

# BILLET D'ÉTAT No. XVI, 2007

27<sup>th</sup> June 2007

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# PROJET DE LOI

ENTITLED

## **The Income Tax (Guernsey) (Amendment) Law, 2007**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> June, 2007<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the islands of Guernsey and Herm.

### **Amendment of Law of 1975.**

1. The Income Tax (Guernsey) Law, 1975, as amended<sup>b</sup> ("**the Law of 1975**") is further amended as follows.

2. In section 61 of the Law of 1975<sup>c</sup> in the proviso -

(a) after the words "Provided that no repayment shall be made" insert "or credit given", and

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<sup>a</sup> Article \*\* of Billet d'État No. \*\*\*\* of 2007.

<sup>b</sup> Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; and No's. II and VII of 2006; also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

<sup>c</sup> The proviso to section 61 was substituted by Vol. XXVI, p. 200.

- (b) after the words "for every year of charge prior to that year of charge." insert "For these purposes an interim assessment made under s.73(2)(a) is not a determination.".

3. After section 81A(3)<sup>d</sup> of the Law of 1975 insert the following subsection -

"(3A) For the avoidance of doubt if any income from which tax has been deducted has not been included in any assessment of tax made under section 73(2)(a) then the tax deducted from such income shall not, under subsection (3), be applied towards the payment of tax due from that assessment."

**Citation.**

4. This Law may be cited as the Income Tax (Guernsey) (Amendment) Law, 2007.

**Commencement.**

5. This Law shall have effect, by virtue of the States' resolution of the 27<sup>th</sup> June 2007<sup>e</sup>, under and subject to the provisions of the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992<sup>f</sup>, on and from the 27<sup>th</sup> June 2007, as if it were a Law sanctioned by Her Majesty in Council and registered on the records of the Island of Guernsey.

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<sup>d</sup> Section 81A(3) was inserted by Vol. XXVII, p.118 and amended by Vol. XXXII, p.307

<sup>e</sup> Article \*\* of Billet d'État No. \*\* of 2007.

<sup>f</sup> Order in Council No. XI of 1992.

# PROJET DE LOI

ENTITLED

## **The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007**

**THE STATES**, in pursuance of their Resolutions of the 31<sup>st</sup> May, 2002<sup>a</sup>, the 27<sup>th</sup> July, 2006<sup>b</sup> and the 30<sup>th</sup> May, 2007<sup>c</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### **Amendment of Law of 1999.**

1. The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended<sup>d</sup> ("**the Law**"), is further amended as follows.
2. In section 1(1) of the Law for "In this Law" substitute "Subject to section 44A, in this Law".
3. In section 2(8) of the Law after "civil proceedings" insert "(that is to say, a balance of probabilities)".

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<sup>a</sup> Article VI of Billet d'État No. IX of 2002.

<sup>b</sup> Article XXIII of Billet d'État No. XIII of 2006.

<sup>c</sup> Article XVIII of Billet d'État No. XIV of 2007.

<sup>d</sup> Order in Council No. VIII of 1999; amended by Order in Council No. II of 2005; Ordinance XXVIII of 1999; Ordinance XII of 2002; Ordinance XXXIII of 2003; G.S.I. No. 27 of 2002; and certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999.

4. After section 4(5) of the Law insert the following subsections -

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

(a) the property was received by him as a result of or in connection with drug trafficking carried on by him or another person or, as the case may be,

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

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

5. In section 25(6)(b)(ii) of the Law after "instituted" insert "in respect of the offence, or (as the case may be) if the application is not made,".

6. For section 29 of the Law substitute the following section -

**"Realisation of property.**

29. (1) Where a confiscation order -

(a) has been made under this Law,

(b) is not satisfied, and

(c) is not subject to appeal,

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

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

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

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

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

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

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

direct.

(6) The Court may -

- (a) order any person holding an interest in realisable property to make to Her Majesty's Sheriff as receiver such payment as the Court may direct in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Law; and
- (b) on the payment being made, by order transfer, grant or extinguish any interest in the property.

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

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

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

7. In section 35(1)(a) of the Law for the text preceding subparagraph (i) substitute the following -

"(a) direct, in relation to any country within the British Islands, or in relation to any other country -

- designated by an Order in Council of Her Majesty under section 96 of the Criminal Justice Act 1988<sup>e</sup> (and any such designation shall continue to have effect for the purposes of this Law, notwithstanding any repeal of section 96, until amended or revoked by Ordinance of the States), or

- designated by Ordinance of the States,

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

8. For section 41(7)(b) of the Law substitute the following -

"(b) which constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), or

(c) which constitutes aiding, abetting, counselling or

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

procuring the commission of an offence specified in paragraph (a), or

- (d) which would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b) or (c) if done in the Bailiwick,

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

9. In section 41(10)(a) of the Law for "12 months" substitute "6 months".

10. In section 42(1)(c) for "order made under section 49" substitute "regulation made under section 49 or 49A".

11. In section 42(2) of the Law for "level 4" substitute "level 5".

12. After section 44 of the Law insert the following section -

*"Interpretation of Part II*

**Interpretation of Part II.**

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

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

**13.** In the following sections of the Law for "benefited from" substitute "engaged in or benefited from" -

- (a) section 45(1),
- (b) section 45(4)(a),
- (c) section 46(1),
- (d) section 46(3)(a),
- (e) section 46(4)(a), and
- (f) section 46(4)(b)(ii).

**14.** In section 45(2) of the Law for "48(10)" substitute "48(11)".

**15.** In sections 45(4)(b)(ii), 45(9)(a) and 46(5) after "legal professional privilege" insert "or excluded material".

**16.** After section 46 of the Law insert the following section -

**"Provisions supplementary to sections 45 and 46."**

**46A.** (1) In sections 45 and 46 -

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

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

purposes of any paid or unpaid office and which he holds in confidence,

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

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

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

(c) items enclosed with or referred to in such communications and made -

(i) in connection with the giving of legal advice, or

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

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

**"premises"** includes any place and, in particular, includes -

(a) any vehicle, vessel, aircraft or hovercraft,

(b) any offshore installation, and

(c) any tent or movable structure.

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

(a) to an express or implied undertaking to hold it in confidence, or

(b) to a restriction on disclosure or an obligation of secrecy contained in any enactment, whether

passed before or after the commencement of this Law.

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

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

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

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

- (a) to his physical or mental health,
- (b) to spiritual counselling or assistance given or to be given to him, or
- (c) to counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by

any individual who -

- (i) by reason of his office or occupation has responsibilities for his personal welfare, or
- (ii) by reason of an order of a court has responsibilities for his supervision.

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

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

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

17. For section 48 of the Law substitute the following -

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

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

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

exercisable if -

- (a) the powers conferred on the Court by sections 26(1), 27(1) and 28(1) are exercisable by virtue of section 25(1), or
- (b) those powers are exercisable by virtue of section 25(2) and the Court has made a restraint order or charging order which in either case has not been discharged,

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

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

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

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

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

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

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

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

- (a) a reasonable opportunity has been given for an officer of the States department to make

representations to the Court, and

- (b) it appears to the Court that the material is likely to be of value in exercising functions relating to the investigation of crime.

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

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

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

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

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

(11) An order under subsection (1) and, in the case of material in the possession of a States department, an order under section 45

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

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

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

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

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

**18.** After section 48 of the Law insert the following sections -

*"Customer information orders*

**Customer information orders.**

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

order is fulfilled.

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

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

(3) The application must also state that-

- (a) the order is sought for the purposes of the investigation,
- (b) the order is sought against the financial services business specified in the application.

(4) An application for a customer information order may specify -

- (a) all financial services businesses,
- (b) a particular description of financial services business, or

(c) a particular financial services business.

(5) A customer information order is an order that a financial services business covered by the application for the order must, on being required to do so by notice in writing given by Her Majesty's Procureur or a police officer, provide any such customer information as it has relating to the person specified in the application.

(6) A financial services business required to provide information under a customer information order must provide the information to Her Majesty's Procureur or a police officer in such manner, and at or by such time, as they may require.

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

(8) A customer information order -

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

**Meaning of customer information.**

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

- (a) the matters specified in subsection (2) if the person is an individual,
- (b) the matters specified in subsection (3) if the person is a body corporate.

(2) The matters referred to in subsection (1)(a) are -

- (a) the account number or the number of any safe deposit box,
- (b) the person's full name,
- (c) his date of birth,
- (d) his most recent home and business address and any previous such address,
- (e) in the case of an account, the date on which he began to hold the account and, if he has ceased to hold the account, the date on which he did so,
- (f) in the case of a safe deposit box, the date on which the box was made available to him and,

if the box has ceased to be available to him, the date on which it so ceased,

- (g) such evidence of his identity as was obtained by the financial services business under or for the purposes of any legislation relating to money laundering,
- (h) the full name, date of birth and most recent home and business address, and any previous such address, of any person -
  - (i) who is or has been a signatory to the account, or
  - (ii) who holds or has held an account at the financial services business jointly with him,
- (i) the account number of any other account held at the financial services business to which he is a signatory and details of the person holding the other account,
- (j) the current balance of each account identified, and
- (k) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order)

concerning each of the accounts identified took place.

- (3) The matters referred to in subsection (1)(b) are -
- (a) the account number or the number of any safe deposit box,
  - (b) the person's full name,
  - (c) a description of any business which the person carries on,
  - (d) the country in which it is incorporated or otherwise established and any number allocated to it,
  - (e) its registered office and any previous registered office, or anything similar under the legislation of the country of incorporation or establishment,
  - (f) any address from which it conducts or has conducted business,
  - (g) in the case of an account, the date on which it began to hold the account and, if it has ceased to hold the account, the date on which it did so,
  - (h) in the case of a safe deposit box, the date on

which the box was made available to it and, if the box has ceased to be available to it, the date on which it so ceased,

- (i) such evidence of its identity as was obtained by the financial services business under or for the purposes of any legislation relating to money laundering,
- (j) the full name, date of birth and most recent home and business address and any previous such address of any person who is or has been a signatory to the account,
- (k) the current balance of each account identified, and
- (l) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order) concerning each of the accounts identified took place.

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

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

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

(a) to be customer information, or

(b) no longer to be customer information.

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

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

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

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

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

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

accrue to the investigation if the information is obtained.

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

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

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

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

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

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

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

or to both.

**Statements.**

**48E.** (1) A statement made by a financial services business in response to a customer information order may not, subject to subsection (2), be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply -

- (a) in the case of proceedings under Part I,
- (b) on a prosecution for an offence under section 48D(1) or (3), or
- (c) on a prosecution for some other offence where, in giving evidence, the financial services business makes a statement inconsistent with the statement mentioned in subsection (1).

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

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

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

**Disclosure of information.**

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

**Supplementary.**

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

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

(a) Her Majesty's Procureur,

(b) any person affected by the order.

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

(a) discharge the order,

(b) vary the order.

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

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

*Account monitoring orders*

**Account monitoring orders.**

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

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

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

(3) The application must also state that-

- (a) the order is sought for the purposes of the investigation,
- (b) the order is sought against the financial

services business specified in the application in relation to account information of the description so specified.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) makes a statement which it knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

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

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to

both, or

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

**Statements.**

**48K.** (1) A statement made by a financial services business in response to an account monitoring order may not, subject to subsection (2), be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply -

- (a) in the case of proceedings under Part I,
- (b) on a prosecution for an offence under section 48J(1) or (3), or
- (c) on a prosecution for some other offence where, in giving evidence, the financial services business makes a statement inconsistent with the statement mentioned in subsection (1).

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

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

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

**Disclosure of information.**

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

**Supplementary.**

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

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

(a) Her Majesty's Procureur,

(b) any person affected by the order.

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

(a) discharge the order,

(b) vary the order.

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

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

*Code of practice*

**Code of practice for Part III.**

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

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

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

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

(5) A failure by a police officer to comply with a

provision of the code does not of itself make him liable to criminal or civil proceedings.

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

**19.** For section 49 of the Law substitute the following section -

**"Financial services businesses and the duties thereof.**

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

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

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

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

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

(b) may prescribe supervisory or regulatory

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

(c) may authorise or require any person who obtains information in the course of the application of any procedure under the regulations, or in the course of performing any function under the regulations or under any other enactment to which the regulations refer, to disclose that information to a police officer or to any other person or body specified in the regulations,

(d) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences, including (without limitation) provision as to -

(i) the persons or bodies or classes or descriptions of persons or bodies who may be found guilty of offences under the regulations,

(ii) the penalties which may be imposed, and

(iii) the defences which are to be available,

(e) may prescribe for the purposes of the regulations the rules, instructions and guidance which any court shall take into account in determining whether any person has complied with a duty or requirement imposed by or in pursuance of the regulations, being rules, instructions and guidance -

(i) which, in the opinion of the court, are relevant to the duty or requirement in question, and

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

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

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

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

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

(6) For the purposes of this section -

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

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

- (a) which constitutes an offence under section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>f</sup>, and in those sections the "purposes of terrorism" include, to the extent that they do not already do so -
  - (i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1 of that Law, or
  - (ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,

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<sup>f</sup> Order on Council No. XVI of 2002.

- (b) which constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>g</sup>,
- (c) which constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b),
- (d) which constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b), or
- (e) which would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b), (c) or (d) if done in the Bailiwick,

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

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

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

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<sup>g</sup> Order on Council No. VII of 2000.

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

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

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

**20.** After section 49 of the Law insert the following sections -

*"Relevant businesses*

**Relevant businesses and the duties thereof.**

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

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

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

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

- (i) the persons or bodies or classes or descriptions of persons or bodies who may be found guilty of offences under the regulations,
  - (ii) the penalties which may be imposed, and
  - (iii) the defences which are to be available,
- (e) may prescribe for the purposes of the regulations the rules, instructions and guidance which any court shall take into account in determining whether any person has complied with a duty or requirement imposed by or in pursuance of the regulations, being rules, instructions and guidance -
  - (i) which, in the opinion of the court, are relevant to the duty or requirement in question, and
  - (ii) which have been issued or approved by a person or body specified in the regulations, and
- (f) may make such other provision as in the opinion of the Policy Council is necessary or expedient for or in relation to the purposes of the regulations.

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

- (a) shall not be treated as a breach of any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and
- (b) does not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(6) For the purposes of this section -

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

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

- (a) which constitutes an offence under section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>h</sup>, and in those sections the "purposes of terrorism" include, to the extent that they do not already do so -

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<sup>h</sup> Order on Council No. XVI of 2002.

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

irrespective of the value of the property involved, and for the purposes of

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<sup>i</sup> Order on Council No. VII of 2000.

this subsection having possession of any property shall be taken to be doing an act in relation to it.

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

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

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

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

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

*Enforcement of money laundering regulations*

**Site visits, etc, for Commission's officers, servants or agents.**

**49B.** (1) In order to determine whether a financial services business has complied with any regulations under section 49, the Commission's officers, servants or agents may on request enter any

premises in the Bailiwick owned, leased or otherwise controlled or occupied by the business.

(2) If the Commission's officers, servants or agents exercise their right of entry under subsection (1), they may require the officers, servants or agents of the financial services business -

- (a) to produce for examination (whether at the premises of the business or at the offices of the Commission) any documents held by the business,
- (b) to produce copies of any documents in a legible form for the officers, servants or agents of the Commission to take away,
- (c) to answer questions for the purpose of verifying compliance with any regulations under section 49.

(3) Except in cases of urgency the right of entry conferred by subsection (1) may only be exercised between 9.00 a.m. and 4.00 p.m. on any day except any Saturday, Sunday, Christmas Day, Easter Day or public holiday.

(4) Nothing in this section compels the production or divulgence of an item subject to legal professional privilege or excluded material, but an advocate or other legal adviser may be required to give the name and address of a client.

(5) A statement made by a person in response to a requirement under this section may not be used in evidence against him in criminal proceedings except -

- (a) on a prosecution for an offence under subsection (7) or (8), or
- (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

(6) A requirement under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(7) A person who without reasonable excuse obstructs, or fails to comply with a request or requirement of, a person exercising or purporting to exercise any power conferred by this section is guilty of an offence and liable -

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

(8) A person who in purported compliance with a requirement under this section -

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

is guilty of an offence and liable -

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

**Power of Bailiff to grant warrant.**

**49C.** (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting -

- (a) that a request or requirement under section 49B has not been complied with,
- (b) that any information or document furnished

pursuant to such a request or requirement is false, misleading, inaccurate or incomplete,

(c) that if such a request or requirement were made -

(i) it would not be complied with,

(ii) any documents to which it would relate would be removed, tampered with, falsified or destroyed, or

(iii) the making of the request or requirement or any attempt to enforce it might significantly prejudice any inquiry to which the request or requirement would relate,

he may grant a warrant.

(2) A warrant under this section authorises any police officer, together with any other person named or described in the warrant (including, without limitation, any officer, servant or agent of the Commission) -

(a) to enter any premises specified in the warrant using such force as may be reasonably necessary,

(b) to search the premises and, in relation to any

documents appearing to be relevant for the purpose of establishing whether the business has complied with any regulations under section 49, to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of or extracts from any such documents,

(d) to require any person named in, or of a class or description specified in, the warrant -

(i) to answer any questions relevant to establishing whether the business has complied with any regulations under section 49,

(ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),

(iii) to make an explanation of any such documents.

(3) A warrant under this section ceases to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any documents of which possession is taken under the

powers conferred by a warrant under this section may be retained -

- (a) for a period of 4 months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or
- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(5) Nothing in a warrant under this section compels the production or divulgence of an item subject to legal professional privilege or excluded material, but an advocate or other legal adviser may be required to give the name and address of a client.

(6) A statement made by a person in response to a requirement imposed by or under a warrant under this section may not be used in evidence against him in criminal proceedings except -

- (a) on a prosecution for an offence under subsection (8) or (9), or
- (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

(7) A requirement imposed by or under a warrant under this section has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute,

contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(8) A person who without reasonable excuse obstructs or fails to comply with a requirement of a person exercising or purporting to exercise any power conferred by a warrant under this section is guilty of an offence and liable -

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

(9) A person who in purported compliance with a requirement imposed by or under a warrant under this section -

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

is guilty of an offence and liable -

- (i) on summary conviction, to imprisonment for a term not exceeding

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

- (ii) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

**Power to extend sections 49B and 49C to relevant businesses.**

**49D.** (1) The Policy Council may by regulation direct that the provisions of this Law specified in subsection (2) shall extend, subject to such exceptions, adaptations and modifications as may be specified in the regulations, to relevant businesses.

(2) The specified provisions are sections 49B and 49C and any other provision of this Law so far as necessary for the purpose of giving effect to those sections as extended under subsection (1).

*Corporate offences*

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

**49E.** (1) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by

its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Where any such offence is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where any such offence is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of any such offence shall be paid from the funds of the body."

**21.** After section 50 of the Law insert the following section -

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

**50A.** References in this Law to a financial services business or relevant business (however expressed) include, except in paragraph 1 of Schedule 2, references to a person carrying on such a business."

**22.** In section 51(1) of the Law insert the following definitions at the appropriate places -

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

**"country"** includes a territory,

**"document"** includes information recorded in any form (including, without limitation, in electronic form) and -

- (a) in relation to information recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of a copy of the information in a legible form in which it can be taken away,
- (b) without prejudice to paragraph (a), references to the production of documents, however expressed, include (without limitation) references to the production of a copy thereof in the English language,

**"Home Department"** means the States of Guernsey Home Department,

**"money laundering offence"** means -

- (a) an offence under section 38, 39 or 40,
- (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),
- (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a),  
or
- (d) an offence committed outside the Bailiwick which would constitute an offence specified in paragraph (a), (b) or (c) if committed within the Bailiwick,

**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>j</sup>.

**23.** In section 52 of the Law insert the following expressions at the appropriate places -

**"account information"** (section 48H(4)),

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

**"business"** (sections 49(6) and 49A(6)),

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<sup>j</sup> Ordres en Conseil Vol. XXXI, p. 278.

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

**"customer information"** (section 48B(1)),

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

**"Home Department"** (section 51(1)),

**"money laundering offence"** (section 51(1)),

**"relevant business"** (sections 49A(1) and 50A),

**"uniform scale"** (section 51(1)).

**24.** In section 52 of the Law in the item relating to "financial services business" for "(section 49(1))" substitute "(sections 49(1) and 50A)".

**25.** In section 53(1) of the Law the expression "of Part I" is repealed.

**26.** Immediately before section 54 of the Law insert the following section-

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

**53A.** (1) The States may by Ordinance amend this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations or rules (and vice versa).".

27. In section 54 of the Law after "Policy Council" wherever appearing<sup>k</sup> insert "or Home Department".

28. (1) The Schedule to the Law<sup>l</sup> is numbered as Schedule 1.

(2) After Schedule 1 (as so numbered) insert the following Schedule -

## "SCHEDULE 2

Section 49A

### RELEVANT BUSINESSES

1. The businesses specified in the following paragraphs of this Schedule are relevant businesses for the purposes of this Law.

However, a business is not a relevant business if it is financial services business within the meaning of section 49(1) and Schedule 1.

2. **High value dealing.**

Trading in goods when there is received, in respect of any transaction, a payment or payments in cash of at least £7,500 in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked.

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<sup>k</sup> References to the Policy Council were substituted for references to the Advisory and Finance Committee by Ordinance XXXIII of 2003.

<sup>l</sup> The Schedule was substituted by G.S.I No. 27 of 2002.

### 3. **Estate agency.**

Things done by a person in the course of a business pursuant to instructions received from another person ("a client") who wishes to dispose of or acquire an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest) -

- (a) for the purpose of or with a view to effecting the introduction to the client of a third person who wishes to acquire or (as the case may be) dispose of such an interest, and
- (b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or (as the case may be) the acquisition of that interest.

Estate agency does not include any business specified in paragraph 5.

### 4. **Casinos and organised gambling.**

The provision or carrying on by way of business of any service or activity which, under the provisions of -

- (a) the Gambling (Guernsey) Law, 1971<sup>m</sup> or any Ordinance made under it,

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<sup>m</sup> Ordres en Conseil Vol. XXIII, p. 109; Vol. XXIV, p. 400; No. XXVII of 1997; no. II of 2001.

- (b) the Hotel Casino Concession (Guernsey) Law, 2001<sup>n</sup>,
- (c) the Gambling (Alderney) Law, 1999<sup>o</sup> or any Ordinance made under it, or
- (d) the Gambling (Sark) Law, 2002<sup>p</sup>,

is prohibited except where provided or carried on under the authority of a licence, concession or other authorisation granted under any of those Laws or any Ordinance made under them.

## **5. Legal and accountancy services.**

The business of lawyer, notary or other independent legal professional, or accountant, when they prepare for or carry out transactions for a client in relation to the following activities -

- (a) the acquisition or disposal of an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest),
- (b) the management of client money, securities or other assets,

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<sup>n</sup> Order in Council No. XI of 2002.

<sup>o</sup> Order in Council No. XIV of 1999; No. XXVII of 2001.

<sup>p</sup> Order in Council No. VIII of 2002; No. XXIX of 2003.

- (c) the management of bank, savings or securities accounts,
- (d) the organisation of contributions for the creation, operation, management or administration of companies,
- (e) the creation, operation, management or administration of legal persons or arrangements, and the acquisition or disposal of business entities.

An "independent legal professional" does not include legal professionals employed by -

- (a) public authorities, or
- (b) undertakings which do not by way of business provide legal services to third parties.

An "accountant" means any person who by way of business provides accountancy services."

**Citation.**

**29.** This Law may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007.

# PROJET DE LOI

ENTITLED

## **The Drug Trafficking (Bailiwick of Guernsey) (Amendment) Law, 2007**

**THE STATES**, in pursuance of their Resolutions of the 27<sup>th</sup> July, 2006<sup>a</sup> and the 30<sup>th</sup> May, 2007<sup>b</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### **Amendment of Drug Trafficking Law.**

1. The Drug Trafficking (Bailiwick of Guernsey) Law, 2000, as amended<sup>c</sup> ("**the Drug Trafficking Law**"), is further amended as follows.

2. In section 2(3) of the Drug Trafficking Law after "another person" insert "and if he has derived a pecuniary advantage as a result of or in connection with criminal conduct, he is to be treated as if he had obtained instead a sum of money equal to the value of the pecuniary advantage".

3. In section 2(7) of the Drug Trafficking Law after "civil proceedings" insert "(that is to say, a balance of probabilities)".

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<sup>a</sup> Article XXIII of Billet d'État No. XIII of 2006.

<sup>b</sup> Article XVIII of Billet d'État No. XIV of 2007.

<sup>c</sup> Order in Council No. VII of 2000; No. II of 2005; and Ordinance No. XXXIII of 2003.

4. After section 4(7) of the Drug Trafficking Law insert the following subsections -

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

(a) the property was received by him as a result of or in connection with criminal conduct carried on by him or another person or, as the case may be,

(b) the expenditure was met out of payments received by him as a result of or in connection with criminal conduct carried on by him or another person.

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

5. After section 29(8) of the Drug Trafficking Law insert the following subsection -

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

6. In section 30(1)(c) of the Drug Trafficking Law after "the defendant"

insert "or the recipient of a gift caught by this Law".

7. In section 35(1)(a) of the Drug Trafficking Law for the text preceding subparagraph (i) substitute the following -

"(a) direct, in relation to any country or territory within the British Islands, or in relation to any other country or territory -

- designated by an Order in Council of Her Majesty under section 39 of the Drug Trafficking Act 1994<sup>d</sup> (and any such designation shall continue to have effect for the purposes of this Law, notwithstanding any repeal of section 39, until amended or revoked by Ordinance of the States), or

- designated by Ordinance of the States,

(any country or territory so designated being referred to in this Law as a "**designated country**") that, subject to such modifications as may be specified, the relevant provisions of this Law shall apply - ".

8. In section 53(3) of the Drug Trafficking Law after "civil proceedings" insert "(that is to say, a balance of probabilities)".

9. In section 58(3)(b)(i) of the Drug Trafficking Law after "the officer

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

of police" insert "(and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act)".

**10.** In section 59(5)(b)(i) of the Drug Trafficking Law after "the officer of police" insert "(and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act)".

**11.** In section 62(2)(a) of the Drug Trafficking Law for "12 months" substitute "6 months".

**12.** After section 62 of the Drug Trafficking Law, insert the following sections -

**"Restrictions on disclosure under this Part."**

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

(a) under section 58,

(b) under section 59,

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

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

(3) In proceedings against a person for an offence under

this section, it is a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

**Disclosure for purposes within the Bailiwick.**

**62B.** (1) Section 62A does not prohibit the disclosure of information to a person in the Bailiwick for the purposes of the investigation of crime in the Bailiwick or for the purposes of criminal proceedings in the Bailiwick.

(2) Section 62A does not prohibit the disclosure of information, for other purposes in the Bailiwick, to -

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

**Disclosure for purposes outside the Bailiwick.**

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

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

(b) to a competent authority outside the Bailiwick,

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

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

**13.** For section 63(1) of the Drug Trafficking Law substitute -

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

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

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

**14.** In section 63(5) of the Drug Trafficking Law after "an officer of police" insert "who has first obtained the consent of Her Majesty's Procureur".

**15.** For section 64(1) of the Drug Trafficking Law substitute -.

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

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

apply on oath to the Bailiff for a warrant under this section in relation to specified premises."

**16.** In section 66(1) of the Drug Trafficking Law for "an investigation into drug trafficking" substitute "an investigation described in section 63(1) or 64(1)".

**17.** After section 67 of the Drug Trafficking Law insert the following sections -

*"Customer information orders*

**Customer information orders.**

**67A.** (1) The Bailiff may, on an application made by Her Majesty's Procureur or by an officer of police, make a customer information order if he is satisfied that each of the requirements for the making of the order is fulfilled.

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

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

(3) The application must also state that -

- (a) the order is sought for the purposes of the investigation,
- (b) the order is sought against the financial services business specified in the application.

(4) An application for a customer information order may specify -

- (a) all financial services businesses,
- (b) a particular description of financial services business, or
- (c) a particular financial services business.

(5) A customer information order is an order that a financial services business covered by the application for the order must, on being required to do so by notice in writing given by Her Majesty's Procureur or by an officer of police, provide any such customer information as it has relating to the person specified in the application.

(6) A financial services business required to provide information under a customer information order must provide the information to Her Majesty's Procureur or an officer of police in such manner, and at or by such time, as they may require.

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

(8) A customer information order -

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

**Meaning of customer information.**

**67B.** (1) "Customer information", in relation to a person and a financial services business, is information as to whether the person holds,

or has held, an account or safe deposit box at the financial services business (whether solely or jointly with another) and (if so) information as to -

- (a) the matters specified in subsection (2) if the person is an individual,
- (b) the matters specified in subsection (3) if the person is a body corporate.

(2) The matters referred to in subsection (1)(a) are -

- (a) the account number or the number of any safe deposit box,
- (b) the person's full name,
- (c) his date of birth,
- (d) his most recent home and business address and any previous such address,
- (e) in the case of an account, the date on which he began to hold the account and, if he has ceased to hold the account, the date on which he did so,
- (f) in the case of a safe deposit box, the date on which the box was made available to him and, if the box has ceased to be available to him, the date on which it so ceased,

- (g) such evidence of his identity as was obtained by the financial services business under or for the purposes of any legislation relating to money laundering,
- (h) the full name, date of birth and most recent home and business address, and any previous such address, of any person -
  - (i) who is or has been a signatory to the account, or
  - (ii) who holds or has held an account at the financial services business jointly with him,
- (i) the account number of any other account held at the financial services business to which he is a signatory and details of the person holding the other account,
- (j) the current balance of each account identified, and
- (k) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order) concerning each of the accounts identified took place.

- (3) The matters referred to in subsection (1)(b) are -
- (a) the account number or the number of any safe deposit box,
  - (b) the person's full name,
  - (c) a description of any business which the person carries on,
  - (d) the country or territory in which it is incorporated or otherwise established and any number allocated to it,
  - (e) its registered office and any previous registered office, or anything similar under the legislation of the country or territory of incorporation or establishment,
  - (f) any address from which it conducts or has conducted business,
  - (g) in the case of an account, the date on which it began to hold the account and, if it has ceased to hold the account, the date on which it did so,
  - (h) in the case of a safe deposit box, the date on which the box was made available to it and, if the box has ceased to be available to it, the date

on which it so ceased,

- (i) such evidence of its identity as was obtained by the financial services business under or for the purposes of any legislation relating to money laundering,
- (j) the full name, date of birth and most recent home and business address and any previous such address of any person who is or has been a signatory to the account,
- (k) the current balance of each account identified, and
- (l) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order) concerning each of the accounts identified took place.

(4) In this section "**money laundering**" has the meaning given by section 49(6) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>e</sup>.

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

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

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

(a) to be customer information, or

(b) no longer to be customer information.

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

**67C.** (1) These are the requirements for the making of a customer information order.

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

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

(4) In the case of any investigation, there must be reasonable grounds for believing that the customer information which may be provided in compliance with the order is likely to be of substantial value

(whether or not by itself) to the investigation for the purposes of which the order is sought.

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

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

**67D.** (1) A financial services business commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it by or under a customer information order.

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

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

(a) makes a statement which it knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

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

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

**Statements.**

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

(2) Subsection (1) does not apply-

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

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

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

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

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

**Disclosure of information.**

**67F.** A customer information order has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such an order.

**Supplementary.**

**67G.** (1) The Court may make rules in respect of the practice and procedure to be followed in connection with proceedings relating to customer information orders.

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

- (a) Her Majesty's Procureur,
- (b) any person affected by the order.

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

- (a) discharge the order,

(b) vary the order.

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

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

*Account monitoring orders*

**Account monitoring orders.**

**67H.** (1) The Bailiff may, on an application made by Her Majesty's Procureur or by an officer of police, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.

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

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

(3) The application must also state that-

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

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

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

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

(6) An account monitoring order is an order that the financial services business specified in the application for the order must, for the period stated in the order, provide account information of the description

specified in the order to an officer of police in the manner, and at or by the time, stated in the order.

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

(8) An account monitoring order -

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

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

**67I.** (1) These are the requirements for the making of an account monitoring order.

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

(3) In the case of an investigation into drug money laundering, there must be reasonable grounds for suspecting that the person

specified in the application for the order has committed an offence under section 57, 58 or 59.

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

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

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

**67J.** (1) A financial services business commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it by or under an account monitoring order.

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

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

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

- (b) recklessly makes a statement which is false or misleading in a material particular.

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

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

**Statements.**

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

(2) Subsection (1) does not apply -

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

business makes a statement inconsistent with the statement mentioned in subsection (1).

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

(a) evidence relating to it is adduced, or

(b) a question relating to it is asked,

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

**Disclosure of information.**

**67L.** An account monitoring order has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such an order.

**Supplementary.**

**67M.** (1) The Court may make rules in respect of the practice and procedure to be followed in connection with proceedings relating to account monitoring orders.

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

(a) Her Majesty's Procureur,

(b) any person affected by the order.

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

(a) discharge the order,

(b) vary the order.

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

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

*Code of practice*

**Code of practice for Part V.**

**67N.** (1) The Home Department may issue a code of practice in connection with the exercise by officers of police of their functions under this Part.

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

(3) The code shall be laid before a meeting of the States as soon as possible after being issued; and, if at that or the next meeting the

States resolve to annul the code, then it shall cease to have effect, but without prejudice to anything done under it or to the issuing of a new code.

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

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

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

### *Corporate offences*

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

**67O.** (1) Where an offence under this Law, or any Ordinance, regulation or rule made under it, is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) Where any such offence is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

he as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(4) Where any such offence is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

(5) A fine imposed on an unincorporated body on its conviction of any such offence shall be paid from the funds of the body.

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

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

**18.** In section 69(1) of the Drug Trafficking Law insert the following definitions at the appropriate places -

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

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

**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>g</sup>.

**19.** In section 70 of the Drug Trafficking Law insert the following entries at the appropriate places -

**"account information"** (section 67H(4)),

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

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

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

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

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

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

**"uniform scale"** (section 69(1)).

**20.** Immediately before section 72 of the Drug Trafficking Law insert the following section -

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

**71A.** (1) The States may by Ordinance amend this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances, regulations or rules (and vice versa).".

**Citation.**

**21.** This Law may be cited as the Drug Trafficking (Bailiwick of Guernsey) (Amendment) Law, 2007.

# PROJET DE LOI

ENTITLED

## **The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> May, 2007<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### **Amendment to Law of 2001.**

1. The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001<sup>b</sup> ("**the Law**") is amended as follows.

2. In section 4(4) of the Law for "The Schedule" substitute "Schedule 1".

3. After section 4 of the Law insert the following sections -

### **"Hearing witnesses in the Bailiwick through television links.**

**4A.** (1) This section applies where Her Majesty's Procureur receives a request, from an authority mentioned in subsection (3) ("**the external authority**") for a person in the Bailiwick to give evidence through a live television link in criminal proceedings before a court or tribunal in a country or territory outside the Bailiwick.

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<sup>a</sup> Article XVIII of Billet d'État No. XIV of 2007.

<sup>b</sup> Order in Council No. VII of 2001.

(2) "**Criminal proceedings**" include any proceedings on an appeal before a court or tribunal against a decision in administrative proceedings.

(3) The authority referred to in subsection (1) is the authority in that country or territory which appears to Her Majesty's Procureur to have the function of making requests of the kind to which this section applies.

(4) Her Majesty's Procureur shall, unless he considers it inappropriate to do so, by notice specify the appropriate court where the witness may be heard in the proceedings in question through a live television link.

(5) Anything done by the witness in the presence of the appropriate court which, if it were done in proceedings before the appropriate court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the appropriate court.

(6) A statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of the offence of perjury as made in proceedings before the appropriate court.

(7) Part 1 of Schedule 2 (evidence given by television link) has effect.

(8) Subject to subsections (5) and (6) and the provisions of Schedule 2, evidence given pursuant to this section is not to be treated for any purpose as evidence given in proceedings in the Bailiwick.

**Hearing witnesses in the Bailiwick by telephone.**

**4B.** (1) This section applies where Her Majesty's Procureur receives a request from an authority mentioned in subsection (3) ("**the external authority**") for a person in the Bailiwick to give evidence by telephone in criminal proceedings before a court or tribunal in a country or territory outside the Bailiwick.

(2) "**Criminal proceedings**" include any proceedings on an appeal before a court or tribunal against a decision in administrative proceedings.

(3) The authority referred to in section (1) is the authority in that country or territory which appears to Her Majesty's Procureur to have the function of making requests of the kind to which this section applies.

(4) A request from the external authority under subsection (1) must -

- (a) specify the court or tribunal in the requesting country or territory,
- (b) give the name and address of the witness,
- (c) state that the witness is willing to give evidence by telephone in the proceedings before that court or tribunal.

(5) Her Majesty's Procureur shall, unless he considers it inappropriate to do so, by notice specify the appropriate court where the witness may be heard in the proceedings in question by telephone.

(6) Anything done by the witness in the presence of the appropriate court which, if it were done in proceedings before the appropriate court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the appropriate court.

(7) A statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of the offence of perjury as made in proceedings before the appropriate court.

(8) Part 2 of Schedule 2 (evidence given by telephone) has effect.

(9) Subject to subsections (6) and (7) and the provisions of Schedule 2, evidence given pursuant to this section is not to be treated for any purpose as evidence given in proceedings in the Bailiwick."

4. In section 9(2) of the Law for "the Schedule" substitute "either schedule".

5. After section 9 of the Law insert the following sections -

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

9A. (1) The States may by Ordinance amend this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances or rules (and vice versa).

**General provisions as to subordinate legislation.**

**9B.** (1) An Ordinance or rule under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or rule, as the case may be, hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient including, without limitation, in the case of an Ordinance, provisions repealing, amending or modifying any enactment (whether passed before or after the commencement of this Law).

(2) Any power conferred by this Law to make an Ordinance or rule may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions."

6. (1) The Schedule to the Law is numbered as Schedule 1.

(2) After Schedule 1 (as so numbered) insert the following  
Schedule -

"SCHEDULE 2

Sections 4A and 4B

**EVIDENCE GIVEN BY TELEVISION LINK OR TELEPHONE**

**PART I**

**EVIDENCE GIVEN BY TELEVISION LINK**

*Securing attendance of witness*

1. The appropriate court has the like powers for securing the attendance of the witness to give evidence through the link as it has for the purpose of proceedings before the appropriate court.

*Conduct of hearing*

2. The witness is to give evidence in the presence of the appropriate court.

3. The appropriate court is to establish the identity of the witness.

4. The appropriate court is to intervene where it considers it necessary to do so to safeguard the rights of the witness.

5. The evidence is to be given under the supervision of the court or tribunal of the country or territory concerned.

6. The evidence is to be given in accordance with -

- (a) the laws of the country or territory, and
- (b) any measures for the protection of the witness agreed between Her Majesty's Procureur and the authority in that country or territory which appears to him to have the function of entering into agreements of that kind.

7. Rules of court under section 9 may make provision for the use of interpreters.

*Privilege of witness*

8. (1) The witness cannot be compelled to give any evidence which he could not be compelled to give in criminal proceedings before the appropriate court.

(2) The witness cannot be compelled to give any evidence if his doing so would be prejudicial to the security of the Bailiwick.

(3) A certificate signed by or on behalf of Her Majesty's Procureur to the effect that it would be prejudicial for that person to do so is conclusive evidence of that fact.

(4) The witness cannot be compelled to give any evidence in his capacity as an officer or servant of the Crown.

(5) Subparagraphs (2) and (4) are without prejudice to the generality of subparagraph (1).

*Record of hearing*

9. Rules of court under section 9 may make provision -

- (a) for the drawing up of a record of the hearing,
- (b) for sending the record to Her Majesty's Procureur for transmission to the external authority.

PART II

## EVIDENCE GIVEN BY TELEPHONE

### *Notification of witnesses*

**10.** The appropriate court must notify the witness of the time when and the place at which he is to give evidence by telephone.

### *Conduct of hearing*

**11.** The appropriate court must be satisfied that the witness is willingly giving evidence by telephone.

**12.** The witness is to give evidence in the presence of the appropriate court.

**13.** The appropriate court is to establish the identity of the witness.

**14.** The evidence is to be given under the supervision of the court or tribunal of the country or territory concerned.

**15.** The evidence is to be given in accordance with the laws of that country or territory.

**16.** Rules of court under section 9 may make provision for the use of interpreters."

### **Citation.**

**7.** This Law may be cited as the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007.

# PROJET DE LOI

ENTITLED

## **The Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007**

### ARRANGEMENT OF SECTIONS

#### PART I CASH

##### *Searches for cash*

1. Search of premises.
2. Search of persons.
3. Meaning of "cash".
4. Prior approval.
5. Code of practice for Part I.

##### *Seizure and detention of cash*

6. Seizure of cash.
7. Detention of seized cash.
8. Interest.
9. Release of detained cash.

#### PART II BANK ACCOUNTS

10. Freezing of bank accounts.
11. Release of frozen bank accounts.

#### PART III FORFEITURE AND RELEASE OF MONEY

##### *Interpretation*

12. Meaning of "money".

*Forfeiture*

- 13. Forfeiture.
- 14. Appeal against forfeiture.
- 15. Application of forfeited money.

*Supplementary*

- 16. Application for release of money by victims and other owners.
- 17. Compensation.

PART IV  
INVESTIGATIONS

*Civil forfeiture investigations*

- 18. Civil forfeiture investigations.
- 19. Offence of prejudicing investigation.

*Production orders*

- 20. Production orders.
- 21. Requirement for making of production order.
- 22. Order to grant entry.
- 23. Disclosure of information and further provisions.
- 24. Computer information.
- 25. Departments of the States.
- 26. Offences in relation to production orders, etc.
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*Customer information orders*

- 28. Customer information orders.
- 29. Meaning of "customer information".
- 30. Requirements for making of customer information order.
- 31. Offences in relation to customer information orders.
- 32. Statements.
- 33. Disclosure of information.
- 34. Supplementary.

*Account monitoring orders*

- 35. Account monitoring orders.
- 36. Requirements for making of account monitoring order.

- 37. Offences in relation to account monitoring orders.
- 38. Statements.
- 39. Disclosure of information.
- 40. Supplementary.

*Disclosure orders*

- 41. Disclosure orders.
- 42. Requirements for making of disclosure order.
- 43. Offences in relation to disclosure orders.
- 44. Statements.
- 45. Disclosure of information and further provisions.
- 46. Supplementary.

*Overseas investigations*

- 47. Overseas investigations.

*Code of practice*

- 48. Code of practice for Part IV.

PART V  
ENFORCEMENT OF ORDERS MADE OUTSIDE  
THE BAILIWICK

- 49. Enforcement of overseas forfeiture orders.

PART VI  
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- 50. Constitution and jurisdiction of Royal Court.
- 51. Functions of Her Majesty's Procureur.
- 52. Disclosure to Administrator of Income Tax.
- 53. Designated countries.
- 54. Respondent's legal expenses.
- 55. Set-off and security interests, etc, unaffected.
- 56. Interpretation.
- 57. "Items subject to legal professional privilege".
- 58. "Excluded material".
- 59. "Proceeds of unlawful conduct".
- 60. "Minimum amount".
- 61. "Unlawful conduct".
- 62. Rules of Court.
- 63. Amendment by Ordinance and extension by regulation.

- 64. General provisions as to subordinate legislation.
- 65. Savings for powers of search under other enactments.
- 66. Repeal of Part III of Drug Trafficking Law.
- 67. Citation.
- 68. Commencement.

SCHEDULE: Legal expenses of respondents, etc.

# PROJET DE LOI

ENTITLED

## **The Forfeiture of Money in Civil Proceedings (Bailiwick of Guernsey) Law, 2007**

**THE STATES**, in pursuance of their Resolutions of the 31<sup>st</sup> May, 2002<sup>a</sup> and the 27<sup>th</sup> July, 2006<sup>b</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### CASH

#### *Searches for cash*

#### Search of premises.

1. (1) A police officer -
  - (a) who has entered any premises under the authority of a warrant granted under subsection (2), or
  - (b) who is, otherwise than under the authority of such a warrant, lawfully on any premises and who has reasonable grounds for suspecting that there is on the

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<sup>a</sup> Article VI of Billet d'État No. IX of 2002.

<sup>b</sup> Article XXII of Billet d'État No. XIII of 2006.

premises cash -

- (i) which is any person's proceeds of unlawful conduct or which is intended by any person for use in unlawful conduct, and
- (ii) the amount of which is not less than the minimum amount,

may search for cash there.

(2) If the Bailiff or the appropriate judicial officer is satisfied, on the application of a police officer, that there are reasonable grounds for suspecting that there is on any premises cash -

- (a) which is any person's proceeds of unlawful conduct or which is intended by any person for use in unlawful conduct, and
- (b) the amount of which is not less than the minimum amount,

he may grant a warrant authorising a police officer to enter the premises specified in the warrant, using such force as may be necessary for the purpose, at any time within 28 days after the date of issue of the warrant.

(3) A person acting under the authority of a warrant granted under this section may, when entering the premises specified in the warrant, take with him such other persons as appear to him to be necessary.

(4) Section 18 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>c</sup> ("additional powers of seizure") applies to a person acting under the authority of a warrant under this section as it applies to a police officer within the meaning of that Law.

(5) The powers conferred by subsection (1) are exercisable only so far as reasonably required for the purpose of finding cash.

(6) A person who obstructs a police officer or other person exercising any power conferred by this section or acting under the authority of a warrant granted under this section is guilty of an offence and liable -

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

#### **Search of persons.**

2. (1) If a police officer has reasonable grounds for suspecting that a person ("**the suspect**") is carrying cash -

- (a) which is any person's proceeds of unlawful conduct or which is intended by any person for use in unlawful conduct, and
- (b) the amount of which is not less than the minimum

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<sup>c</sup> Order in Council No. XXIII of 2003.

amount,

he may exercise the following powers.

(2) The police officer may, so far as he thinks it necessary or expedient, require the suspect -

(a) to permit a search of any article he has with him, and

(b) to permit a search of his person.

(3) A police officer exercising powers by virtue of subsection (2)(b) may detain the suspect for so long as is necessary for their exercise.

(4) The powers conferred by this section are exercisable only so far as reasonably required for the purpose of finding cash.

(5) This section does not require a person to submit to an intimate search or strip search.

(6) For the purposes of subsection (5) -

**"intimate search"** means any search which involves a physical examination (that is, an examination which is more than simply a visual examination) of a person's bodily orifices, and

**"strip search"** means any search which is not an intimate search but which involves the removal of an article of clothing which -

(a) is being worn (wholly or partly) on the trunk,

- (b) is being worn either next to the skin or next to an article of underwear.

(7) A person who obstructs a police officer exercising any power conferred by this section is guilty of an offence and liable -

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

**Meaning of "cash".**

3. (1) In this Law "**cash**" means -

- (a) notes and coins in any currency,
- (b) postal orders,
- (c) cheques of any kind, including traveller's cheques,
- (d) banker's drafts,
- (e) bearer bonds and bearer shares, and
- (f) postage stamps from any jurisdiction,

found at any place in the Bailiwick.

- (2) **"Cash"** also includes any kind of monetary instrument which-
  - (a) is found at any place in the Bailiwick, and
  - (b) is of a class or description specified by regulations of the Home Department made after consultation with the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark.

**Prior approval.**

- 4. (1) The powers conferred by -
  - (a) section 1 to search premises for cash otherwise than under the authority of a warrant granted under section 1(2), and
  - (b) section 2 to search any article or person,

may be exercised only with the appropriate approval unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(2) The appropriate approval means the approval of a senior police officer.

(3) In relation to Sark, the appropriate approval may also be given by the Constable and the Vingtenier.

**Code of practice for Part I.**

5. (1) The Home Department may issue a code of practice in connection with the exercise by police officers of their functions under sections 1 and 2.

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

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

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

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

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

### *Seizure and detention of cash*

#### **Seizure of cash.**

6. (1) A police officer may seize any cash if he has reasonable grounds for suspecting that -

(a) it is any person's proceeds of unlawful conduct, or

- (b) it is intended by any person for use in unlawful conduct.

(2) A police officer may also seize cash if he has reasonable grounds for suspecting that part of it -

- (a) is any person's proceeds of unlawful conduct, or
- (b) is intended by any person for use in unlawful conduct,

if it is not reasonably practicable to seize only that part.

(3) This section does not authorise the seizure of an amount of cash if it or, as the case may be, the part to which his suspicion relates is less than the minimum amount.

(4) A person who obstructs a police officer exercising any power conferred by this section is guilty of an offence and liable -

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

#### **Detention of seized cash.**

7. (1) While the police officer continues to have reasonable grounds for his suspicion, cash seized under section 6 may be detained initially for a period of 48 hours.

In calculating that period no account shall be taken of any Saturday, Sunday, Christmas Day, Good Friday or public holiday.

(2) The period for which the cash or any part of it may be detained may be extended by an order made by the Bailiff; but the order may not authorise the detention of any of the cash -

- (a) beyond the end of a period of four months beginning on the date of the order,
- (b) in the case of any further order under this section, beyond the end of a period of two years beginning on the date of the first order, unless the Bailiff orders otherwise in any particular case in the interests of justice.

(3) An application for an order under subsection (2) may be made by or with the authority of Her Majesty's Procureur and the Bailiff may make the order if satisfied, in relation to any cash to be further detained, that either of the following conditions is met.

(4) The first condition is that there are reasonable grounds for suspecting that the cash is any person's proceeds of unlawful conduct and that -

- (a) its continued detention is justified while its origin or derivation is further investigated or consideration is given to bringing -
  - (i) proceedings in the Bailiwick or elsewhere

against any person for an offence with which the cash is connected, or

- (ii) proceedings in connection with the cash under Part III of this Law or under corresponding legislation in force in a country designated under section 53, or

- (b) proceedings described in paragraph (a)(i) or (ii) have been started and have not been concluded.

(5) The second condition is that there are reasonable grounds for suspecting that the cash is intended by any person for use in unlawful conduct and that -

- (a) its continued detention is justified while its intended use is further investigated or consideration is given to bringing -

- (i) proceedings in the Bailiwick or elsewhere against any person for an offence with which the cash is connected, or

- (ii) proceedings in connection with the cash under Part III of this Law or under corresponding legislation in force in a country designated under section 53, or

- (b) proceedings described in paragraph (a)(i) or (ii) have been started and have not been concluded.

(6) An application for an order under subsection (2) may also be made by or with the authority of Her Majesty's Procureur in respect of any cash seized under section 6(2), and the Bailiff may make the order if satisfied that -

- (a) the condition in subsection (4) or (5) is met in respect of part of the cash, and
- (b) it is not reasonably practicable to detain only that part.

(7) An order under subsection (2) -

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

**Interest.**

8. (1) If cash is detained under section 7 for more than 48 hours (calculated as mentioned in section 7(1)), it is at the first opportunity to be paid into an interest-bearing account and held there, and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of cash detained under section 7 which was seized under section 6(2), the police officer must, on paying it into the account, release the part of the cash to which the suspicion does not relate.

(3) Subsection (1) does not apply if the cash or, as the case may be, the part to which the suspicion relates -

(a) is required as evidence of an offence or evidence in proceedings under this Law, or

(b) is required -

(i) for the purposes of examination (for example, to determine its origin, derivation or use), or

(ii) otherwise for the purposes of a civil forfeiture investigation or the investigation, prevention or detection of crime.

**Release of detained cash.**

9. (1) This section applies while any cash is detained under section 7.

(2) The Bailiff may direct the release of the whole or any part of the cash if the following condition is met.

(3) The condition is that the Bailiff is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 7 for the detention of the cash are no longer met in relation to the cash to be released.

- (4) An order for the release of cash under this section -
  - (a) may be made in chambers,
  - (b) may not be made until notice of the application for it has been given to Her Majesty's Procureur, and
  - (c) may be made subject to such terms and conditions as the Bailiff thinks fit.

(5) A police officer may, with the authority of Her Majesty's Procureur, release the whole or any part of the cash being detained if satisfied that the detention of the cash to be released is no longer justified.

## PART II

### BANK ACCOUNTS

#### **Freezing of bank accounts.**

**10.** (1) Where there are reasonable grounds for suspecting that the funds or any part of the funds in an account maintained at a bank -

- (a) are any person's proceeds of unlawful conduct, or
- (b) are intended by any person for use in unlawful conduct,

and the funds or the part of the funds are not less than the minimum amount, an application may be made to the Bailiff by or with the authority of Her Majesty's Procureur for an order prohibiting the funds or the part of the funds from being transferred or withdrawn from, or otherwise paid out of, the account.

Funds and an account which are the subject of such an order are "**frozen**" for the purposes of this Law.

(2) The maximum period for an order freezing funds under subsection (1) is four months.

(3) The period for which funds are frozen under subsection (1) may be extended by a further order made by the Bailiff, but that further order may not authorise the freezing of the funds -

- (a) beyond the end of a period of four months beginning on the date of that further order,
- (b) in any case, beyond the end of a period of two years beginning on the date of the original order under subsection (1), unless the Bailiff orders otherwise in any particular case in the interests of justice.

(4) On an application by or with the authority of Her Majesty's Procureur for an order under subsection (1) or (3), the Bailiff may make the order if satisfied, in relation to any funds, that either of the following conditions is met.

(5) The first condition is that there are reasonable grounds for suspecting that the funds are any person's proceeds of unlawful conduct and that -

- (a) the making of the order is justified while the origin or derivation of the funds is further investigated or consideration is given to bringing -

- (i) proceedings in the Bailiwick or elsewhere against any person for an offence with which the funds are connected, or
  - (ii) proceedings in connection with the funds under Part III of this Law or under corresponding legislation in force in a country designated under section 53, or
- (b) proceedings described in paragraph (a)(i) or (ii) have been started and have not been concluded.

(6) The second condition is that there are reasonable grounds for suspecting that the funds are intended by any person for use in unlawful conduct and that -

- (a) the making of the order is justified while their intended use is further investigated or consideration is given to bringing -
  - (i) proceedings in the Bailiwick or elsewhere against any person for an offence with which the funds are connected, or
  - (ii) proceedings in connection with the funds under Part III of this Law or under corresponding legislation in force in a country designated under section 53, or
- (b) proceedings described in paragraph (a)(i) or (ii) have

been started and have not been concluded.

(7) An order under subsection (1) or (3) -

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

(8) Any interest accruing to the account in respect of the frozen funds shall also be frozen and is to be added to the funds on their forfeiture or release.

(9) If an amount of funds is frozen in an account then any transfer or withdrawal from, or other payment out of, the account shall be deemed, to the extent that there is an amount of funds in the account in excess of the amount frozen, to have been paid out of that excess amount.

(10) The Bailiff may, on an application made -

- (a) by a person whose account is frozen, or
- (b) by or with the authority of Her Majesty's Procureur,

by order permit any funds which are frozen to be transferred to an interest-bearing account at the same bank and held there.

(11) Where an order is made under subsection (10), this Law applies in relation to -

- (a) the interest-bearing account, and
- (b) the funds in it,

as it applies to the account and funds frozen under subsection (1).

(12) An order under subsection (10) -

- (a) may be made in chambers,
- (b) may not be made until notice of the application for it has been given to Her Majesty's Procureur (where the application is made by the person whose account is frozen) or to that person (where the application is made by Her Majesty's Procureur), and
- (c) may be made subject to such terms and conditions as the Bailiff thinks fit.

**Release of frozen bank accounts.**

11. (1) This section applies while any funds in an account maintained at a bank are frozen under section 10.

(2) The Bailiff may direct the release of the whole or any part of the funds if the following condition is met.

(3) The condition is that the Bailiff is satisfied, on an application by the person whose account was frozen, that the conditions in section 10 for the freezing of the funds are no longer met in relation to the funds to be released.

(4) An order for the release of funds under this section -

- (a) may be made in chambers,
- (b) may not be made until notice of the application for it has been given to Her Majesty's Procureur, and
- (c) may be made subject to such terms and conditions as the Bailiff thinks fit.

(5) A police officer may, with the authority of Her Majesty's Procureur, release the whole or any part of the funds which are frozen if satisfied that the freezing of the funds to be released is no longer justified.

### PART III

#### FORFEITURE AND RELEASE OF MONEY

##### *Interpretation*

##### **Meaning of "money".**

**12.** For the purposes of this Law "**money**" means cash detained under section 7 and funds frozen under section 10.

*Forfeiture*

**Forfeiture.**

**13.** (1) While money is detained under section 7 or frozen under section 10, an application for the forfeiture of the whole or any part of it may be made by Her Majesty's Procureur to the Royal Court sitting as an Ordinary Court ("**the Royal Court**").

(2) The Royal Court may order the forfeiture of the money or any part of the money if satisfied on a balance of probabilities that the money or the part -

- (a) is any person's proceeds of unlawful conduct, or
- (b) is intended by any person for use in unlawful conduct.

(3) Where an application for the forfeiture of any money is made under this section, the money is to be detained or, as the case may be, frozen (and may not, subject to sections 16 and 54, be released under any power conferred by this Law) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

**Appeal against forfeiture.**

**14.** (1) Any party to proceedings for an order for the forfeiture of money under section 13 who is aggrieved by the making of the order or by a decision not to make the order may appeal to the Court of Appeal.

(2) For the avoidance of doubt an appeal under this section is an appeal in a civil matter for the purposes of Part II of the Court of Appeal

(Guernsey) Law, 1961<sup>d</sup>.

The provisions of that Law and any rules under it apply accordingly.

**Application of forfeited money.**

**15.** (1) Money forfeited under this Law and any accrued interest thereon shall, subject to subsection (2), be credited to the General Revenues of the States of Guernsey.

- (2) Money and accrued interest thereon shall not be so credited -
  - (a) before the end of the period within which an appeal under section 14 may be made,
  - (b) if a person appeals under that section, before the appeal is finally disposed of, or
  - (c) if the money and interest is to be paid elsewhere (for example, into any seized asset fund) pursuant to a direction of the Treasury and Resources Department.

*Supplementary*

**Application for release of money by victims and other owners.**

**16.** (1) A person who claims that any money detained under section 7 or frozen under section 10, or any part of it, belongs to him may apply to the Royal Court for the money or part to be released to him.

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

(2) The application may be made in the course of proceedings under section 7, 10 or 13 or at any other time.

(3) If it appears to the Royal Court that -

- (a) the applicant was deprived of the money to which the application relates, or of property which it represents, by unlawful conduct,
- (b) the money or property he was deprived of was not, immediately before he was deprived of it, any person's proceeds of unlawful conduct or intended by any person for use in unlawful conduct, and
- (c) the money belongs to him,

the Royal Court may order the money to which the application relates to be released to the applicant.

(4) If -

- (a) it appears to the Royal Court that -
  - (i) the money to which the application relates belongs to the applicant, but
  - (ii) the applicant is not the person from whom the cash was seized under section 6 or, as the case may be, whose account was frozen under

section 10, and

- (b) the Royal Court -
  - (i) is satisfied that the conditions in section 7 for the detention of the cash or, as the case may be, the conditions in section 10 for the freezing of the account are no longer met, or
  - (ii) if an application for forfeiture has been made under section 13, decides not to make an order under that section in relation to the money, and
- (c) no objection to the making of an order under this subsection has been made by the person from whom the cash was seized or, as the case may be, whose account was frozen,

the Royal Court may order the money to which the application relates to be released to -

- (A) the applicant, or
- (B) the person from whom it was seized or, as the case may be, whose account was frozen.

**Compensation.**

**17.** (1) If no forfeiture order is made in respect of money detained under section 7 or frozen under section 10, then -

- (a) the person to whom the money belongs, or
- (b) the person from whom it was seized or, as the case may be, whose account was frozen,

may make an application to the Royal Court for compensation.

(2) In the case of cash detained under section 7, if, for any period beginning with the first opportunity to place the cash in an interest-bearing account after the initial detention of the cash for 48 hours (calculated as mentioned in section 7(1)), the cash was not held in an interest-bearing account while detained, the Royal Court may, on an application under subsection (1), order an amount of compensation to be paid to the applicant.

(3) The amount of compensation to be paid under subsection (2) is the amount the Royal Court thinks would have been earned in interest in the period in question if the money had been held in an interest-bearing account.

(4) If the Royal Court is satisfied, taking into account (in the case of cash detained under section 7) any interest to be paid under section 8 and any compensation to be paid under subsection (2) -

- (a) that the applicant has suffered loss as a result of the detention or freezing of the money, and
- (b) that the circumstances are exceptional,

the Royal Court may, on an application under subsection (1), order compensation (or additional compensation) to be paid to him.

(5) The amount of compensation to be paid under subsection (4) is the amount the Royal Court thinks reasonable having regard to the loss suffered and any other relevant circumstances.

(6) Any compensation awarded under this section is to be paid by the States of Guernsey.

(7) If a forfeiture order is made in respect of part only of any money detained under section 7 or frozen under section 10, this section has effect in relation to the other part.

## PART IV INVESTIGATIONS

### *Civil forfeiture investigation*

#### **Civil forfeiture investigations.**

**18.** For the purposes of this Law a "**civil forfeiture investigation**" is an investigation being conducted in the Bailiwick or elsewhere into -

- (a) whether any money is any person's proceeds of unlawful conduct or is intended by any person for use in unlawful conduct,
- (b) any person who holds the money or to whom it belongs, or
- (c) the extent or whereabouts of the money,

with a view to proceedings in connection with the money being taken under Part III

of this Law or under corresponding legislation in force in a country designated under section 53.

**Offence of prejudicing investigation.**

**19.** (1) This section applies if a person knows or suspects that Her Majesty's Procurer or a police officer is acting (or proposing to act) in connection with a civil forfeiture investigation which is being or is about to be conducted.

(2) The person commits an offence if -

- (a) he makes a disclosure which is likely to prejudice the investigation, or
- (b) he falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(3) A person does not commit an offence under subsection (2)(a) if -

- (a) he does not know or suspect that the disclosure is likely to prejudice the investigation,
- (b) the disclosure is made in the exercise of a function under this Law or any other enactment relating to unlawful conduct or benefit from unlawful conduct or in compliance with a requirement imposed under or by virtue of this Law, or

- (c) he is a professional legal adviser and the disclosure falls within subsection (4).

(4) A disclosure falls within this subsection if it is a disclosure -

- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
- (b) to any person in connection with legal proceedings or contemplated legal proceedings.

(5) But a disclosure does not fall within subsection (4) if it is made with the intention of furthering a criminal purpose.

(6) A person does not commit an offence under subsection (2)(b) if -

- (a) he does not know or suspect that the documents are relevant to the investigation, or
- (b) he does not intend to conceal any facts disclosed by the documents from Her Majesty's Procureur or any person carrying out the investigation.

(7) A person guilty of an offence under subsection (2) is liable -

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

- (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

*Production orders*

**Production orders.**

**20.** (1) The Bailiff may, on an application made by or with the authority of Her Majesty's Procureur, make a production order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for a production order must state that money specified in the application is subject to a civil forfeiture investigation.

(3) The application must also state that -

- (a) the order is sought for the purposes of the investigation,
- (b) the order is sought in relation to material, or material of a description, specified in the application,
- (c) a person specified in the application appears to be in possession or control of the material.

(4) A production order is an order -

- (a) requiring the person specified in the application for the order as appearing to be in possession or control of material to produce it to Her Majesty's Procureur or a

police officer for him to take away, or

- (b) requiring that person to give Her Majesty's Procurer or a police officer access to the material,

within the period stated in the order.

(5) The period stated in a production order must be a period of 7 days beginning with the day on which the order is made, unless it appears to the Bailiff that a longer or shorter period would be appropriate in the particular circumstances.

(6) A production order -

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

**Requirements for making of production order.**

21. (1) These are the requirements for the making of a production order.

(2) There must be reasonable grounds for suspecting that the money the application for the order specifies as being subject to the civil forfeiture investigation is any person's proceeds of unlawful conduct or is intended by any

person for use in unlawful conduct.

(3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material so specified is in possession or control of it.

(4) There must be reasonable grounds for believing that the material is likely to be of substantial value (whether or not by itself) to the civil forfeiture investigation for the purposes of which the order is sought.

(5) There must be reasonable grounds for believing that it is in the public interest for the material to be produced or for access to it to be given, having regard to -

- (a) the benefit likely to accrue to the investigation if the material is obtained,
- (b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

**Order to grant entry.**

**22.** (1) This section applies if the Bailiff makes a production order requiring a person to give Her Majesty's Procureur or a police officer access to material on any premises.

(2) The Bailiff may, on an application made by or with the authority of Her Majesty's Procureur specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to Her Majesty's Procureur or a police officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material.

(4) An order to grant entry -

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

**Disclosure of information and further provisions.**

23. (1) A production order does not require a person to produce, or give access to -

- (a) items subject to legal professional privilege, or
- (b) excluded material.

"Items subject to legal professional privilege" and "excluded material" are defined in sections 57 and 58.

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

(3) Her Majesty's Procureur, a police officer and any other person named or described in a production order may take copies of any material which is produced, or to which access is given, in compliance with the order.

(4) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the civil forfeiture investigation for the purposes of which the order was made.

(5) Notwithstanding subsection (4), if Her Majesty's Procureur has reasonable grounds for believing that -

- (a) the material may need to be produced for the purposes of any legal proceedings, and
- (b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

#### **Computer information.**

**24.** (1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer.

(2) If the order is an order requiring a person to produce the material so that it can be taken away, it has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible.

(3) If the order is an order requiring a person to give access to

the material, it has effect as an order to give access to the material in a form in which it is visible and legible.

**Departments of the States.**

**25.** (1) A production order may be made in relation to material in the possession or control of a department of the States of Guernsey, States of Alderney or Chief Pleas of Sark.

(2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.

**Offences in relation to production orders, etc.**

**26.** (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed by or under a production order or an order to grant entry.

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

(3) A person commits an offence if in purported compliance with a production order he -

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

(4) A person commits an offence if he obstructs any person acting under the authority of an order to grant entry.

(5) A person guilty of an offence under subsection (3) or (4) is liable -

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

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

**Supplementary.**

**27.** (1) An application to discharge or vary a production order may be made to the Royal Court by -

(a) Her Majesty's Procureur,

(b) any person affected by the order.

(2) The Royal Court, subject to such terms and conditions as it thinks fit -

(a) may discharge the order,

(b) may vary the order.

*Customer information orders*

**Customer information orders.**

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

(2) The application for a customer information order must state that -

(a) money specified in the application is subject to a civil forfeiture investigation, and

(b) a person specified in the application appears to hold all or some of the money or all or some of the money appears to belong to a person so specified.

(3) The application must also state that -

(a) the order is sought for the purposes of the investigation,

(b) the order is sought against the bank specified in the application.

(4) An application for a customer information order may specify -

(a) all banks,

(b) a particular description of banks, or

(b) a particular bank.

(5) A customer information order is an order that a bank covered by the application for the order must, on being required to do so by notice in writing given by or with the authority of Her Majesty's Procureur, provide any such customer information as it has relating to the person specified in the application.

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

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

(8) A customer information order -

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

**Meaning of "customer information".**

29. (1) "Customer information", in relation to a person and a bank, is information as to whether the person holds, or has held, an account or safe

deposit box at the bank (whether solely or jointly with another) and (if so) information as to -

- (a) the matters specified in subsection (2) if the person is an individual,
- (b) the matters specified in subsection (3) if the person is a body corporate.

(2) The matters referred to in subsection (1)(a) are -

- (a) the account number or the number of any safe deposit box,
- (b) the person's full name,
- (c) his date of birth,
- (d) his most recent home and business address and any previous such address,
- (e) in the case of an account, the date on which he began to hold the account and, if he has ceased to hold the account, the date on which he did so,
- (f) in the case of a safe deposit box, the date on which the box was made available to him and, if the box has ceased to be available to him, the date on which it so ceased,

- (g) such evidence of his identity as was obtained by the bank under or for the purposes of any legislation relating to money laundering,
  - (h) the full name, date of birth and most recent home and business address, and any previous such address, of any person -
    - (i) who is or has been a signatory to the account, or
    - (ii) who holds or has held an account at the bank jointly with him, or
  - (i) the account number of any other account held at the bank to which he is a signatory and details of the person holding the other account,
  - (j) the current balance of each account identified, and
  - (k) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order) concerning each of the accounts identified took place.
- (3) The matters referred to in subsection (1)(b) are -
- (a) the account number or the number of any safe deposit box,

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

account,

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

(4) For the purposes of this Law "**money laundering**" means doing any act -

- (a) which constitutes an offence under section 38, 39 or 40 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>e</sup>,
- (b) which constitutes an offence under section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>f</sup>, and in those sections the "purposes of terrorism" include, to the extent that they do not already do so -
  - (i) any attempt, conspiracy or incitement to carry

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

<sup>f</sup> Order on Council No. XVI of 2002.

out terrorism within the meaning of section 1 of that Law, or

- (ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,
- (c) which constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>g</sup>,
- (d) which constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), (b) or (c),
- (e) which constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), (b) or (c), or
- (f) which would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b), (c), (d) or (e) if done in the Bailiwick,

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

- (5) In this Law a "**safe deposit box**" includes any procedure

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<sup>g</sup> Order on Council No. VII of 2000.

under which a bank provides a facility to hold items for safe keeping on behalf of another person.

(6) The Home Department may by regulations made after consultation with the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark provide for information of a class or description specified in the regulations -

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

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

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

- (2) There must be reasonable grounds for suspecting that -
  - (a) the money specified in the application for the order is any person's proceeds of unlawful conduct or is intended by any person for use in unlawful conduct, and
  - (b) the person specified in the application holds all or some of the money or all or some of the money belongs to him.

(3) There must be reasonable grounds for believing that the customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the civil forfeiture

investigation for the purposes of which the order is sought.

(4) There must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the civil forfeiture investigation if the information is obtained.

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

**31.** (1) A bank commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it by or under a customer information order.

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

(3) A bank commits an offence if in purported compliance with a customer information order it -

(a) makes a statement which it knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

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

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

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

**Statements.**

32. (1) A statement made by a bank in response to a customer information order may not, subject to subsection (2), be used in evidence against it in criminal proceedings.

(2) Subsection (1) does not apply -

- (a) on a prosecution for an offence under section 31(1) or (3), or
- (b) on a prosecution for some other offence where, in giving evidence, the bank makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(b) against a bank unless -

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

by or on behalf of the bank in the proceedings arising out of the prosecution.

**Disclosure of information.**

33. A customer information order has effect notwithstanding any

obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such an order.

**Supplementary.**

**34.** (1) An application to discharge or vary a customer information order may be made to the Royal Court by -

- (a) Her Majesty's Procureur,
- (b) any person affected by the order.

(2) The Royal Court may, subject to such terms and conditions as it thinks fit -

- (a) discharge the order,
- (b) vary the order.

*Account monitoring orders*

**Account monitoring orders.**

**35.** (1) The Bailiff may, on an application made by or with the authority of Her Majesty's Procureur, make an account monitoring order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for an account monitoring order must state that -

- (a) money specified in the application is subject to a civil forfeiture investigation, and
- (b) a person specified in the application appears to hold all or some of the money or all or some of the money appears to belong to a person so specified.

(3) The application must also state that -

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

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

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

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

(6) An account monitoring order is an order that the bank specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to Her Majesty's Procureur or a police officer in the manner, and at or by the time, stated in the order.

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

(8) An account monitoring order -

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

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

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

(2) There must be reasonable grounds for suspecting that -

- (a) the money specified in the application for the order is any person's proceeds of unlawful conduct or is intended by any person for use in unlawful conduct, and

- (b) the person specified in the application holds all or some of the money or all or some of the money belongs to him.

(3) There must be reasonable grounds for believing that the account information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the civil forfeiture investigation for the purposes of which the order is sought.

(4) There must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the civil forfeiture investigation if the information is obtained.

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

37. (1) A bank commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it by or under an account monitoring order.

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

(3) A bank commits an offence if in purported compliance with an account monitoring order it -

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

- (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A person guilty of an offence under subsection (3) is liable -
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

**Statements.**

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

- (2) Subsection (1) does not apply -
  - (a) on a prosecution for an offence under section 37(1) or (3), or
  - (b) on a prosecution for some other offence where, in giving evidence, the bank makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(b) against a bank unless -

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

by or on behalf of the bank in the proceedings arising out of the prosecution.

**Disclosure of information.**

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

**Supplementary.**

**40.** (1) An application to discharge or vary an account monitoring order may be made to the Royal Court by -

- (a) Her Majesty's Procureur,
- (b) any person affected by the order.

(2) The Royal Court may, subject to such terms and conditions as it thinks fit -

- (a) discharge the order,
- (b) vary the order.

*Disclosure orders*

**Disclosure orders.**

**41.** (1) The Bailiff may, on an application made by or with the authority of Her Majesty's Procureur, make a disclosure order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for a disclosure order must state that -

- (a) money specified in the application is subject to a civil forfeiture investigation, and
- (b) the order is sought for the purposes of the investigation.

(3) A disclosure order is an order authorising Her Majesty's Procureur or a person authorised by him to give notice in writing to any person whom they consider to have relevant information requiring that person to do, in respect of any matter relevant to the investigation for the purposes of which the order is sought, all or any of the following -

- (a) to answer questions, at or by a time specified in the notice or at once, and at a place so specified,
- (b) to provide information, or information of a class or description, specified in the notice, at or by a time and in a manner so specified,
- (c) to produce documents, or documents of a class or description, specified in the notice, at or by a time so specified or at once, and in a manner so specified.

(4) Relevant information is information (whether or not contained in a document) which Her Majesty's Procureur or a person authorised by him considers to be relevant to the investigation.

(5) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.

(6) A disclosure order -

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

**Requirements for making of disclosure order.**

42. (1) These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that the money specified in the application for the order is any person's proceeds of unlawful conduct or is intended by any person for use in unlawful conduct.

(3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed

under the order is likely to be of substantial value (whether or not by itself) to the civil forfeiture investigation for the purposes of which the order is sought.

(4) There must be reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the civil forfeiture investigation if the information is obtained

**Offences in relation to disclosure orders.**

**43.** (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

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

(3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he -

(a) makes a statement which he knows to be false or misleading in a material particular, or

(b) recklessly makes a statement which is false or misleading in a material particular.

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

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

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

**Statements.**

**44.** (1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not, subject to subsection (2), be used in evidence against him in criminal proceedings.

(2) Subsection (1) does not apply -

- (a) on a prosecution for an offence under section 43(1) or (3), or
- (b) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2)(b) against a person unless -

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

by him or on his behalf in the proceedings arising out of the prosecution.

**Disclosure of information and further provisions.**

**45.** (1) A disclosure order does not confer the right to require a person -

- (a) to answer any privileged question,
- (b) to provide any privileged information, or
- (c) to produce or give access to -
  - (i) items subject to legal professional privilege, or
  - (ii) excluded material,

except that a lawyer may be required to provide the name and address of a client.

(2) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the Royal Court.

(3) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the Royal Court.

(4) "Items subject to legal professional privilege" and "excluded material" are defined in sections 57 and 58.

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

(6) Her Majesty's Procureur, a police officer and any other person named or described in a disclosure order may take copies of any documents which are produced, or to which access is given, in compliance with a requirement imposed under the order.

(7) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the civil forfeiture investigation for the purposes of which the disclosure order was made.

(8) Notwithstanding subsection (7), if Her Majesty's Procureur has reasonable grounds for believing that -

- (a) the documents may need to be produced for the purposes of any legal proceedings, and
- (b) they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

**Supplementary.**

**46.** (1) An application to discharge or vary a disclosure order may be made to the Royal Court by -

- (a) Her Majesty's Procureur,
- (b) any person affected by the order.

(2) The Royal Court may, subject to such terms and conditions as it thinks fit -

- (a) discharge the order,
- (b) vary the order.

*Overseas investigations*

**Overseas investigations.**

47. (1) If Her Majesty's Procureur receives from a country designated under section 53 a request in connection with a civil forfeiture investigation being conducted there with a view to proceedings in connection with money with which the investigation is concerned being taken under Part III of this Law or under corresponding legislation in force in that country, Her Majesty's Procureur may apply for an order under section 20, 28, 35 or 41.

(2) Any information obtained as a result of an order applied for pursuant to subsection (1) may be sent by Her Majesty's Procureur to the person who made the request.

(3) Her Majesty's Procureur may, when disclosing any information to any person pursuant to this section -

- (a) impose such conditions in relation to the use, disclosure, safekeeping and return of the information by that person or by any other person who may obtain the information from him,
- (b) require any such person to enter into such undertakings in relation to such use, disclosure, safekeeping and return, and

- (c) take such other steps to ensure that any confidentiality of the information is protected,

as Her Majesty's Procureur thinks fit.

(4) The provisions of this section are in addition to and not in derogation from the power of Her Majesty's Procureur and any police officer to use and disclose any document, information or material for any other lawful purpose or in any other lawful circumstance.

(5) No obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise is contravened by the sending of information pursuant to subsection (2).

- (6) In this section "**person**" includes any body or authority.

#### *Code of practice*

#### **Code of practice for Part IV.**

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

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

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

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

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

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

## PART V

### ENFORCEMENT OF ORDERS MADE OUTSIDE THE BAILIWICK

#### **Enforcement of overseas forfeiture orders.**

**49.** (1) The Royal Court shall, on the application of Her Majesty's Procureur, register an overseas forfeiture order in the records of the Court.

(2) An overseas forfeiture order is an order of a court exercising civil jurisdiction in a country designated under section 53 for the forfeiture of monies found by that court to be the proceeds of unlawful conduct or intended for use in unlawful conduct, being an order corresponding to an order of the Royal Court for the forfeiture of monies made under Part III of this Law.

(3) Following registration of an overseas forfeiture order under subsection (1) the order has effect and is enforceable in all respects as if it were an order of the Royal Court for the forfeiture of monies made under Part III of this Law.

(4) However, the right of appeal to the Court of Appeal conferred by section 14 against an order for the forfeiture of monies made under Part III of this Law does not apply in respect of -

- (a) an overseas forfeiture order registered under subsection (1), or
- (b) the registration thereof.

(5) Monies forfeited pursuant to an overseas forfeiture order registered under subsection (1) and any accrued interest thereon shall be dealt with in accordance with section 15 (monies to be credited to the General Revenues of the States of Guernsey subject to specified exceptions).

## PART VI GENERAL

### **Constitution and jurisdiction of Royal Court.**

**50.** For the purposes of this Law, the Royal Court -

- (a) has, in relation to functions conferred on it by this Law, jurisdiction throughout the Bailiwick, and
- (b) is constituted by the Bailiff sitting unaccompanied by the Jurats.

### **Functions of Her Majesty's Procureur.**

**51.** (1) Her Majesty's Procureur may, either generally or for the purposes of a particular case or class of cases, arrange for any of his functions under this Law, other than this power of delegation, to be exercised in his name by

a Crown Advocate or other Advocate of the Royal Court; and references in this Law to Her Majesty's Procureur shall be construed accordingly.

(2) A function exercised by a Crown Advocate or other Advocate pursuant to an arrangement under subsection (1) is for all purposes exercised by Her Majesty's Procureur; and every decision taken or other thing done by the Crown Advocate or other Advocate pursuant to the arrangement has the same effect as if taken or done by Her Majesty's Procureur.

(3) An arrangement under subsection (1) for the exercise of a function by a Crown Advocate or other Advocate -

- (a) may be varied or terminated at any time by Her Majesty's Procureur, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the exercise of the function by Her Majesty's Procureur while the arrangement subsists.

(4) Any requirement imposed by or under this Law (however expressed) to provide or produce material to Her Majesty's Procureur, or to give Her Majesty's Procureur access to any material or premises, includes a requirement to provide or produce the material, or to give access to the material or premises, to any person nominated by Her Majesty's Procureur or otherwise acting for him and on his behalf.

In this subsection "**material**" includes documents and information.

(5) References in this Law to a person authorised by Her

Majesty's Procureur are references to a person, or a member of a class or description of persons, authorised by him either generally or for the purposes of a particular case or class of cases.

(6) This section is without prejudice to any other enactment or rule of law.

**Disclosure to the Administrator of Income Tax.**

**52.** (1) Her Majesty's Procureur may disclose to the Administrator of Income Tax any document, information or material obtained or received -

(a) for the purposes of, or in connection with proceedings under, this Law, or

(b) in the course of a civil forfeiture investigation.

(2) The Administrator of Income Tax may use any document, information or material disclosed to him under subsection (1) for the purposes of performing any of his functions.

(3) The provisions of this section are in addition to and not in derogation from the power of Her Majesty's Procureur and any police officer to use and disclose any document, information or material for any other lawful purpose or in any other lawful circumstance.

(4) No obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise is contravened by the making of a disclosure under this section.

**Designated countries.**

**53.** (1) The Home Department may by regulations made after consultation with the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark designate any country for the purposes of this Law if it appears to the Home Department to have legislation or law in force corresponding to the provisions of Part III of this Law relating to the forfeiture in civil proceedings of monies which are the proceeds of unlawful conduct or intended for use in unlawful conduct.

(2) When making a designation under subsection (1) the Home Department may also designate those persons, bodies or authorities in the designated country on whose behalf any action under this Law may be taken.

**Respondent's legal expenses.**

**54.** The Schedule applies to the funding of the legal expenses of respondents and other parties.

**Set-off and security interests, etc, unaffected.**

**55.** (1) For the avoidance of doubt and without limitation -

- (a) rights of set-off and secured interests, including security interests within the meaning of the Security Interests (Guernsey) Law, 1993<sup>h</sup>, and
- (b) rights of enforcement thereof,

are, except when and to the extent that the Royal Court orders otherwise under subsection (2), unaffected by an order freezing funds under section 10 or by

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<sup>h</sup> No. III of 1993.

proceedings for the forfeiture of money under Part III of this Law or under corresponding legislation in force in a country designated under section 53.

(2) The Royal Court may, subject to such terms and conditions as it thinks fit, order otherwise when satisfied -

- (a) that the right or interest was not obtained, given or created in good faith, or
- (b) that for any other reason it would be appropriate to do so in the interests of justice.

**Interpretation.**

**56.** (1) In this Law, unless the context requires otherwise -

**"account information"** : see section 35(4),

**"account monitoring order"** : see section 35,

**"appropriate judicial officer"** means -

- (a) in Alderney, the Chairman of the Court of Alderney or, if he is absent or unable to act, a Jurat of the Court of Alderney authorised by him to act in that capacity on his behalf,
- (b) in Sark, the Seneschal of Sark or, if he is absent or unable to act, his deputy,

**"authorised"** by Her Majesty's Procureur and related expressions :

see section 51(5),

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

**"Bailiwick"** means the Bailiwick of Guernsey,

**"bank"** means a holder of a banking licence granted under the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>i</sup>,

**"body corporate"** means a body of whatever description incorporated or established with or without limited liability in any part of the world, including (without limitation) a company the memorandum and articles of which are registered in the Register of Companies kept under the Companies (Guernsey) Law, 1994 or the Companies (Alderney) Law, 1994,

**"cash"** : see section 3,

**"civil forfeiture investigation"** : see section 18,

**"country"** includes a territory,

**"customer information "** : see section 29,

**"customer information order"** : see section 28,

**"department"** of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any department, council, committee, board or like body

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<sup>i</sup> Order in Council No. XIII of 1994.

thereof,

**"disclosure order"** : see section 41,

**"document"** includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form -

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

**"electronic form"**, in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology,

**"excluded material"** : see section 58,

**"financial instrument"** means -

- (a) securities within the meaning of the Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005<sup>j</sup>,
- (b) any instrument to which section 5 of the Forgery and

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<sup>j</sup> Order in Council No. VI of 2006.

Counterfeiting (Bailiwick of Guernsey) Law, 2006 applies,

**"financial services business"** means a person or body specified in Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>k</sup>,

**"frozen"** and related expressions, in relation to an account or funds in an account : see section 10(1),

**"funds"** means any credit balance on an account held at a bank and includes any investment or other asset held or managed by or on behalf of the bank and representing any such credit balance,

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller, and see section 51,

**"Home Department"** means the States Home Department,

**"items subject to legal professional privilege"** : see section 57,

**"journalistic material"** : see section 58,

**"legislation"**, in the expression "corresponding legislation in force in a country designated under section 53", includes law of any description,

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<sup>k</sup> Order in Council No. VIII of 1999; Schedule 1 was substituted by Guernsey Statutory Instrument No. 27 of 2002 and renumbered by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007.

**"minimum amount"** : see section 60,

**"money"** : see section 12,

**"money laundering"** : see section 29(4),

**"order to grant entry"** : see section 22,

**"overseas forfeiture order"** : see section 49(1),

**"personal records"** : see section 58,

**"premises"** includes any place and also includes -

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

**"police officer"** means a member of the salaried police force of the Island of Guernsey and an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>1</sup>, and also -

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

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<sup>1</sup> Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

(b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed pursuant to section 47 of the Government of Alderney Law, 2004<sup>m</sup>, and

(c) in relation to Sark, the Constable and the Vingtenier,

**"proceeds of unlawful conduct"** : see section 59,

**"production order"** : see section 20,

**"regulatory Laws"** means -

(a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>n</sup>,

(b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>o</sup>,

(c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000<sup>p</sup>,

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<sup>m</sup> Order in Council No. III of 2005.

<sup>n</sup> Ordres en Conseil Vol. XXX, p. 281.

<sup>o</sup> Order in Council No. XIII of 1994.

<sup>p</sup> Order in Council No. I of 2001.

(d) the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>q</sup>, and

(e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>r</sup>,

"**relevant business**" means a person or body specified in Schedule 2 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>s</sup>,

"**Royal Court**" means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 50,

"**safe deposit box**" : see section 29(5),

"**security**" means any mortgage, charge, hypothèque, lien or other security, and "**secured interest**" shall be read accordingly,

"**senior police officer**" means -

(a) in relation to -

(i) a member of the salaried police force, or the special constabulary, of the Island of Guernsey,

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<sup>q</sup> Order in Council No. XXI of 2002.

<sup>r</sup> Order in Council No. XXII of 2002.

<sup>s</sup> Order in Council No. VIII of 1999; Schedule 2 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007.

and

- (ii) a special constable appointed pursuant to section 47 of the Government of Alderney Law, 2004,

a member of the salaried police force of the Island of Guernsey of at least the rank of Inspector, and

- (b) in relation to an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>t</sup>, an officer of at least the grade of Senior Investigation Officer,

"**States**" means the States of Guernsey,

"**uniform scale**" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>u</sup>,

"**unlawful conduct**" : see section 61.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

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<sup>t</sup> Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

<sup>u</sup> Ordres en Conseil Vol. XXXI, p. 278.

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

**"Items subject to legal professional privilege".**

**57. (1)** Subject to subsection (2), **"items subject to legal professional privilege"** means -

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

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

proceedings,

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

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

**"Excluded material".**

**58.** (1) Subject to subsections (2) and (3), "**excluded material**" means -

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence,
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence, and
- (c) journalistic material which a person holds in confidence and which consists of -
  - (i) documents, or
  - (ii) records other than documents.

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

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

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

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

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

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

- (i) by reason of his office or occupation has responsibilities for his personal welfare, or
- (ii) by reason of an order of a court has responsibilities for his supervision.

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

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

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

**"Proceeds of unlawful conduct".**

**59.** References in this Law to money or other property which is the proceeds of unlawful conduct include references to money or other property which, in whole or in part, directly or indirectly represents the proceeds of unlawful conduct.

**"Minimum amount".**

**60.** (1) In this Law the "**minimum amount**" means £1,000 or such other amount in sterling as may be specified by regulations of the Home Department made after consultation with the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark.

(2) For that purpose the amount of any money held in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

**"Unlawful conduct".**

**61.** (1) Conduct which occurs in any place in the Bailiwick is "**unlawful conduct**" if it is unlawful under the criminal law of that place.

(2) Conduct which -

- (a) occurs in a country outside the Bailiwick and is unlawful under the criminal law of that country, and
- (b) if it occurred in any place in the Bailiwick, would be unlawful under the criminal law of that place,

is also unlawful conduct.

(3) The Royal Court must decide on a balance of probabilities whether it is proved -

- (a) that any matters alleged to constitute unlawful conduct have occurred,
- (b) that any money is any person's proceeds of unlawful conduct, or
- (c) that any person intended to use any money in unlawful conduct.

**Rules of Court.**

- 62.** (1) The Royal Court sitting as a Full Court may make rules -
- (a) in respect of the practice and procedure to be followed in connection with proceedings relating to -
    - (i) production orders and orders to grant entry,
    - (ii) customer information orders,
    - (iii) account monitoring orders,
    - (iv) disclosure orders,
  - (b) without prejudice to paragraph (a), generally in respect of -
    - (i) applications to the Bailiff and Royal Court and appeals to the Court of Appeal under this Law, and
    - (ii) practice and procedure under this Law before the Bailiff, Royal Court and Court of Appeal,
  - (c) in respect of evidence including, without limitation, rules as to the admission of evidence and evidential presumptions,
  - (d) in respect of the giving of notice of applications or

appeals to persons affected, and

(e) in respect of the joinder of such persons as parties.

(2) Subsection (1) is without prejudice to any other power to make rules.

**Amendment by Ordinance and extension by regulation.**

**63.** (1) The States may by Ordinance amend this Law.

(2) Without prejudice to subsection (1), the Home Department may, by regulation made after consultation with the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark -

(a) extend the application of this Law to any description of financial instrument, and

(b) amend the expression "bank" so as to include -

(i) any other class or description of person or body licensed by the Guernsey Financial Services Commission under the regulatory Laws, and

(b) any other class or description of financial services business or relevant business.

(3) Subsections (1) and (2) are without prejudice to any other provision of this Law conferring power to enact Ordinances, orders, regulations or

rules (and vice versa).

(4) An Ordinance under this section does not have effect unless approved by the States of Alderney and the Chief Pleas of Sark.

(5) For the purposes of subsection (4), an Ordinance shall be deemed to have been approved by the States of Alderney or the Chief Pleas of Sark at the expiration of a period of four months immediately following the day of its approval by the States of Deliberation unless, within that period -

- (a) the States of Alderney resolve to disapprove its application to Alderney or, as the case may be,
- (b) the Chief Pleas of Sark resolve to disapprove its application to Sark.

**General provisions as to subordinate legislation.**

**64.** (1) An Ordinance, order, regulation or rule under this Law -

- (a) may be amended or repealed by a subsequent Ordinance, order, regulation or rule, as the case may be, hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient including, without limitation -
  - (i) in the case of an Ordinance, and

- (ii) in the case of an order under the Schedule and a regulation,

provisions repealing, amending or modifying any enactment (whether passed before or after the commencement of this Law).

(2) Any power conferred by this Law to make any Ordinance, order, regulation or rule may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

**Savings for powers of search under other enactments.**

65. The provisions of this Law conferring powers of search and seizure on police officers are in addition to and not in derogation from any such powers conferred on them by or under any other enactment.

**Repeal of Part III of Drug Trafficking Law.**

66. Part III of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>w</sup> is repealed.

**Citation.**

67. This Law may be cited as the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007.

**Commencement.**

68. This Law shall come into force on the day appointed by Ordinance; and different days may be appointed for different provisions and different purposes.

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<sup>w</sup> Order in Council No. VII of 2000.

## SCHEDULE

Section 54

### LEGAL EXPENSES OF RESPONDENTS, ETC

1. A party to proceedings under section 9 or 11 (release of detained cash or frozen bank accounts) or Part III (forfeiture and release of money) may apply to the Royal Court for the expenses of his legal representation to be met out of monies -

- (a) which are detained or frozen under section 7 or 10, and
- (b) which belong to him or which he would otherwise be entitled to use for that purpose (were the monies not detained or frozen).

2. The Royal Court, if satisfied that the party is unable to pay for legal representation, may, subject to the provisions of and under this Schedule, and subject to such terms and conditions as it thinks fit, direct that an order made under section 7 or 10 be varied to allow for the payment of reasonable legal expenses which have been or may be reasonably incurred by him for the purposes of the proceedings.

3. The Royal Court may (without prejudice to the generality of its power to impose terms and conditions under paragraph 2) -

- (a) specify the total amount that may be released for the payment of legal expenses for the purposes of the proceedings or any particular stage in the proceedings,

- (b) restrict who may receive sums so released (for example, by requiring released sums to be paid to Advocates),
- (c) restrict the amount of any sum released in respect of any particular item of expenditure or any particular stage in the proceedings,
- (d) provide for a sum to be released in respect of any particular item of expenditure or any particular stage in the proceedings only if the Court (or a person nominated by it) has assessed the item or the stage and approved the amount,
- (e) limit the amounts that may be released by reference to the amounts that would be payable in respect of the services of an Advocate under the provisions of the Legal Aid (Bailiwick of Guernsey) Law, 2003<sup>x</sup> or any Ordinance or Scheme thereunder.

4. The Royal Court, in deciding whether to release any amount for the payment of legal expenses under this Schedule -

- (a) must have regard (in particular) to the desirability of the party being legally represented in the proceedings in question, and

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<sup>x</sup> No. VI of 2004.

- (b) must, where the party is the respondent, disregard the possibility that his legal representation might, were the amount not so released, be funded under the provisions of the Legal Aid (Bailiwick of Guernsey) Law, 2003 or any Ordinance or Scheme thereunder.

**5.** The Royal Court may by Order -

- (a) make provision for the purpose of carrying this Schedule into effect, and
- (b) amend this Schedule.