

ORDER IN COUNCIL

XV
2007

ratifying a Projet de Loi

ENTITLED

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

(Registered on the Records of the Island of Guernsey
on the 3rd December, 2007.)



2007

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

3rd day of December, 2007 before Richard John Collas, Esquire, Deputy Bailiff; present:- Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, Barbara Jean Bartie, and John Ferguson Esquire, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 14th day of November, 2007 approving and ratifying a Projet de Loi of the States of Guernsey entitled "The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007",

THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ORDERED:-

1. That the said Order in Council be registered on the records of this Island and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively.



At the Court at Buckingham Palace

THE 14th DAY OF NOVEMBER 2007

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolutions of 31st May 2002, 27th July 2006 and 30th May 2007, the States of Deliberation at a meeting on 27th June 2007 approved a *Projet de Loi* entitled *The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law 2007* and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction *The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law 2007*, and to order that it shall have force of law in the Bailiwick of Guernsey.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it,

together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

Judith Simpson

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 31st May, 2002^a, the 27th July, 2006^b and the 30th May, 2007^c, 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^d ("**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)".

^a Article VI of Billet d'État No. IX of 2002.

^b Article XXIII of Billet d'État No. XIII of 2006.

^c Article XVIII of Billet d'État No. XIV of 2007.

^d 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^e (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

^e 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^f, 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,

^f 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^g,
- (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.

^g 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^h, and in those sections the "purposes of terrorism" include, to the extent that they do not already do so -

^h 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, 2000ⁱ,
- (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

ⁱ 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^j.

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)),

^j 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^k insert "or Home Department".

28. (1) The Schedule to the Law^l 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.

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

^l 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^m or any Ordinance made under it,

^m 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, 2001ⁿ,
- (c) the Gambling (Alderney) Law, 1999^o or any Ordinance made under it, or
- (d) the Gambling (Sark) Law, 2002^p,

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,

ⁿ Order in Council No. XI of 2002.

^o Order in Council No. XIV of 1999; No. XXVII of 2001.

^p 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.