New York on 30th March 1961; or
- (b) of the production, supply, use, export or import of dangerous or otherwise harmful drugs in pursuance of any treaty, convention, or other agreement or arrangement to which the government of that country and the States of Jersey are for the time being parties.

(6) A statement in a corresponding law certificate that any facts constitute an offence against the corresponding law in question shall be evidence of the matters stated.

(7) If, in any proceedings under this Law, the question arises whether a 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 in determining that question; and for this purpose ‘Secretary of State’ means –

- (a) Her Majesty’s Secretary of State for the Home Department; or
- (b) Her Majesty’s Secretary of State for any other government department, or any Minister of the Crown, to whom the functions of the Secretary of State for the Home Department are transferred.”.

#### 44 Article 7 amended

In Article 7 of the 1978 Law, for sub-paragraph (5)(a) there shall be substituted the following sub-paragraph –

“(a) the provisions of Part 2 of the Proceeds of Crime (Jersey) Law 1999 relating to the confiscation of the proceeds of criminal conduct; or”.

#### 45 Article 10A inserted

After Article 10 of the 1978 Law, there shall be inserted the following Article –



**“10A Prohibition on importation and exportation of goods for use in drug trafficking**

The importation or exportation of goods intended by any person for use in drug trafficking is prohibited.”.

**46 Articles 11A, 11B and 11C inserted**

After Article 11 of the 1978 Law, there shall be inserted the following Articles –

**“11A Offences committed on Jersey ships**

- (1) Anything which, if it were done on land in Jersey, would constitute an offence listed in paragraph (2) of this Article shall constitute that offence if done on a Jersey ship.
- (2) This is the list of offences mentioned in paragraph (1) –
  - (a) an offence under any of Articles 5, 6, 8(2) or 21(5) of this Law;
  - (b) an offence under Article 61 of the Customs and Excise (Jersey) Law 1999<sup>22</sup> in connection with a prohibition on importation or exportation having effect by virtue of Article 4 of this Law.
- (3) In this Article and in Articles 11B and 11D, ‘Jersey ship’ means a ship registered in Jersey.

**11B Use of ships for illicit traffic of drugs**

- (1) It is an offence for a person, knowing or having reasonable grounds to suspect that a controlled drug is intended to be imported or has been exported contrary to Article 4 of this Law or the law of any other state or territory –
  - (a) to have in possession a controlled drug; or
  - (b) to be in any way knowingly concerned in the carrying or concealing of a controlled drug,on a ship to which this Article applies.
- (2) This Article applies to the following ships –
  - (a) a Jersey ship;
  - (b) a ship registered in the United Kingdom or an Overseas Territory of the United Kingdom, Guernsey, or the Isle of Man;
  - (c) a ship registered in a Convention state; and
  - (d) a ship not registered in any country or territory.
- (3) A certificate issued by or on behalf of the government of a state or territory other than Jersey to the effect that importation or exportation of a controlled drug is contrary to the law of that state

or territory shall be evidence to that effect for the purposes of proceedings in Jersey.

### **11C Jurisdiction in respect of offences on ships**

- (1) Proceedings under Article 11A or 11B in respect of an offence on a ship may be taken, and the offence may be treated as having been committed, within Jersey.
- (2) The location of a ship is immaterial for the purpose of establishing whether an offence under Article 11B has been committed.
- (3) Section 3 of the Territorial Waters Jurisdiction Act 1878 of the United Kingdom shall not apply to any proceedings under Article 11A or 11B.
- (4) Enforcement 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, which shall not be given unless, in relation to that ship, the Convention state has –
  - (a) requested assistance from Jersey for the purpose mentioned in paragraph (1) of this Article; or
  - (b) authorized Jersey to act for that purpose.
- (5) In giving such authority, the Attorney General may impose such conditions or limitations on the exercise of enforcement powers as may be necessary to give effect to any conditions or limitations imposed by the Convention state.
- (6) Whether in response to a request from a Convention state or of the Attorney General's own motion, the Attorney General may authorize a Convention state to exercise, in relation to a Jersey ship, powers corresponding to the enforcement powers, subject to such conditions or limitations as the Attorney General may impose.
- (7) The enforcement powers shall not be exercised in the territorial sea of another country or territory except with the authority of the Attorney General, which shall not be given unless the country or territory concerned has agreed to such exercise of the powers.
- (8) The Attorney General may delegate to the Agent of the Impôts by instrument in writing all or any of the Attorney General's functions under this Article, subject to such conditions or limitations as may be specified in the instrument.
- (9) In this Article, 'enforcement powers' means the powers conferred by Article 19A."

### **47 Article 19 amended**

- (1) For the heading to Article 19 of the 1978 Law there shall be substituted the following heading –

**“Powers to search and detain”.**

- (2) In Article 19 of the 1978 Law –
- (a) in paragraph (1), for the words “books or documents” there shall be substituted the word “material”;
  - (b) in paragraph (2) –
    - (i) after the words “there is reasonable cause to suspect that” there shall be inserted the words “there is in the possession of a person on any premises”,
    - (ii) in sub-paragraph (a), the word “is” and the words “in the possession of a person in any premises” shall be deleted,
    - (iii) for sub-paragraph (b) there shall be substituted the following sub-paragraph –
      - “(b) material directly or indirectly relating to, or connected with, drug trafficking or any other transaction or dealing which was, or intended transaction or dealing which would if carried out be, an offence under this Law or (in the case of a transaction or dealing intended to be carried out in a place outside Jersey) under a corresponding law,”,
    - (iv) for the words from “the Bailiff” to the end of the paragraph there shall be substituted the words “the Bailiff may make an order in accordance with paragraph (2A) or may issue a warrant in accordance with paragraph (2B), or both, as the Bailiff thinks fit.”;
  - (c) after paragraph (2) there shall be inserted the following paragraphs –
    - “(2A) An order under this paragraph may order any person who appears to the Bailiff to be in possession of material such as is mentioned in paragraph (2)(b) –
      - (a) to produce the material to a police officer or an officer of the Impôts for the officer to take away;
      - (b) to give access to the material (including, where the person subject to the order appears to the Bailiff to be entitled to grant such entry, access by entry to any premises) to a police officer or an officer of the Impôts,within 7 days or such other period as may appear to the Bailiff to be appropriate; and provision may be made by Rules of Court as to the discharge and variation of, and proceedings relating to, orders under this paragraph.
    - (2B) A warrant under this paragraph may authorize any police officer or officer of the Impôts, together with any other person named in the warrant, at any time or times within one month from the date of the warrant –
      - (a) to enter, if necessary by force, the premises specified in the warrant;
      - (b) to search those premises and any persons found to be on the premises;

- (c) if there are reasonable grounds for suspecting that an offence under this Law has been committed in relation to any controlled drug found as a result of the search, to seize and detain the drug;
- (d) if there are reasonable grounds for suspecting that material found as a result of the search is material such as mentioned in paragraph (2)(b), to seize and detain the material.”;
- (d) in paragraph (3), in sub-paragraph (b) for the word “person” in the first place in which it occurs, there shall be substituted the words “police officer”;
- (e) in paragraph (7), in sub-paragraph (b) for the words “books, documents” and in sub-paragraph (c) for the words “books or documents” there shall be substituted in each place the word “material”;
- (f) for paragraph (8) there shall be substituted the following paragraph –
  - “(8) In this Article –
    - (a) ‘material’ includes, but is not limited to, books and documents; and
    - (b) ‘vessel’ includes an aircraft, a hydrofoil and a hovercraft.”.
- (3) At the end of Article 19 of the 1978 Law there shall be added the following paragraphs –
  - “(9) Where material to which paragraphs (2), (2A) and (2B) of this Article relate consists of information contained in a computer –
    - (a) an order for production of or grant of access to the material under paragraph (2A)(a) shall have effect as an order that any person who appears to be in possession or control of the material shall produce it in a form in which it is visible and legible and can be taken away;
    - (b) a warrant authorizing seizure and detention of the material under paragraph (2B)(d) shall be taken also to authorize seizure and detention of the computer and any related hardware containing the information.
  - (10) An order under paragraph (2A) and a warrant under paragraph (2B) –
    - (a) shall not confer any right to production of, or access to, material subject to legal professional privilege;
    - (b) shall have effect despite any obligation to secrecy or other restriction upon the disclosure of information, whether imposed by statute or otherwise;
    - (c) may be made in relation to material in the possession of a States Department.”.

#### 48 Articles 19A and 19B inserted

After Article 19 of the 1978 Law, there shall be inserted the following Articles –

**“19A Additional enforcement powers in respect of offences on ships**

- (1) Powers conferred by this Article are exercisable by an officer in relation to a ship to which Article 11A or 11B applies (‘the ship’), for the purpose of –
  - (a) investigating whether or not an offence under either of those Articles has been committed; or
  - (b) taking any action or proceeding in respect of such an offence.
- (2) In this Article and in Article 19B, ‘officer’ means –
  - (a) a police officer;
  - (b) such other person of a description specified for the purpose by an Order made by the Minister for Health and Social Services.
- (3) An officer exercising powers conferred by this Article may be accompanied by another person who may, under the officer’s supervision, perform any of the officer’s functions.
- (4) An officer may require a person in control of a ship –
  - (a) to stop the ship;
  - (b) to take the ship to a port in Jersey or, where the officer is exercising powers with the Attorney General’s authority given under Article 11C(4), 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; and
  - (c) to take any other action as may be necessary for the fulfilment of a purpose described in sub-paragraph (a) or (b).
- (5) An officer may stop a ship, board it, search it and anyone and anything on it including its cargo, and (without prejudice to the generality of this power or the power in Article 19(3)(b)) in doing so may –
  - (a) open any containers;
  - (b) test or sample anything on the ship;
  - (c) require the production of documents or records relating to the ship or anything on it;
  - (d) make copies of anything of which production may be required under sub-paragraph (c).
- (6) An officer may detain a ship in port and in such a case the officer shall serve notice on the master in writing that the ship is detained until –
  - (a) a time specified in the notice; or
  - (b) such time as the notice is withdrawn by service of a further notice in writing signed by an enforcement officer.
- (7) An officer may arrest anyone whom the officer reasonably suspects is guilty of an offence under Article 11A or 11B, and may seize and detain anything which appears to the officer to be evidence of

the offence (and the powers conferred by this paragraph shall be in addition to, and not in derogation of, any other powers conferred on a police officer).

- (8) An officer may use reasonable force in the exercise of powers or functions under this Article.
- (9) An officer exercising powers under this Article shall, if required, produce evidence of authority.
- (10) No liability in any civil or criminal proceedings shall attach to any act of an officer in the purported exercise of powers under this Article, if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.
- (11) It is an offence for a person –
  - (a) intentionally to obstruct an officer in the exercise of powers under this Article;
  - (b) to fail without reasonable excuse to comply with a requirement of an officer exercising such powers; or
  - (c) in purporting to comply with such a requirement –
    - (i) to make a statement which the person knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
    - (ii) intentionally to fail to disclose any material particular.

#### **19B Tipping off**

- (1) It is an offence for a person, who knows or suspects that an officer is acting or proposing to act –
  - (a) in pursuance of an order under Article 19(2A) or a warrant under Article 19(2B); or
  - (b) in the exercise of powers under Article 19A,to disclose to any other person the knowledge or suspicion or any other matter or information relating to that action or proposed action.
- (2) The States may by Regulations specify cases in which a disclosure to which paragraph (1) would otherwise apply shall not amount to the commission of an offence.
- (3) Paragraph (1) does not make it an offence for a professional legal adviser to disclose information or any other matter –
  - (a) to a client or a client's representative in connection with giving legal advice to the client; or
  - (b) to any person for the purpose of actual or contemplated legal proceedings,except where the information or other matter is disclosed with a view to furthering a criminal purpose.
- (4) A person shall not be guilty of an offence under paragraph (1) in respect of anything done by the person in the course of acting in

connection with the enforcement, or intended enforcement, of any provision of this Law.”.

**49 Minor and consequential amendments to the 1978 Law**

- (1) In Article 6 of the 1978 Law, paragraph (5) shall be deleted.
- (2) In Article 20 of the 1978 Law, after the word “procures” there shall be inserted the words “, conspires in”.
- (3) In Article 21 of the 1978 Law, paragraphs (6) and (7) shall be deleted.
- (4) In Article 22 of the 1978 Law, the words “or Article 46 of, or the Schedule to, the Drug Trafficking Offences (Jersey) Law 1988” shall be deleted.
- (5) In Article 24(1) of the 1978 Law, for the words “Articles 5, 8(1) and (2) and 9” there shall be substituted the words “Article 5, Article 8(1) and (2), Article 9 and Article 11B(1)”.
- (6) In the table in Schedule 4 to the 1978 Law –
  - (a) after the entry relating to Article 11 –
    - (i) in the first column there shall be inserted the entry “Article 11A”,
    - (ii) in the second column corresponding to that entry there shall be inserted the words “Offence committed on a Jersey ship”,
    - (ii) in the sixth column corresponding to that entry there shall be entered the words “The same penalty as that for the offence in question if it had been committed on land in Jersey”;
  - (b) after the entry relating to Article 11A –
    - (i) in the first column there shall be inserted the entry “Article 11B”,
    - (ii) in the second column corresponding to that entry there shall be inserted the words “Having possession of a controlled drug or being concerned in the carrying or concealing of a controlled drug on a ship”,
    - (iii) in the third column corresponding to that entry there shall be inserted the words “Life or a fine, or both”,
    - (iv) in the fourth column corresponding to that entry there shall be inserted the words “14 years or a fine, or both”,
    - (v) in the fifth column corresponding to that entry there shall be inserted the words “5 years or a fine, or both”;
  - (c) in the entry relating to Article 19(7) –
    - (i) in the first column for the words “Article 19(7)” there shall be substituted the words “Articles 19(7) and 19A(11)(a)”;
  - (d) after the entry relating to Article 19(7) –
    - (i) in the first column there shall be inserted the entry “Article 19A(11)(b) and (c)”,

- (ii) in the second column corresponding to that entry there shall be inserted the words “Failing, or wrongfully purporting, to comply with a requirement of an officer exercising enforcement powers”,
- (iii) in the sixth column corresponding to that entry there shall be inserted the words “2 years or a fine, or both”;
- (e) after the entry relating to Article 19A(11)(b) and (c) inserted by sub-paragraph (d) of this paragraph –
  - (i) in the first column there shall be inserted the entry “Article 19B(1)”,
  - (ii) in the second column corresponding to that entry there shall be inserted the words “Tipping off”,
  - (iii) in the sixth column corresponding to that entry there shall be inserted the words “5 years or a fine, or both”.

## **50 Repeal of Drug Trafficking Offences Law etc., and savings**

- (1) The following enactments shall be repealed –
  - (a) Drug Trafficking Offences (Jersey) Law 1988<sup>23</sup>;
  - (b) Drug Trafficking Offences (Exemption for Regulators) (Jersey) Regulations 1998<sup>24</sup>;
  - (c) Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 2008<sup>25</sup>.
- (2) Nothing in paragraph (1) shall affect –
  - (a) any liability, investigation, legal proceeding or penalty for or in respect of any offence under the Drug Trafficking Offences (Jersey) Law 1988 committed or partly committed before the commencement of the provision in that paragraph; or
  - (b) any protection against, or immunity from, prosecution for an offence conferred by Articles 37, 38, 40 or 40A of that Law,and for these purposes the provisions of that Law shall continue to apply as though not repealed by this Law, except that a reference in that Law to the Drug Trafficking Confiscations Fund shall be read as a reference to the Criminal Offences Confiscation Fund established under Article 24 of the Proceeds of Crime (Jersey) Law 1999.
- (3) Notwithstanding paragraph (1)(b) and (c), until Regulations are made under and for the purposes of Article 34C or (as the case may be) Article 38 of the Proceeds of Crime (Jersey) Law 1999<sup>26</sup>, the Regulations mentioned in those sub-paragraphs and in force immediately before the commencement date shall continue to have effect as Regulations made under the aforementioned Articles of the Proceeds of Crime (Jersey) Law 1999 (except to any extent to which they may be inconsistent with that Law).
- (4) Except as otherwise provided by this Article, any act done before the commencement date by any person under any provision of the Drug Trafficking Offences (Jersey) Law 1988<sup>27</sup> (being an act that still had force or effect immediately before the repeal of that provision by this Law)



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shall, if there is provision under the Misuse of Drugs (Jersey) Law 1978<sup>28</sup> or of the Proceeds of Crime (Jersey) Law 1999 (in each case as amended by this Law) to do such an act, be taken to have been done under the latter provision.

- (5) On the date on which paragraph (1) comes in to force, or as soon as reasonably practicable after that date, there shall be transferred to the Criminal Offences Confiscation Fund established under Article 24 of the Proceeds of Crime (Jersey) Law 1999 any monies remaining in the Drug Trafficking Confiscations Fund established under Article 24 of the Drug Trafficking Offences (Jersey) Law 1988.

## **PART 4**

### **PROVISIONS OF GENERAL APPLICATION**

#### **51 Consequential etc. provisions, Regulations and Order**

- (1) The Schedule to this Law shall have effect for the purpose of making the amendments specified in the Schedule in relation to each enactment mentioned in it.
- (2) The States may, by Regulations, make any supplementary, incidental or consequential provision necessary to bring this Law into full effect, including provision –
- (a) of a saving or transitional nature;
  - (b) further to amend an enactment amended by Parts 1 to 4 of this Law or under paragraph (1) of this Article by the Schedule, and any enactment made under such an enactment; and
  - (c) to amend or modify any enactment, other than an enactment mentioned in sub-paragraph (a), whether made before or after the commencement of this Law.
- (3) The Minister may by Order provide for modifications, further to those made by the Schedule to this Law, to be made to the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008<sup>29</sup>, for the purpose of making any supplementary, incidental or consequential provision necessary to bring this Law into full effect.
- (4) Nothing in paragraphs (2) or (3) shall be construed as enabling the States or the Minister to confer power to make any amendment, by any means, to any enactment whatsoever.

#### **52 Citation and commencement**

This Law may be cited as the Proceeds of Crime and Terrorism (Miscellaneous Provisions) (Jersey) Law 201-, and shall come into force on such day or days as the States may by Act appoint.

**SCHEDULE**

(Article 51(1))

**CONSEQUENTIAL AMENDMENTS****1 Civil Asset Recovery (International Co-operation) (Jersey) Law 2007**

In Article 1(1) of the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007<sup>30</sup>, for the definition “items subject to legal professional privilege”, there shall be substituted the following definition –

“ ‘items subject to legal professional privilege’ shall have the same meaning as is given to the expression ‘items subject to legal privilege’ by Article 1(1) of the Proceeds of Crime (Jersey) Law 1999<sup>31</sup>;”.

**2 Community Provisions (Wire Transfers) (Jersey) Regulations 2007**

In the Community Provisions (Wire Transfers) (Jersey) Regulations 2007<sup>32</sup> –

- (a) in Regulation 5(5)(b), in clause (iii) for the words “Article 40 of the Drug Trafficking Offences (Jersey) Law 1988 and Article 23 of the Terrorism (Jersey) Law 2002” there shall be substituted the words “Article 34D of the Proceeds of Crime (Jersey) Law 1999<sup>33</sup> and Article 21 of the Terrorism (Jersey) Law 2002<sup>34</sup>”;
- (b) in Regulation 11(1) –
  - (i) in sub-paragraph (a), for the words “Article 40 of the Drug Trafficking Offences (Jersey) Law 1988” there shall be substituted the words “Article 34D of the Proceeds of Crime (Jersey) Law 1999”;
  - (ii) in sub-paragraph (c), for the word “23” there shall be substituted the word “21”;
- (c) in Regulation 15(3) –
  - (i) sub-paragraph (a) shall be deleted,
  - (ii) for sub-paragraph (c), there shall be substituted the following sub-paragraph –
    - “(c) the Terrorist Asset-Freezing (Jersey) Law 2011<sup>35</sup>;”.

**3 Court of Appeal (Jersey) Law 1961**

In the Court of Appeal (Jersey) Law 1961<sup>36</sup> –

- (a) in Article 44(1), in the definition “confiscation order” the words “Article 1(1) of the Drug Trafficking Offences (Jersey) Law 1988 or” shall be deleted;
- (b) in Article 45D(4), the words “of any of Articles 9, 12 and 13 of the 1988 Law or” shall be deleted;
- (c) in Article 45E(2) –

- (i) in sub-paragraph (a), the words “paragraphs (2) to (7) (inclusive) of Article 3 of the 1988 Law or” shall be deleted, and
- (ii) in sub-paragraph (b), for the words “Article 3 of the 1988 Law or Article 3 of the 1999 Law, as the case may be.” there shall be substituted the words “Article 3 of the 1999 Law.”;
- (d) in Article 45F –
  - (i) sub-paragraphs (2)(b), (3)(a), and paragraph (5), shall be revoked,
  - (ii) in sub-paragraph (7)(a), the words “paragraphs (2) to (7) (inclusive) of Article 3 of the 1988 Law or” shall be deleted, and
  - (iii) in sub-paragraph (7)(b), for the words “either of those Articles” there shall be substituted the words “that Article”;
- (e) in Article 46E(1), the definition “1988 Law” shall be deleted.

#### **4 Criminal Justice (International Co-operation) (Jersey) Law 2001**

In Article 1 of the Criminal Justice (International Co-operation) (Jersey) Law 2001<sup>37</sup>, for the definition “items subject to legal professional privilege” there shall be substituted the following definition –

“ ‘items subject to legal professional privilege’ shall have the same meaning as is given to the expression ‘items subject to legal privilege’ by Article 1(1) of the Proceeds of Crime (Jersey) Law 1999<sup>38</sup>.”.

#### **5 Data Protection (Subject Access Exemptions) (Jersey) Regulations 2005**

In Regulation 2 of the Data Protection (Subject Access Exemptions) (Jersey) Regulations 2005<sup>39</sup>, for paragraph (b) there shall be substituted the following paragraph –

“(b) Article 19B of the Misuse of Drugs (Jersey) Law 1978<sup>40</sup>.”.

#### **6 Money Laundering (Jersey) Order 2008**

In the Money Laundering (Jersey) Order 2008<sup>41</sup> –

- (a) in Article 1(1), the definition “Drug Trafficking Offences Law” shall be deleted;
- (b) in Article 11(1)(b), the words “, the Drug Trafficking Offences Law” shall be deleted;
- (c) in Article 21(6), for sub-paragraphs (a) to (c) there shall be substituted the following sub-paragraphs –
  - “(a) the nominated officer referred to in Article 34D of the Law and Article 21 of the Terrorism Law;
  - (b) the appropriate person referred to in Article 32(5) of the Law; and

- (c) the person to whom disclosure may be made under any procedure established by an employer as described in Article 18(7) of the Terrorism Law.”;
- (d) in the form of Suspicious Activity Report set out in the Schedule to the Order, in the italicized words of introduction to the form, the words “, *the Drug Trafficking Offences (Jersey) Law 1988 (as amended)*,” shall be deleted.

## 7 Non-Profit Organizations (Jersey) Law 2008

In the Non-Profit Organizations (Jersey) Law 2008<sup>42</sup> –

- (a) in Article 35(2), in the definition “Terrorism Orders” –
  - (i) for sub-paragraph (a) there shall be substituted the following sub-paragraph –
    - “(a) the Terrorist Asset-Freezing (Jersey) Law 2011<sup>43</sup>.”;
    - (ii) at the end of sub-paragraph (b), the comma shall be deleted and the words “of the United Kingdom” shall follow immediately after the word “2002”;
  - (b) in Article 39, for the word “20” there shall be substituted the word “19” and for the word “20(1)(b)” there shall be substituted the word “19(1)(b)”.

## 8 Police Procedures and Criminal Evidence (Jersey) Law 2003

In the Police Procedures and Criminal Evidence (Jersey) Law 2003<sup>44</sup> –

- (a) in Article 1(1), the definition “drug trafficking” and “drug trafficking offence” shall be deleted;
- (b) Article 1(3) shall be deleted;
- (c) in Article 3(2), for sub-paragraph (c) there shall be substituted the following sub-paragraph –
  - “(c) any of the offences mentioned in sub-paragraphs (a) to (e) in the definition ‘drug trafficking’ in Article 1(1) of the Misuse of Drugs (Jersey) Law 1978<sup>45</sup>.”;
- (d) in Article 52, for paragraph (6) there shall be substituted the following paragraph –
  - “(6) An officer may also authorize delay where the serious offence is a money laundering offence and the officer has reasonable grounds for believing –
    - (a) that the detained person has benefited from the offence; and
    - (b) that telling the named person of the arrest will hinder the recovery of the value of the property obtained, or of the pecuniary advantage derived, by the detained person from or in connection with the offence.”;
- (e) in Article 54, for paragraph (9) there shall be substituted the following paragraph –

- “(9) An officer may also authorize delay where the serious offence is a money laundering offence and the officer has reasonable grounds for believing –
  - (a) that the detained person has benefited from the offence; and
  - (b) that telling the named person of the arrest will hinder the recovery of the value of the property obtained, or of the pecuniary advantage derived, by the detained person from or in connection with the offence.”;
- (f) in Part 2 of Schedule 1 –
  - (i) for item 6 there shall be substituted the following item –
    - “6. In the Misuse of Drugs (Jersey) Law 1978 –
      - (a) any act described in the definition ‘drug trafficking’ in Article 1(1);
      - (b) Article 19B (except that an offence under that Article is not a serious offence for the purposes of Article 13 of this Law).”;
    - (ii) in item 14(a), for the words ‘Articles 32, 33 and 34’ there shall be substituted the words “Articles 30 and 31”;
    - (iii) in item 15(a), the word ‘18,’ shall be deleted, and
    - (iv) in item 15(b), for the words ‘Articles 20, 23’ there shall be substituted the words ‘Articles 19, 21’;
  - (g) in Schedule 3 –
    - (i) for the entry “Article 19(2)” opposite the item relating to the Misuse of Drugs (Jersey) Law 1978, there shall be substituted the entry “Article 19(2), 19(2A) and 19(2B)”;
    - (ii) the item and entry relating to the Drug Trafficking Offences (Jersey) Law 1988 shall be deleted.

**9 Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004**

- (1) In this paragraph, references to Codes are references to the Codes of Practice in the Schedule to the Police Procedures and Criminal Evidence (Codes of Practice) (Jersey) Order 2004<sup>46</sup>.
- (2) In Code A –
  - (a) in paragraph 3.23, for the words “under Article 17(2) of the Misuse of Drugs (Jersey) Law 1978” there shall be substituted the words “under Article 19(2) of the Misuse of Drugs (Jersey) Law 1978<sup>47</sup>”;
  - (b) for paragraph 3.24 there shall be substituted the following paragraph –
    - “If there are reasonable grounds to suspect that there is a controlled drug, or any material directly or indirectly relating to drug trafficking or similar offences, in the possession of a person on any premises, an order for production of or access to the material may be made under Article 19(2A) of the Misuse of Drugs (Jersey)

- Law 1978, or a warrant may be issued under Article 19(2B) of that Law for entry to and search of the premises and for seizure and detention of any drugs or material found on the premises. (Both an order and a warrant may be granted if the Bailiff thinks fit.”);
- (c) in the table in Annex A, in the second entry in the column headed “POWER”, for the words “Article 17(3)” there shall be substituted the words “Article 19(3)”.
- (3) In Code B, in paragraph 1.4 for the words “Article 17(2) the Misuse of Drugs (Jersey) Law 1978” there shall be substituted the words “Article 19(2B) of the Misuse of Drugs (Jersey) Law 1978”.
- (4) In Code C –
- (a) in paragraph 12.4, for the words “the confiscation provision of the Drug Trafficking Offences (Jersey) Law 1988” there shall be substituted the words “confiscation provisions relating to drug trafficking, in the Misuse of Drugs (Jersey) Law 1978 or the Proceeds of Crime (Jersey) Law 1999<sup>48</sup>”;
- (b) in paragraph 2 of Annex B, for the words “drug trafficking” in the third place in which they occur there shall be substituted the words “criminal conduct”.

## **10 Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008**

- (1) In Regulation 2 of the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008<sup>49</sup> –
- (a) in paragraph (1) –
- (i) at the beginning of sub-paragraph (b) there shall be inserted the words “the enforcement of”,
- (ii) for the words “in Schedule 1” there shall be substituted the words “the Schedule”;
- (b) for paragraph (2), there shall be substituted the following paragraph –
- “(2) The Law as so modified is reproduced, after the Schedule, for illustrative purposes only.”.
- (2) For Schedules 1 and 2 to the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008<sup>50</sup> there shall be substituted the following –

### **“SCHEDULE**

(Regulation 2(1))

### **MODIFICATION OF THE PROCEEDS OF CRIME (JERSEY) LAW 1999**

#### **1 Article 1 amended**

- (1) In Article 1(1) –

- (a) the following definitions shall be omitted –
    - ‘Commission’ and ‘Financial Services Commission’;
    - ‘competent authority’;
    - ‘criminal investigation’;
    - ‘designated customs officer’;
    - ‘designated police officer’;
    - ‘drug trafficking’;
    - ‘exported’;
    - ‘financial services business’;
    - ‘investigation’;
    - ‘modifications’;
    - ‘money laundering’;
    - ‘proceeds of criminal conduct’;
  - (b) for the definition ‘criminal conduct’ there shall be substituted the following definition –
    - ‘“criminal conduct” means conduct corresponding to an offence specified in Schedule 1;’;
  - (c) for the definition ‘defendant’ there shall be substituted the following definition –
    - ‘“defendant” means a person against whom –
      - (a) an external confiscation order has been made; or
      - (b) proceedings have been or are to be instituted in a court in a country or territory outside Jersey, which may result in an external confiscation order being made;’;
  - (d) after the definition ‘defendant’ there shall be inserted the following definition –
    - ‘“Enforcement Regulations” means the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008<sup>51</sup>;’;
  - (e) in sub-paragraph (a) of the definition ‘external confiscation order’, for the words ‘conduct corresponding to an offence specified in Schedule 1’ there shall be substituted the words ‘criminal conduct’;
  - (f) for the definitions ‘gift caught by Part 2’ and ‘gift caught by this Part’ there shall be substituted the following definition –
    - ‘“gift caught by this Law” has the meaning given in Article 2(9);’.
- (2) In Article 1(2) –
- (a) in sub-paragraph (a) –
    - (i) the words ‘with the commission of an offence or’ shall be deleted, and
    - (ii) after the words ‘and in some other connection’ there shall be inserted the words ‘(whether received before

- or after the commencement of the Enforcement Regulations);
- (b) in sub-paragraph (b) –
- (i) the words ‘with the commission of an offence or’, and
- (ii) the words ‘the commission of that offence’, shall be deleted.
- (3) For paragraphs (2A) to (9) of Article 1 there shall be substituted the following paragraphs –
- ‘(3) For the purposes of this Law, proceedings for an offence are instituted in a country or territory outside Jersey when –
- (a) the defendant has been notified in writing in accordance with the laws of that country or territory that proceedings have begun there against the defendant in respect of an offence; or
- (b) an application has been made to a court in that country or territory for an external confiscation order against the defendant,
- whichever is the earliest.
- (4) For the purposes of this Law, proceedings for an offence are concluded –
- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings; or
- (b) on satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered or the payment of any amount due.
- (5) For the purposes of this Law, an external confiscation order is satisfied when no property remains liable to be recovered, or no amount is due, under that order.
- (6) For the purposes of this Law, an external confiscation order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.’.

## 2 Article 2 amended

In Article 2 –

- (a) for paragraphs (1) and (2) there shall be substituted the following paragraphs –
- ‘(1) In this Law, “realisable property” means –
- (a) in relation to an external confiscation order in respect of specified property, the property that is specified in the order;



- (b) in any other case –
  - (i) any property held by the defendant,
  - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, and
  - (iii) any property to which the defendant is beneficially entitled.

(2) However, property is not realisable property if –

- (a) a confiscation order;
- (b) an order under Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008<sup>52</sup>;
- (c) an order under Article 29 of the Misuse of Drugs (Jersey) Law 1978<sup>53</sup>; or
- (d) an order under Article 27 of the Terrorism (Jersey) Law 2002<sup>54</sup>,

is in force in respect of the property.’;

- (b) paragraphs (3) and (11) shall be omitted;
- (c) in paragraphs (4), (5), (7) and (10), for the words ‘Part 2’ wherever they appear, there shall be substituted the words ‘this Law’;
- (d) for paragraph (9) there shall be substituted the following paragraph –

‘(9) A gift (including a gift made before the commencement of the Enforcement Regulations) is caught by this Law if –

- (a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and
- (b) the Court considers it appropriate in all the circumstances to take the gift into account.’.

### **3 Part 2 amended**

- (1) For the heading to Part 2 there shall be substituted the following heading –

‘EXTERNAL CONFISCATION ORDERS’.

- (2) Articles 3 to 14, 18, 19, 21, and 25 to 28A shall be omitted.
- (3) For Article 15 there shall be substituted the following Article –

#### **‘15 Cases in which *saisies judiciaires* may be made**

- (1) The powers conferred on the Court by Article 16 are exercisable where –
  - (a) proceedings have been instituted in a country or territory outside Jersey and have not been concluded, and –

- (i) an external confiscation order has been made in the proceedings, or
    - (ii) it appears to the Court that there are reasonable grounds for believing that such an order will be made in the proceedings;
  - or
  - (b) it appears to the Court that proceedings are to be instituted against the defendant in a country or territory outside Jersey, and that there are reasonable grounds for believing that an external confiscation order will be made in those proceedings.
- (2) Where the Court has made an order under Article 16 by virtue of paragraph (1)(b), the Court shall discharge the Order if proceedings have not been instituted within such time as the Court considers reasonable.’.
- (4) In Article 16 –
- (a) in paragraph (1), after the words ‘an application made by or on behalf of the Attorney General’ there shall be inserted the words ‘on behalf of the government of a country or territory outside Jersey’;
  - (b) in paragraph (6), for sub-paragraphs (b) and (c) there shall be substituted the following sub-paragraph –
    - ‘(b) shall be discharged when the proceedings in which it was made are concluded.’.
- (5) In Article 17, for paragraph (1) there shall be substituted the following paragraph –
- ‘(1) Where –
- (a) an external confiscation order has been registered under Article 39; and
  - (b) the Court has made a *saisie judiciaire*,
- the Court may, on an application made by or on behalf of the Attorney General, empower the Viscount to realise, in such manner as it may direct, any realisable property vested in the Viscount or in the Viscount’s possession pursuant to a *saisie judiciaire* under Article 16.’.
- (6) In Article 20, for the words ‘confiscation order’ wherever they appear, there shall be substituted the words ‘external confiscation order’.
- (7) In Article 22, in paragraph (2) the words ‘, 18, 19’ shall be omitted.
- (8) In Article 24 –
- (a) in sub-paragraph (2)(a), for the words ‘a confiscation order’ there shall be substituted the words ‘an external confiscation order’;
  - (b) for paragraph (8) there shall be substituted the following paragraph –

(8) In this Article –

“asset sharing agreement” means any agreement or arrangement made by or on behalf of Jersey with a country or territory outside Jersey for the sharing of the proceeds of criminal conduct that, as a result of mutual assistance, have been confiscated or forfeited either in Jersey or elsewhere;

“criminal conduct” has the meaning given by Article 1(1) of this Law, disregarding any modification to that definition made by the Enforcement Regulations.’.

**4 Part 3 omitted**

Part 3 shall be omitted.

**5 Part 4 amended**

(1) For the heading to Part 4 there shall be substituted the following heading –

‘REGISTRATION OF EXTERNAL CONFISCATION ORDERS’.

(2) Article 38 shall be omitted.

**6 Part 5 amended**

(1) Articles 40 to 43 shall be omitted.

(2) For the text of Article 44 there shall be substituted the following –

‘The power of the Superior Number of the Royal Court to make Rules of Court under the Royal Court (Jersey) Law 1948<sup>55</sup> includes a power to make Rules for the purposes of this Law.’.

(3) For the text of Article 45 there shall be substituted the following –

‘This Law may be cited as the Proceeds of Crime (Jersey) Law 1999<sup>56</sup>, as modified by the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008<sup>57</sup>.’.

**7 Schedules amended**

(1) In Schedule 1 –

(a) for the sub-heading in brackets there shall be substituted the following sub-heading –

‘(Article 1(1))’;

(b) for the sub-heading ‘**OFFENCES FOR WHICH CONFISCATION ORDERS MAY BE MADE**’ there shall be substituted the following subheading –

‘**OFFENCES RELEVANT TO CRIMINAL CONDUCT**’.

- (2) Schedules 2 and 3 shall be omitted.

**THE FOLLOWING PROVISIONS ARE REPRODUCED FOR  
ILLUSTRATIVE PURPOSES ONLY AND HAVE NO LEGAL EFFECT**

**THE PROCEEDS OF CRIME (JERSEY) LAW 1999, AS MODIFIED BY  
THE PROCEEDS OF CRIME (ENFORCEMENT OF CONFISCATION  
ORDERS) (JERSEY) REGULATIONS 2008**

(REGULATION 2 AND SCHEDULE)

**PART 1**

**INTRODUCTORY**

**1 Interpretation**

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

‘Court’ means the Royal Court;

‘criminal conduct’ means conduct corresponding to an offence specified in Schedule 1;

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

‘defendant’ means a person against whom –

- (a) an external confiscation order has been made; or
- (b) proceedings have been or are to be instituted in a court in a country or territory outside Jersey, which may result in an external confiscation order being made;

‘Enforcement Regulations’ means the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008<sup>58</sup>;

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

- (a) for the purpose of recovering property obtained as a result of or in connection with criminal conduct;
- (b) for the purpose of recovering the value of property so obtained; or
- (c) for the purpose of depriving a person of a pecuniary advantage so obtained;

‘gift caught by this Law’ has the meaning given in Article 2(9);

‘interest’, in relation to property, includes right;

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

‘Minister’ means the Minister for Treasury and Resources;

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

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

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

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

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

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

‘value of property’ has the meaning given in Article 2(4), (5) and (6).

(2) For the purposes of this Law –

- (a) references to property obtained, or to a pecuniary advantage derived, in connection with criminal conduct include a reference to property obtained or to a pecuniary advantage derived both in that connection and in some other connection (whether received before or after the commencement of the Enforcement Regulations); and
- (b) where a person derives a pecuniary advantage as a result of or in connection with criminal conduct, the person is to be treated as if the person had obtained, as a result of or in connection with that conduct, a sum of money equal to the pecuniary advantage.

(3) For the purposes of this Law, proceedings for an offence are instituted in a country or territory outside Jersey when –

- (a) the defendant has been notified in writing in accordance with the laws of that country or territory that proceedings have begun there against the defendant in respect of an offence; or
- (b) an application has been made to a court in that country or territory for an external confiscation order against the defendant,

whichever is the earliest.

(4) For the purposes of this Law, proceedings for an offence are concluded –

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings; or
- (b) on satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered or the payment of any amount due.

(5) For the purposes of this Law, an external confiscation order is satisfied when no property remains liable to be recovered, or no amount is due, under that order.

- (6) For the purposes of this Law, an external confiscation order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

## 2 Meanings of expressions relating to realisable property

- (1) In this Law, 'realisable property' means –
- (a) in relation to an external confiscation order in respect of specified property, the property that is specified in the order;
  - (b) in any other case –
    - (i) any property held by the defendant,
    - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, and
    - (iii) any property to which the defendant is beneficially entitled.
- (2) However, property is not realisable property if –
- (a) a confiscation order;
  - (b) an order under Article 9 of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008<sup>59</sup>;
  - (c) an order under Article 29 of the Misuse of Drugs (Jersey) Law 1978<sup>60</sup>; or
  - (d) an order under Article 27 of the Terrorism (Jersey) Law 2002<sup>61</sup>,
- is in force in respect of the property.
- (3) \* \* \* \* \*
- (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 means the market value of the property.
- (5) References in this Law to the value at any time (referred to in paragraph (6) as the 'material time') of any property obtained by a person as a result of or in connection with an offence are references to –
- (a) the value of the property to the person when the person obtained it, adjusted to take account of subsequent changes in the value of money; or
  - (b) where paragraph (6) applies, the value there mentioned, whichever is greater.
- (6) If at the material time the person holds –
- (a) the property that the person obtained (not being cash); or

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

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

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

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

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

whichever is greater.

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

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

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

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

(9) A gift (including a gift made before the commencement of the Enforcement Regulations) is caught by this Law if –

(a) it was made by the defendant at any time after the conduct to which the external confiscation order relates; and

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

(10) 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 value that is significantly less than the value provided by the defendant; and

(b) in those circumstances, the preceding provisions of this Article shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in sub-paragraph (a) bears to the value provided by the defendant.

(11) \* \* \* \* \*

**PART 2**

**EXTERNAL CONFISCATION ORDERS**

<b>3</b>	*	*	*	*	*	*
<b>4</b>	*	*	*	*	*	*
<b>5</b>	*	*	*	*	*	*
<b>6</b>	*	*	*	*	*	*
<b>7</b>	*	*	*	*	*	*
<b>8</b>	*	*	*	*	*	*
<b>9</b>	*	*	*	*	*	*
<b>10</b>	*	*	*	*	*	*
<b>11</b>	*	*	*	*	*	*
<b>12</b>	*	*	*	*	*	*
<b>13</b>	*	*	*	*	*	*
<b>14</b>	*	*	*	*	*	*

**15 Cases in which saisies judiciaires may be made**

- (1) The powers conferred on the Court by Article 16 are exercisable where –
    - (a) proceedings have been instituted in a country or territory outside Jersey and have not been concluded, and –
      - (i) an external confiscation order has been made in the proceedings, or
      - (ii) it appears to the Court that there are reasonable grounds for believing that such an order will be made in the proceedings;
- or



(b) it appears to the Court that proceedings are to be instituted against the defendant in a country or territory outside Jersey, and that there are reasonable grounds for believing that an external confiscation order will be made in those proceedings.

(2) Where the Court has made an order under Article 16 by virtue of paragraph (1)(b), the Court shall discharge the Order if proceedings have not been instituted within such time as the Court considers reasonable.

## 16 Saisies judiciaires

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

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

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

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

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

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

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

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

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

(6) A *saisie judiciaire* –

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

(b) shall be discharged when the proceedings in relation to which it was made are concluded.

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

- (8) Where it appears to the Court that any order made by it under this Article may affect immovable property situate in Jersey, it shall order the registration of the order in the Public Registry.
- (9) For the purposes of this Article, dealing with property held by any person includes (without prejudice to the generality of the expression) –
  - (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
  - (b) removing the property from Jersey.
- (10) Where the Court has made a *saisie judiciaire* a police officer may, for the purpose of preventing the removal of any realisable property from Jersey, seize the property.
- (11) Property seized under paragraph (10) shall be dealt with in accordance with the Court’s directions.

**17 Realisation of property**

- (1) Where –
  - (a) an external confiscation order has been registered under Article 39; and
  - (b) the Court has made a *saisie judiciaire*,

the Court may, on an application made by or on behalf of the Attorney General, empower the Viscount to realise, in such manner as it may direct, any realisable property vested in the Viscount or in the Viscount’s possession pursuant to a *saisie judiciaire* under Article 16.
- (2) The Court shall not in respect of any property exercise its power under paragraph (1) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Court.

**18** \* \* \* \* \*

**19** \* \* \* \* \*

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

- (1) The following sums in the hands of the Viscount, that is to say –
  - (a) money that has vested in the Viscount or come into the Viscount’s possession pursuant to Article 16; and
  - (b) the proceeds of the realisation of any property under Article 17,

shall, after such payments (if any) as the Court may direct have been made out of those sums and then after payment of the

Viscount's fees and expenses, be applied on the defendant's behalf towards the satisfaction of the external confiscation order.

- (2) The amount applied by the Viscount towards the satisfaction of the external confiscation order shall be paid in to the Criminal Offences Confiscations Fund.
- (3) If, after payment of the Viscount's fees and expenses and of the amount payable under the external confiscation order, any sums remain in the hands of the Viscount, the Viscount shall distribute those sums –
  - (a) among such of those persons who held the property that has been realised under this Part; and
  - (b) in such proportions,as the Court may direct after giving them a reasonable opportunity to make representations to the Court.

21 \* \* \* \* \*

**22 Bankruptcy of defendant**

- (1) Where a person who holds realisable property becomes bankrupt –
  - (a) no property for the time being subject to a *saisie judiciaire* made before the order judging the person bankrupt; and
  - (b) no proceeds of property realised by virtue of Article 16(4) or 17 for the time being in the hands of the Viscount,shall form part of the person's estate for the relevant bankruptcy proceedings.
- (2) Where a person has become bankrupt, the powers conferred on the Court by Articles 16, 17 and 20 or on the Viscount shall not be exercised in relation to –
  - (a) property which the bankrupt has placed under the control of the Court (*a remis entre les mains de la Justice*);
  - (b) property which has been declared *en désastre*;
  - (c) property of which the bankrupt has made a general cession (*a fait cession générale*);
  - (d) property which has been adjudged renounced (*adjudgé renoncé*).
- (3) Paragraph (2) does not affect the enforcement of a *saisie judiciaire* –
  - (a) made before the person becomes bankrupt; or
  - (b) on property that was subject to a *saisie judiciaire* made when the person became bankrupt.

**23 Limitation of liability of Viscount**

Where the Viscount –

- (a) takes any action in relation to property that is not realisable property, being action that the Viscount would be entitled to take if it were such property; and
- (b) believes and has reasonable grounds for believing that the Viscount is entitled to take that action in relation to that property,

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

**24 Criminal Offences Confiscations Fund**

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

(2) All amounts –

- (a) recovered under or in satisfaction of an external confiscation order; or
- (b) received under an asset sharing agreement,

shall be included in 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.

(3A) The Fund shall be a special fund for the purposes of the Public Finances (Jersey) Law 2005<sup>62</sup>.

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

- (a) in promoting or supporting measures that, in the opinion of the Minister, may assist –
  - (i) in preventing, suppressing or otherwise dealing with criminal conduct,
  - (ii) in dealing with the consequences of criminal conduct,
  - (iii) without prejudice to the generality of clauses (i) and (ii), in facilitating the enforcement of any enactment dealing with criminal conduct;

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

(c) meeting the expenses incurred by the Minister in administering the Fund.

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

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

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

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

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

and any interest earned on such monies while held in such an account shall be paid by the States 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 –

‘asset sharing agreement’ means any agreement or arrangement made by or on behalf of Jersey with a country or territory outside Jersey for the sharing of the proceeds of criminal conduct that, as a result of mutual assistance, have been confiscated or forfeited either in Jersey or elsewhere;

‘criminal conduct’ has the meaning given by Article 1(1) of this Law, disregarding any modification to that definition made by the Enforcement Regulations.

25 \* \* \* \* \*

26 \* \* \* \* \*

27 \* \* \* \* \*

28 \* \* \* \* \*

28A \* \* \* \* \*

**PART 3**

\* \* \* \* \*

**PART 4**

**REGISTRATION OF EXTERNAL CONFISCATION ORDERS**

**38** \* \* \* \* \*

**39 Registration of external confiscation orders**

- (1) On the application of the Attorney General, the Court may register an external confiscation order if –
  - (a) the Court is satisfied that at the time of registration the order is in force and is not subject to appeal;
  - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable the person to defend them; and
  - (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
- (2) In paragraph (1), ‘appeal’ includes –
  - (a) any proceedings by way of discharging or setting aside a judgment; and
  - (b) an application for a new trial or a stay of execution.
- (3) The Court shall cancel the registration of an external confiscation order if it appears to the Court that the order has been satisfied by the payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

**PART 5**

**MISCELLANEOUS**

**40** \* \* \* \* \*

**41** \* \* \* \* \*

**42** \* \* \* \* \*

**43** \* \* \* \* \*

**44 Rules of Court**

The power of the Superior Number of the Royal Court to make Rules of Court under the Royal Court (Jersey) Law 1948<sup>63</sup> includes a power to make Rules for the purposes of this Law.

**45 Citation**

This Law may be cited as the Proceeds of Crime (Jersey) Law 1999, as modified by the Proceeds of Crime (Enforcement of Confiscation Orders) (Jersey) Regulations 2008<sup>64</sup>.

**SCHEDULE 1**

(Article 1(1))

**OFFENCES RELEVANT TO CRIMINAL CONDUCT**

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

**SCHEDULE 2**

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**SCHEDULE 3**

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**11 Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008**

In the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008<sup>65</sup> –

(a) in Article 1(1), for the definition “money laundering” there shall be substituted the following definition –

“ ‘money laundering’ means –

- (a) conduct which is an offence under any provision of Articles 30 and 31 of this Law or of Articles 15 and 16 of the Terrorism (Jersey) Law 2002<sup>66</sup>; or
- (b) conduct outside Jersey which, if occurring in Jersey, would be an offence specified in sub-paragraph (a).”;

(b) in Article 3(1), sub-paragraph (a) shall be deleted and in sub-paragraph (g), for the words “(a) to” there shall be substituted the words “(b), (c) or”.

**12 States of Jersey Law 2005**

In Article 9(1) of the States of Jersey Law 2005<sup>67</sup>, for sub-paragraph (c)(xiii) there shall be substituted the following sub-paragraph –

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“(xiii) an offence mentioned in the definition ‘drug trafficking’ in Article 1(1) of the Misuse of Drugs (Jersey) Law 1978<sup>68</sup>”.



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- 1 *chapter 17.860*
  - 2 *chapter 24.660*
  - 3 *chapter 08.780*
  - 4 *chapter 17.861*
  - 5 *chapter 25.550*
  - 6 *chapter 13.250*
  - 7 *chapter 08.580*
  - 8 *chapter 08.680*
  - 9 *chapter 03.385*
  - 10 *chapter 17.525*
  - 11 *chapter 17.665*
  - 12 *chapter 19.300*
  - 13 *chapter 17.840*
  - 14 *chapter 08.780*
  - 15 *chapter 08.680*
  - 16 *chapter 17.860*
  - 17 *chapter 08.785*
  - 18 *chapter 17.910.16*
  - 19 *chapter 17.861*
  - 20 *chapter 08.680*
  - 21 *chapter 08.780*
  - 22 *chapter 24.660*
  - 23 *L.1/1989 (chapter 08.580)*
  - 24 *R&O.9240 (chapter 08.580.60)*
  - 25 *R&O.79/2008 (chapter 08.580.30)*
  - 26 *chapter 08.780*
  - 27 *chapter 08.580*
  - 28 *chapter 08.680*
  - 29 *chapter 08.780.60*
  - 30 *chapter 17.145*
  - 31 *chapter 08.780*
  - 32 *chapter 17.245.57*
  - 33 *chapter 08.780*
  - 34 *chapter 17.860*
  - 35 *chapter 17.861*
  - 36 *chapter 07.245*
  - 37 *chapter 08.300*
  - 38 *chapter 08.780*
  - 39 *chapter 15.240.45*
  - 40 *chapter 08.680*
  - 41 *chapter 08.780.30*
  - 42 *chapter 15.430*
  - 43 *chapter 17.861*
  - 44 *chapter 23.750*
  - 45 *chapter 08.680*
  - 46 *chapter 23.750.20*
  - 47 *chapter 08.680*
  - 48 *chapter 08.780*
  - 49 *chapter 08.780.60*
  - 50 *chapter 08.780.60*
  - 51 *chapter 08.780.60*
  - 52 *chapter 08.770*
  - 53 *chapter 08.680*

- 54 *chapter 17.860*  
55 *chapter 07.770*  
56 *chapter 08.780*  
57 *chapter 08.780.60*  
58 *chapter 08.780.60*  
59 *chapter 08.770*  
60 *chapter 08.680*  
61 *chapter 17.860*  
62 *chapter 24.900*  
63 *chapter 07.770*  
64 *chapter 08.780.60*  
65 *chapter 08.785*  
66 *chapter 17.860*  
67 *chapter 16.800*  
68 *chapter 08.680*