

PROJET DE LOI

ENTITLED

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

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The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999

THE STATES, in pursuance of their Resolution of the 1st day of August, 1997^a, 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

CONFISCATION ORDERS, RESTRAINT ORDERS & CHARGING ORDERS

Meaning of "criminal conduct".

1. (1) In this Law "**criminal conduct**" means any conduct, other than drug trafficking-

- (a) which constitutes a criminal offence under the laws of the Bailiwick which may be tried on indictment; or
- (b) which would constitute such an offence if it were to take place in the Bailiwick.

(2) In subsection (1) "**drug trafficking**" means any conduct covered by the definition of "drug trafficking" or "drug trafficking offence" in the Drug

^a Article XXII of Billet d'État No. XVI of 1997.

Trafficking Offences (Bailiwick of Guernsey) Law, 1988 and the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992^b.

Confiscation orders

Confiscation orders.

2. (1) Where a defendant appears before the Royal Court ("**the Court**") to be sentenced in respect of one or more offences committed after the commencement of this Law (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned), then, if Her Majesty's Procureur in writing asks the Court to proceed under this section, it shall act as follows.

(2) The Court shall firstly determine whether the defendant has benefited from criminal conduct.

(3) For the purposes of this Law, a person has benefited from criminal conduct if he has (whether before or after the commencement of this Law) obtained property as a result of or in connection with his or any other person's criminal conduct; 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.

(4) Subject to subsection (6), if the Court determines that the defendant has so benefited, it shall, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with section 5 the amount to be recovered in his case by virtue of this section.

^b Ordres en Conseil Vol. XXXI, p. 109; and Order in Council No. V of 1992.

- (5) The Court shall then, in respect of the offence or offences concerned-
- (a) order the defendant to pay that amount;
 - (b) take account of the order before-
 - (i) imposing any fine on him;
 - (ii) making any order involving any payment by him, other than an order under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990^c (compensation orders);
 - (iii) making an order under section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^d (forfeiture orders);
 - (c) subject to paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(6) If, in a case falling within subsection (4), the Court is satisfied that a victim of any relevant criminal conduct has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct-

- (a) the Court shall have a power, instead of a duty, to make an order under this section;

^c Ordres en Conseil Vol. XXXII, p. 77.

^d Ordres en Conseil Vol. XXIV, p. 273.

- (b) section 5 shall not apply for determining the amount to be recovered in that case by virtue of this section; and
- (c) where the Court makes an order in exercise of that power, the sum required to be paid under that order shall be of such an amount, not exceeding the amount that would (but for paragraph (b)) apply by virtue of section 5, as the Court thinks fit.

(7) No enactment restricting the power of the Court dealing with an offender in a particular way from dealing with him also in any other way shall, by reason only of the making of an order under this section, restrict the Court from dealing with an offender in any way the Court considers appropriate in respect of an offence.

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

- (a) whether a person has benefited from criminal conduct; or
- (b) the amount to be recovered in his case by virtue of this section;

shall be that applicable in civil proceedings.

(9) Where-

- (a) the Court makes both a confiscation order and an order for the payment of compensation under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990

against the same person in the same proceedings; and

- (b) it appears to the Court that he will not have sufficient means to satisfy both the orders in full;

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

(10) In this Law "**confiscation order**" means an order under this section and includes such an order made by virtue of section 13, 14 or 19.

Postponed determinations.

3. (1) Where the Court is acting under section 2 but considers that it requires further information before-

- (a) determining whether the defendant has benefited from criminal conduct; or
- (b) determining the amount to be recovered in his case by virtue of that section;

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

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

(3) Unless it is satisfied that there are exceptional circumstances, the Court shall not specify a period under subsection (1) which-

- (a) by itself; or
- (b) where there have been one or more previous postponements under subsection (1) or (4), when taken together with the earlier specified period or periods;

exceeds six months beginning with the date of conviction.

(4) Where the defendant appeals against the conviction, the Court may, on that account-

- (a) postpone making either or both of the determinations mentioned in subsection (1) for such period as it may specify; or
- (b) where it has already exercised its powers under this section to postpone, extend the specified period.

(5) A postponement or extension under subsection (1) or (4) may be made-

- (a) on application by the defendant or Her Majesty's Procureur; or
- (b) by the Court of its own motion.

(6) Unless the Court is satisfied that there are exceptional circumstances, any postponement or extension under subsection (4) shall not exceed the period ending three months after the date on which the appeal is determined or otherwise disposed of.

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

(8) Where the Court has so proceeded, section 2 shall have effect as if-

- (a) in subsection (4), the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted; and
- (b) in subsection (5)(c), after the word "determining", there were inserted "in relation to any offence in respect of which he has not been sentenced or otherwise dealt with".

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

- (a) impose any fine on him; or
- (b) make any such order as is mentioned in section 2(5)(b)(ii) or (iii).

(10) Where the Court has sentenced the defendant under subsection (7) during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making an order as mentioned in section 2 (5)(b)(ii) or (iii).

(11) In this section-

"the date of conviction" means-

- (a) the date on which the defendant was convicted; or
- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions; and

"the relevant offence" means the offence in respect of which the defendant appears (as mentioned in section 2(1)) before the Court.

Assessing the proceeds of criminal conduct.

4. (1) For the purposes of this Law-

- (a) any property obtained by a person at any time (whether before or after the commencement of this Law) as a result of or in connection with criminal conduct carried on by him or another person are his proceeds of criminal conduct; and
- (b) the value of his proceeds of criminal conduct is the aggregate of the values of the property.

(2) Subject to subsections (4) and (5), the Court shall for the purpose-

- (a) of determining whether the defendant has benefited from criminal conduct; and
- (b) if he has, of assessing the value of his proceeds of criminal conduct;

make the required assumptions.

(3) The required assumptions are-

- (a) that any property appearing to the Court-
 - (i) to have been held by the defendant at any time since his conviction; or
 - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him;

was received by him, at the earliest time at which he appears to the Court to have held it, as a result of or in connection with criminal conduct carried on by him;

- (b) that any expenditure of his since the beginning of that period was met out of payments received by him as a result of or in connection with criminal conduct carried on by him; and
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as a result of or in connection with criminal conduct, he received the property free of any other interest in it.

(4) The Court shall not make any required assumption in relation to any particular property or expenditure if-

- (a) that assumption is shown to be incorrect in the defendant's case; or
- (b) the Court is satisfied that there would be a serious risk of injustice in the defendant's case if the assumption were to be

made;

and, where by virtue of this subsection the Court does not make one or more of the required assumptions, it shall state its reasons.

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

Amount to be recovered under a confiscation order.

5. (1) Subject to section 2(6)(b) and to subsection (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Court assesses to be the value of the defendant's proceeds of criminal conduct.

(2) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by reason of the acceptance of an allegation made in a statement given under section 11 or made in the giving of information under section 12, or otherwise) the Court may issue a certificate giving the Court's opinions as to the matters concerned, and shall do so if satisfied as mentioned in subsection (3).

(3) If the Court is satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of his proceeds of criminal conduct, the amount to be recovered in the defendant's case under the confiscation order shall be-

- (a) the amount appearing to the Court to be the amount that might be so realised; or

- (b) a nominal amount, where it appears to the Court (on the information available to it at the time) that the amount that might be so realised is nil.

Meaning of "amount that might be realised" and "realisable property".

6. (1) For the purposes of this Law the amount that might be realised at the time the confiscation order is made against the defendant is-

- (a) the total of the values at that time of all the realisable property held by the defendant; less
- (b) where there are obligations having priority at that time, the total amount payable in pursuance of such obligations;

together with the total of the values at that time of all gifts caught by this Law.

(2) In this Law "**realisable property**" means, subject to subsection (3)-

- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law.

(3) Property is not realisable property if there is in force in respect of it an order under any of the following enactments, namely-

- (a) section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^e,

^e Ordres en Conseil Vol. XXIV, p. 273.

- (b) section 11(2), (3) or (4) of the Prevention of Terrorism (Bailiwick of Guernsey) Law, 1990^f.

(4) For the purposes of subsection (1), an obligation has priority at any time if it is an obligation of the defendant-

- (a) to pay an amount due in respect of a fine, or any other order of a court, imposed or made on conviction of an offence, where the fine was imposed or the order was made before the confiscation order; or
- (b) to pay any sum which, if the defendant's affairs had been declared to be in a state of désastre, would be included among the preferred debts (within the meaning of section 1 of the Preferred Debts (Guernsey) Law, 1983^g; and for the purposes of the said section 1 the relevant date shall be the date of the confiscation order.

Value of property.

7. (1) Subject to the following provisions of this section and to section 8, for the purposes of this Law the value of property (other than cash) in relation to any person holding the property is the market value of the property, except that, where any other person holds an interest in the property, the value is-

- (a) the market value of the first mentioned person's beneficial interest in the property; less

^f Ordres en Conseil Vol. XXXII, p. 236.

^g Ordres en Conseil Vol. XXVIII, p. 184; No. VII of 1992; No. III of 1993 and No. IX of 1998.

- (b) the amount required to discharge any encumbrance (other than a charging order) on that interest.

(2) Subject to section 8(2), references in this Law to the value at any time (referred to in subsection (3) as "**the material time**") of a gift caught by this Law or of any property obtained by a person as a result of or in connection with criminal conduct are references to-

- (a) the value of the gift or property to the recipient when he received or obtained it, adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (3) applies, the value therein mentioned;

whichever is the greater.

(3) Subject to section 8(2), if at the material time the recipient holds-

- (a) the property which he received or obtained (not being cash);
or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received or obtained;

the value referred to in subsection (2)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received or obtained, but disregarding in either case any charging order made under this Law.

Gifts caught by this Law.

8. (1) A gift (including a gift made before the commencement of this Law) is caught by this Law if-

- (a) it was made by the defendant at any time since the beginning of the period of six years ending when the proceedings were instituted against him; or
- (b) it was made by the defendant at any time and was a gift of property-
 - (i) received by the defendant in connection with criminal conduct carried on by him or another person; or
 - (ii) which in whole or in part directly or indirectly represented in the defendant's hands property received by him in that connection.

(2) For the purposes of this Law-

- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, the provisions of subsection (1) and of section 7 shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred

to in paragraph (a) bears to the value of the consideration provided by the defendant.

Procedure for enforcing confiscation orders.

9. (1) Subject to subsections (2) and (3), where the Court orders the defendant to pay any amount under section 2, the Court may, if it thinks fit, order the defendant to be imprisoned in default of payment of the amount.

(2) When exercising its powers under subsection (1) the Court may in respect of a confiscation order of an amount in Column 1 below impose a term of imprisonment not exceeding the maximum period set out opposite that amount in Column 2-

Column 1	Column 2
AMOUNT OF CONFISCATION ORDER	MAXIMUM PERIOD
An amount not exceeding £200	7 days
An amount exceeding £200 but not exceeding £500	14 days
An amount exceeding £500 but not exceeding £1,000	28 days
An amount exceeding £1,000 but not exceeding £2,500	45 days
An amount exceeding £2,500 but not exceeding £5,000	3 months
An amount exceeding £5,000 but not exceeding	

Order in Council No. VIII of 1999

£10,000	6 months
An amount exceeding £10,000 but not exceeding £20,000	12 months
An amount exceeding £20,000 but not exceeding £50,000	18 months
An amount exceeding £50,000 but not exceeding £100,000	2 years
An amount exceeding £100,000 but not exceeding £250,000	3 years
An amount exceeding £250,000 but not exceeding £1 million	5 years
An amount exceeding £1 million	10 years;

and the States may by Ordinance amend the amounts and periods set out in the above table.

(3) The Court may, in its discretion, defer such imprisonment on such terms as it thinks fit.

(4) Where an order of imprisonment is made under this section, it shall cease to have effect on payment of the full amount ordered to be paid under section 2.

(5) Where an order of imprisonment is made under this section and payment is made of part of the amount ordered under section 2, the term of imprisonment to be served as a result of the order under this section shall be reduced

in proportion to the amount paid.

(6) A term of imprisonment imposed under this section in default of payment shall be served consecutively to any term of imprisonment which the defendant may be liable to serve in respect of any offence or offences.

(7) The reference in subsection (6) to any term of imprisonment which the defendant is liable to serve in respect of any offence or offences is a reference to the term of imprisonment or youth detention (as the case may be) which he is liable to serve in respect of the offence or offences; and for the purposes of this subsection-

- (a) consecutive terms and terms which are wholly or partly concurrent are treated as a single term; and
- (b) the Court shall disregard any sentence which is suspended under section 1 of the Criminal Justice (Power to Suspend Sentence) (Bailiwick of Guernsey) Law, 1972^h and which has not been activated at the time when a term of imprisonment is imposed under this section.

(8) Where the defendant serves a term of imprisonment imposed under this section without satisfying the amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

(9) This section applies in relation to confiscation orders made by the Criminal Division of the Court of Appeal in the same way as it applies to such orders made by the Court, and references in this section to the Court shall be construed

^h Ordres en Conseil Vol. XXIII, p. 344.

accordingly.

Interest on sums unpaid under confiscation orders.

10. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person shall be liable to pay interest on that sum for the period in which it remains unpaid; and the amount of interest shall for the purposes of enforcement be treated as part of the amount to be recovered under the confiscation order.

(2) The Court may, on the application of Her Majesty's Procureur, increase the term of imprisonment fixed in respect of the confiscation order under section 9(1) where subsection (1) applies and interest has accrued.

(3) The rate of interest under subsection (1) is that for the time being applying to a judgment debt under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985ⁱ.

Statements relating to criminal conduct.

11. (1) Where Her Majesty's Procureur asks the Court to proceed under section 2, he shall give the Court, within such period as it may direct, a statement of matters which he considers relevant in connection with-

- (a) determining whether the defendant has benefited from criminal conduct; or
- (b) assessing the value of his proceeds of criminal conduct.

(2) In this section such a statement is referred to as a "**prosecutor's**

ⁱ Ordres en Conseil Vol. XXIX, p. 133; amended by Order of the Royal Court No. I of 1996.

statement''.

(3) Where Her Majesty's Procureur has given a prosecutor's statement-

(a) he may at any time give the Court a further such statement;
and

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

(4) Where any prosecutor's statement has been given and the Court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant-

(a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and

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

(5) Where the Court has given a direction or made a requirement under this section it may at any time vary it by giving or making a further direction or requirement.

(6) Where the defendant accepts to any extent any allegation in any prosecutor's statement, the Court may, for the purposes of-

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

(b) assessing the value of his proceeds of criminal conduct;

treat his acceptance as conclusive of the matters to which it relates.

(7) If the defendant fails in any respect to comply with a requirement under subsection (4) he may be treated for the purposes of this section as accepting every allegation in the prosecutor's statement in question apart from-

- (a) any allegation in respect of which he has complied with the requirement; and
- (b) any allegation that he has benefited from criminal conduct or that any property was received or obtained by him as a result of or in connection with criminal conduct carried on by him or another person.

(8) Where-

- (a) there is given to the Court by the defendant a statement as to matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
- (b) Her Majesty's Procurer accepts to any extent any allegation in the statement;

the Court may, for the purposes of that determination, treat the acceptance by Her Majesty's Procurer as conclusive of the matters to which it relates.

(9) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this section in such manner as the Court may direct.

(10) No acceptance by the defendant under this section that any property

was received or obtained by him as a result of or in connection with criminal conduct carried on by him or another person shall be admissible in evidence in any proceedings for an offence.

Provision of information by defendant.

12. (1) This section applies where Her Majesty's Procureur has asked the Court to proceed under section 2.

(2) For the purpose of obtaining information to assist it in carrying out its functions, the Court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under subsection (2) may require all, or any specified part, of the required information to be given to the Court in such manner, and for such date, as may be specified in the order.

(4) If the defendant fails without reasonable excuse (proof whereof shall lie on him) to comply with any order under this section, the Court may draw such inference from that failure as it considers appropriate.

(5) Where Her Majesty's Procureur accepts to any extent any allegation made by the defendant in giving to the Court information required by an order under this section, the Court may treat that acceptance as conclusive of the matters to which it relates.

(6) For the purposes of this section, an allegation may be accepted in such manner as the Court may direct.

Further proceedings in connection with confiscation orders

Reconsideration of case where Court has not proceeded under section 2.

13. (1) This section applies where the defendant has appeared before the Court to be sentenced in respect of one or more offences but the Court has not proceeded under section 2.

(2) If Her Majesty's Procureur has evidence-

(a) which was not available to him when the defendant appeared to be sentenced (and accordingly it was not considered by the Court), but

(b) which Her Majesty's Procureur believes would have led the Court to determine that the defendant had benefited from criminal conduct if-

(i) Her Majesty's Procureur had asked the Court to proceed under section 2; and

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

he may apply to the Court for it to consider the evidence.

(3) The Court shall proceed under section 2 if, having considered the evidence, it is satisfied that it is appropriate to do so.

(4) In considering whether it is appropriate to proceed under section 2, the Court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under section 2, the Court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

(6) In considering the circumstances of any case the Court shall have regard, in particular, to the amount of any fine or fines imposed on the defendant in respect of the offence or offences in question.

(7) Where the Court is proceeding under section 2 by virtue of this section, subsection (4) of that section shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted.

(8) The Court may take into account any property received or obtained by the defendant on or after the date of conviction, but only if Her Majesty's Procureur shows that it was received or obtained by the defendant as a result of or in connection with criminal conduct carried on by the defendant or another person on or before that date.

(9) In considering under this section any evidence which relates to any property to which subsection (8) applies, the Court shall not make the assumptions which would otherwise be required by section 4.

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

(11) Sections 11 and 12 shall apply where Her Majesty's Procureur makes an application under this section as they apply where Her Majesty's Procureur asks the Court to proceed under section 2.

(12) In this section "**the date of conviction**" means-

(a) the date on which the defendant was convicted; or

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

Re-assessment of whether defendant has benefited from criminal conduct.

14. (1) This section applies where the Court has made a determination under section 2(2) ("**the section 2(2) determination**") that the defendant has not benefited from criminal conduct.

(2) If Her Majesty's Procureur has evidence-

- (a) which was not considered by the Court in making the section 2(2) determination; but
- (b) which Her Majesty's Procureur believes would have led the Court to determine that the defendant had benefited from criminal conduct if it had been considered by the Court;

he may apply to the Court for it to consider that evidence.

(3) If, having considered the evidence, the Court is satisfied that it would have determined that the defendant had benefited from criminal conduct if that evidence had been available to it, the Court-

- (a) shall make-
 - (i) a fresh determination under section 2(2); and
 - (ii) a determination under section 2(4) of the amount to be recovered by virtue of section 2; and

(b) may make a confiscation order.

(4) Where the Court is proceeding under section 2 by virtue of this section, section 2(4) shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted.

(5) The Court may take into account any property received or obtained by the defendant on or after the date of the section 2(2) determination, but only if Her Majesty's Procurer shows that it was received or obtained by the defendant as a result of or in connection with criminal conduct carried on by the defendant or another person on or before that date.

(6) In considering under this section any evidence which relates to any property to which subsection (5) applies, the Court shall not make the assumptions which would otherwise be required by section 4.

(7) No application shall be entertained by the Court under this section if it is made after the end of the period of 6 years beginning with the date of conviction; and in this subsection "**the date of conviction**" has the same meaning as in section 13.

(8) Sections 11 and 12 shall apply where Her Majesty's Procurer makes an application under this section as they apply where Her Majesty's Procurer asks the Court to proceed under section 2.

Revised assessment of the proceeds of criminal conduct.

15. (1) This section applies where the Court has made a determination under section 2(4) of the amount to be recovered in a particular case by virtue of that section ("**the current section 2(4) determination**").

(2) Where Her Majesty's Procureur is of the opinion that the real value of the defendant's proceeds of criminal conduct was greater than their assessed value, he may apply to the Court for the evidence on which he has formed his opinion to be considered by the Court.

(3) Sections 11 and 12 shall apply where Her Majesty's Procureur makes such an application as they apply where he asks the Court to proceed under section 2, but subject (in the case of section 11) to subsection (9)(a).

(4) If, having considered the evidence, the Court is satisfied that the real value of the defendant's proceeds of criminal conduct is greater than their assessed value (whether because the real value at the time of the current section 2(4) determination was higher than was thought or because the value of the proceeds in question has subsequently increased), the Court shall make a fresh determination under section 2(4) of the amount to be recovered by virtue of that section.

(5) In subsections (2) and (4)-

"**assessed value**" means the value of the defendant's proceeds of criminal conduct as assessed by the Court in accordance with section 5(1), and

"**real value**" means the value of the defendant's proceeds of criminal conduct which took place-

- (a) in the period by reference to which the current section 2(4) determination was made; or
- (b) in any earlier period.

(6) Where the Court is proceeding under section 2 by virtue of this section, section 2(4) shall have effect as if the words "before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned," were omitted.

(7) Any determination under section 2(4) by virtue of this section shall be by reference to the amount that might be realized at the time when the determination is made.

(8) In the case of any determination under section 2(4) by virtue of this section, section 4(5) shall not apply in relation to any of the defendant's proceeds of criminal conduct taken into account in respect of the current section 2(4) determination.

(9) In relation to any such determination by virtue of this section-

- (a) sections 5(2), 6(4) and 11(8)(a) shall have effect as if for "confiscation order" there were substituted "determination";
- (b) section 5(3) shall have effect as if for "confiscation order is made" there were substituted "determination is made"; and
- (c) section 6(1) shall have effect as if for "the confiscation order is made against the defendant" there were substituted "of the determination".

(10) The Court may take into account any property received or obtained by the defendant on or after the date of the current section 2(4) determination, but only if Her Majesty's Procureur shows that it was received or obtained by the defendant as a result of or in connection with criminal conduct carried on by the defendant or any person on or before that date.

(11) In considering under this section any evidence which relates to any property to which subsection (10) applies, the Court shall not make the assumptions which would otherwise be required by section 4.

(12) If, as a result of making the fresh determination required by subsection (4), the amount to be recovered exceeds the amount set by the current section 2(4) determination, the Court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current section 2(4) determination such greater amount as it thinks just in all the circumstances of the case.

(13) Where the Court varies a confiscation order under subsection (12), it may, if it thinks fit-

- (a) increase the term of imprisonment imposed in respect of the confiscation order, or vary any terms upon which such imprisonment was deferred, under section 9; or
- (b) where it had not previously made such an order of imprisonment, subject to section 9, order the defendant to be imprisoned until the substituted amount is paid.

(14) The Court shall not entertain an application under this section if it is made more than six years after the date of conviction; and in this subsection "**the date of conviction**" has the same meaning as in section 13.

Increase in realisable property.

16. (1) This section applies where, by virtue of section 5(3), the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of criminal conduct.

(2) If, on an application made in accordance with subsection (3), the Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount to be recovered under the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased), the Court shall issue a certificate to that effect, giving the Court's reasons.

(3) An application under subsection (2) may be made either by Her Majesty's Procureur or Her Majesty's Sheriff appointed as receiver in relation to the realisable property of the person in question under section 26 or 29 or in pursuance of a charging order.

(4) Where a certificate has been issued under subsection (2), Her Majesty's Procureur may apply to the Court for an increase in the amount to be recovered under the confiscation order; and on that application the Court may-

- (a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in subsection (1)) as appears to the Court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment imposed in respect of the confiscation order, or vary any terms on which such imprisonment was deferred, under section 9 or, where it had not previously made such an order of imprisonment, subject to section 9, order the defendant to be imprisoned until the substituted amount is paid.

Inadequacy of realisable property.

17. (1) If, on an application made in respect of a confiscation order by-

- (a) the defendant; or
- (b) Her Majesty's Sheriff appointed as receiver under section 26 or 29 or in pursuance of a charging order;

the Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the confiscation order, the Court shall issue a certificate to that effect giving the Court's reasons.

(2) For the purposes of subsection (1)-

- (a) in the case of realisable property held by a person whose affairs have been declared to be in a state of *désastre*, the Court shall take into account the extent to which any property held by him would be included among the preferred debts (within the meaning of section 1 of the Preferred Debts (Guernsey) Law, 1983^j); and for the purposes of the said section 1 the relevant date shall be the date of the confiscation order; and
- (b) the Court may disregard any inadequacy in the realisable property which appears to it to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Law from any risk of realisation under this Law.

^j Ordres en Conseil Vol. XXVIII, p. 184; No. VII of 1992; No. III of 1993 and No. IX of 1998.

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

(4) The Court, on an application under subsection (3)-

(a) shall substitute for the amount to be recovered under the confiscation order such lesser amount as the Court thinks just in all the circumstances of the case; and

(b) may substitute for the term of imprisonment imposed under section 9 in respect of the amount to be recovered under the confiscation order a shorter term in respect of the lesser amount, or vary any terms upon which such imprisonment was deferred.

(5) Rules of Court may make provision-

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

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

Compensation.

18. (1) If proceedings are instituted against a person for any offence or offences and either-

(a) the proceedings do not result in his conviction for any offence; or

- (b) he is convicted of one or more offences but-
 - (i) the conviction or convictions concerned are quashed;
or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned;

the Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The Court shall not order compensation to be paid in any case unless the Court is satisfied-

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned; and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order of the Court under sections 26 to 29.

(3) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

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

(5) Compensation payable under this section shall be paid by the States of Guernsey.

Confiscation orders where the defendant has absconded or died

Powers of the Court where the defendant has absconded or died.

19. (1) Subsection (2) applies where a person has been convicted of one or more offences.

(2) If Her Majesty's Procureur asks the Court to proceed under this section, it may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that he has died or absconded.

(3) Subsection (4) applies where proceedings for one or more offences have been instituted against a person but have not been concluded.

(4) If Her Majesty's Procureur asks the Court to proceed under this section, it may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that he has absconded.

(5) The power conferred by subsection (4) may not be exercised at any time within two years from the date on which, in the opinion of the Court, the defendant absconded.

(6) In any proceedings on an application under this section-

(a) section 4(2) shall not apply;

(b) section 11 shall apply as it applies where Her Majesty's Procureur asks the Court to proceed under section 2, but with the omission of subsections (4), (6) and (7);

- (c) the Court shall not make a confiscation order against a person who has absconded unless it is satisfied that Her Majesty's Procureur has taken reasonable steps to contact him; and
- (d) any person appearing to the Court to be likely to be affected by the making of the confiscation order by the Court shall be entitled to appear before the Court and to make representations.

(7) Where the Court makes a confiscation order under this section against a person who has absconded, it may make such order as it thinks fit under section 9.

(8) Where the Court-

- (a) has been asked to proceed under this section in relation to a defendant who has absconded, but
- (b) has decided not to make a confiscation order against him,

section 14 shall not apply at any time while he remains an absconder.

(9) Where a confiscation order has been made in relation to any defendant by virtue of this section, section 15 shall not apply at any time while he remains an absconder.

Effect of conviction where the Court has acted under section 19.

20. (1) Where, in the case of any defendant, the Court has made a confiscation order by virtue of section 19, the Court shall, in respect of the offence or offences concerned-

- (a) take account of the order before-
 - (i) imposing any fine on the defendant;
 - (ii) making any order involving any payment by him other than an order under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990^k;
 - (iii) making an order under section 26 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^l; and
- (b) subject to paragraph (a), leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(2) Where the Court has made a confiscation order by virtue of section 19 and the defendant subsequently appears before a Court to be sentenced in respect of one or more of the offences concerned, section 2(1) shall not apply so far as his appearance is in respect of that offence or those offences.

Variation of confiscation orders made by virtue of section 19.

21. (1) This section applies where the Court has made a confiscation order by virtue of section 19(4), and the defendant has ceased to be an absconder.

- (2) If the defendant alleges that-

^k Ordres en Conseil Vol. XXXII, p. 77.

^l Ordres en Conseil Vol. XXIV, p. 273.

- (a) the value of his proceeds of criminal conduct in the period by reference to which the determination in question was made ("**the original value**"); or
- (b) the amount that might have been realised at the time the confiscation order was made;

was less than the amount ordered to be paid under the confiscation order, he may apply to the Court for it to consider his evidence.

(3) If, having considered that evidence, the Court is satisfied that the defendant's allegation is correct, it-

- (a) shall make a fresh determination under section 2(4); and
- (b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) In the case of any determination under section 2(4) by virtue of this section, section 4(5) shall not apply in relation to any of the defendant's proceeds of criminal conduct taken into account in determining the original value.

(5) Where the Court varies a confiscation order under this section-

- (a) it may substitute for the term of imprisonment imposed under section 9 in respect of the amount to be recovered under the order a shorter term in respect of the lesser amount, or vary any terms upon which such imprisonment was deferred; and
- (b) on the application of a person who held property which was

realisable property, it may order compensation to be paid to the applicant in accordance with section 24 if-

- (i) it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order; and
- (ii) having regard to all the circumstances of the case, the Court considers it to be appropriate.

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

Compensation, etc, where absconder is acquitted.

22. (1) This section applies where the Court has made a confiscation order by virtue of section 19(4), and the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts.

(2) The Court shall cancel the confiscation order.

(3) The Court may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 24 if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

Power to discharge confiscation order and order compensation where absconder returns.

23. (1) This section applies where-

- (a) the Court has made a confiscation order by virtue of section 19(4) in relation to an absconder;

- (b) the defendant has ceased to be an absconder; and
- (c) section 22 does not apply.

(2) The Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that-

- (a) there has been undue delay in continuing the proceedings in respect of which the power under section 19(4) was exercised; or
- (b) Her Majesty's Procureur does not intend to proceed with the prosecution.

(3) Where the Court cancels a confiscation order under this section it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant in accordance with section 24 if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

Provisions supplementary to sections 21, 22, and 23.

24. (1) Where the Court orders compensation to be paid under section 21, 22 or 23, the amount of that compensation shall be such as the Court considers just in all the circumstances of the case.

(2) Rules of Court may make provision-

- (a) for the giving of notice of any application under section 21, 22 or 23; and

- (b) for any person appearing to the Court to be likely to be affected by any exercise of its powers under any of those sections to be given an opportunity to make representations to the Court.

(3) Any payment of compensation under any of those sections shall be paid by the States of Guernsey.

(4) Where the Court cancels a confiscation order under section 22 or 23, it may make such consequential or incidental order as it considers appropriate in connection with the cancellation.

Restraint orders and charging orders

Restraint orders and charging orders: general provisions.

25. (1) The powers conferred on the Court by sections 26(1), 27(1) and 28(1) are exercisable where-

- (a) proceedings have been instituted in the Bailiwick against the defendant for an offence or an application has been made by Her Majesty's Procureur in respect of the defendant under section 13, 14, 15, 16 or 19;
- (b) the proceedings have not, or the application has not, been concluded; and
- (c) the Court is satisfied that there is a reasonable cause to believe-
 - (i) in the case of an application under section 15 or 16, that the Court will be satisfied as mentioned in

section 15(4) or, as the case may be, 16(2); or

- (ii) in any other case, that the defendant has benefited from criminal conduct.

(2) The powers mentioned in subsection (1) are also exercisable where-

- (a) the Court is satisfied that a person is to be charged with an offence or that an application of a kind mentioned in subsection (1)(a) is to be made in respect of the defendant; and
- (b) the Court is also satisfied as mentioned in subsection (1)(c).

(3) The Court shall not exercise those powers by virtue of subsection (1) if it is satisfied-

- (a) that there has been undue delay in continuing the proceedings or application in question; or
- (b) that Her Majesty's Procureur does not intend to proceed.

(4) For the purposes of sections 26, 27 and 28, at any time when those powers are exercisable before proceedings have been instituted-

- (a) references in this Law to the defendant shall be construed as references to the person referred to in subsection (2)(a);
- (b) references in this Law to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in

subsection (2)(a) for an offence.

- (5) A restraint order or a charging order-
- (a) may be made only on an application by Her Majesty's Procureur;
 - (b) may be made on an ex parte application to the Bailiff in chambers;
 - (c) shall provide for notice to be given to persons affected by the order; and
 - (d) may be made subject to conditions, including, without prejudice to the generality of the foregoing, conditions as to when the order is to become effective.
- (6) A restraint order or a charging order-
- (a) may be discharged or varied in relation to any property; and
 - (b) shall be discharged-
 - (i) when proceedings for the offence or in relation to the application are concluded;
 - (ii) in the case of an order made by virtue of subsection (2), if the proposed proceedings are not instituted within such time as the Court considers reasonable;
 - (iii) in the case of a charging order, if the amount the

payment of which is secured by the order is lodged with Her Majesty's Greffier in Guernsey.

(7) An application for the discharge or variation of a restraint order or charging order may be made to the Court by any person affected by it.

(8) The powers of the Court under this section and under sections 26, 27 and 28-

- (a) to make, vary or discharge a restraint order or a charging order;
- (b) to appoint Her Majesty's Sheriff as receiver; and
- (c) to give directions;

may be exercised by the Bailiff in chambers, and any application to him may be made on an ex parte basis; and references to "**the Court**" in those provisions and in sections 31(1) and 33(2) shall be construed accordingly.

(9) In exceptional circumstances or in an emergency the power of the Court to make a restraint order or a charging order may be exercised-

- (a) in relation to realisable property situated in Alderney, securities of the States of Alderney, securities of an Alderney company, other securities registered in a register kept in Alderney, units of a collective investment scheme in connection with which registration is carried on in Alderney or a vessel registered in a register maintained in Alderney, by the Chairman of the Court of Alderney or, if he is absent or unable to act, by a Jurat of the Court of Alderney;

- (b) in relation to realisable property situated in Sark, securities of the Chief Pleas of Sark, other securities registered in a register kept in Sark, units of a collective investment scheme in connection with which registration is carried on in Sark or a vessel registered in a register maintained in Sark, by the Seneschal of Sark or his deputy,

on an application made ex parte in chambers by Her Majesty's Procureur.

Restraint orders.

26. (1) The Court may by order (in this Law referred to as a "**restraint order**") prohibit any person from dealing with any realisable property subject to such conditions and exceptions as may be specified in the order.

(2) A restraint order may apply-

- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
- (b) to realisable property held by a specified person, being property transferred to him after the making of an order.

(3) This section shall not have effect in relation to any property which is for the time being the subject of a charging order under section 27 or 28.

(4) Where the Court has made a restraint order, it may at any time appoint Her Majesty's Sheriff as receiver-

- (a) to take possession of any realisable property; and

- (b) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed;

subject to such exceptions and conditions as may be specified by the Court; and the Court may direct any person having possession of property in respect of which Her Majesty's Sheriff is appointed as receiver under this section to give possession of it to Her Majesty's Sheriff.

(5) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression)-

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from the Bailiwick.

(6) Where a restraint order has been made, a police officer or Her Majesty's Sheriff may seize any realisable property for the purpose of preventing its removal from the Bailiwick; and property so seized shall be dealt with in accordance with the directions of the Court.

Realty charging orders.

27. (1) The Court may make a realty charging order in respect of realisable property consisting of real property situate in the Bailiwick securing the payment to the Crown-

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and

- (b) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purposes of this Law, a realty charging order is an order made under this section, imposing on any such realisable property consisting of real property situate in the Bailiwick as may be specified in the order a charge for securing the payment of money to the Crown.

(3) A realty charging order shall forthwith be registered-

- (a) if the real property in respect of which it is made is in Guernsey, in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe in Guernsey;
- (b) if that real property is in Alderney, by noting it against the entry relating to the land concerned in the Alderney Land Register as if an application had been made under section 18(1) of the Alderney Land and Property, etc, Law, 1949^m and concurred in by the registered owner of the land as mentioned in section 18(2) of that Law;
- (c) if that real property is in Sark, at the Greffe in Sark as if it were a judgment debt ordered to be registered against the real property concerned by an Act of the Court of the Seneschal.

(4) A realty charging order shall have effect as a preliminary vesting order in favour of the Crown (with priority from the date of its registration); except that, notwithstanding any rules of court or rules of customary law to the contrary, the

^m Ordres en Conseil Vol. XIV, p. 67; Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156; and No. VII of 1994.

Crown shall remain entitled to levy execution upon, and to recover out of, the defendant's personal property all or any part of any amount which has been, or which may be, ordered to be paid by the defendant under a confiscation order.

Personalty charging orders.

28. (1) The Court may make a personalty charging order in respect of any realisable property described in subsection (2) securing the payment to the Crown of any amount which has been, or which may be, ordered to be paid by the defendant under a confiscation order.

(2) The property referred to in subsection (1) is-

- (a) any interest in real property (not itself being real property) situated in the Bailiwick;
- (b) any interest in securities of-
 - (i) the States of Guernsey, the States of Alderney or the Chief Pleas of Sark;
 - (ii) any Bailiwick company;
 - (iii) any body incorporated outside the Bailiwick, or any country or territory outside the Bailiwick, which are registered in a register kept in the Bailiwick;
- (c) any interest in units of any collective investment scheme in connection with which registration is carried on in the Bailiwick;
- (d) any interest in a vessel registered in a register maintained in

the Bailiwick; and

- (e) dividends or interest payable in respect of any property described in paragraph (b) or (c).
- (3) A personalty charging order shall have effect as follows-
- (a) to the extent that it relates to property within subsection (2)(a) or (d), as an absolute assignment to the Crown of the interest concerned, so as to be effectual in law to pass and transfer to the Crown the rights, remedies and powers specified in paragraphs (a), (b) and (c) of section 2(1) of the Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979ⁿ;
 - (b) to the extent that it relates to property within subsection (2)(b), (c) or (e), so as to create in favour of the Crown an interest in that property equivalent to a security interest within the meaning of the Security Interests (Guernsey) Law, 1993^o, and with the same rights, remedies and effects as attach to a security interest created under that Law.

(4) The Committee may from time to time by regulations amend subsection (2); and any such regulations may make consequential amendments to section 25(9).

Realisation of property

ⁿ Ordres en Conseil Vol. XXVII, p. 132; Vol. XXXII, p. 324; and No. III of 1993.

^o Order in Council No. III of 1993.

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 subsection (2).

- (2) The Court may-
- (a) appoint Her Majesty's Sheriff as receiver to take possession of and realise any realisable property in such manner as the Court may direct;
 - (b) order any person having possession of realisable property (other than property which is, for the time being, subject to a realty charging order) to give possession of it to Her Majesty's Sheriff;
 - (c) order any person holding an interest in realisable property (other than an interest which is for the time being subject to a realty charging order) to make such payment to Her Majesty's Sheriff 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, as the Court may direct; and the Court may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(3) The powers of the Court under this section may be exercised by the Bailiff in chambers; and an application under this section may be made on an ex parte basis.

Application of proceeds of realisation and other sums.

30. (1) Subject to subsection (2)-

- (a) the proceeds of a realisation of any property under this Law;
and
- (b) any other sums, being property held by the defendant or the recipient of a gift caught by this Law, in the hands of Her Majesty's Sheriff pursuant to this Law;

shall, after such payments (if any) as the Court may direct have been made out of them, be applied on the defendant's behalf towards the satisfaction of the confiscation order in the same manner as if the confiscation order were a fine imposed by the Court.

(2) If, after the amount payable under the confiscation order has been fully paid, any such sums remain in the hands of Her Majesty's Sheriff, he shall distribute those sums-

- (a) among such of those who held property which has been realised under this Law; and
- (b) in such proportions;

as the Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.

Exercise by Court or Sheriff of powers for realisation of property.

31. (1) The following provisions apply to the powers conferred on the Court by sections 26 to 30 and on Her Majesty's Sheriff when appointed as receiver under this Law.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available, for satisfying the confiscation order or, as the case may be, any confiscation order that may be made in the defendant's case, the value for the time being of realisable property held by any person by means of the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, the power shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by or on behalf of the Crown or the States of Guernsey or Alderney or the Chief Pleas of Sark.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

Insolvency of defendants

Affairs of a person in a state of désastre.

32. Where the affairs of a person who holds realisable property are declared in a state of désastre-

- (a) property for the time being subject to a restraint order; and
- (b) any proceeds of property realised by virtue of this Law for the time being in the hands of Her Majesty's Sheriff as receiver appointed under this Law;

shall be excluded from the person's estate for the purposes of those désastre proceedings.

Winding up of a company holding realisable property.

33. (1) Where realisable property is held by a Bailiwick company and an order for the winding up of the company has been made or a resolution has been passed by the company for its voluntary winding up, the functions of the liquidator or provisional liquidator shall not be exercisable in relation to-

- (a) property for the time being subject to a restraint order made before the relevant time; or
- (b) any proceeds of property realised by virtue of this Law for the time being in the hands of Her Majesty's Sheriff as receiver appointed under this Law.

(2) Where, in the case of a Bailiwick company, such an order has been made or such a resolution has been passed, the powers conferred on the Court by sections 26 to 30 or on Her Majesty's Sheriff as receiver appointed under this Law shall not be exercised in relation to any realisable property held by the company in relation to which the functions of the liquidator are exercisable-

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) Nothing in the Companies (Guernsey) Law, 1994^P or the Companies (Alderney) Law, 1994^Q shall be taken as restricting, or enabling the restriction of, the exercise of those powers.

(4) Subsection (2) does not affect the enforcement of a charging order made before the relevant time or on any property which was subject to a restraint order at the relevant time.

(5) In this section "**the relevant time**" means-

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the application for the winding up of the company, such a resolution had been passed by the company, the time of the passing of the resolution; and

^P Order in Council No. XXXIII of 1994; No. XIV of 1996.

^Q Order in Council No. XXXIV of 1994.

- (c) in any other case where such an order had been made, the time of the making of the order.

Restriction on the liability of Her Majesty's Sheriff

Restriction on the liability of Her Majesty's Sheriff.

34. Where Her Majesty's Sheriff as receiver appointed under this Law takes any action-

- (a) in relation to property which is not realisable property, being action which he would be entitled to take if it were such property; and
- (b) believing and having reasonable grounds for believing that he is entitled to take that action in relation to that property;

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

Enforcement of orders made outside the Bailiwick

Enforcement of external confiscation orders.

35. (1) The States may by Ordinance-

- (a) direct in relation to any specified country or territory which is within the British Islands, or in relation to any specified country or territory which is for the time being designated by an Order in Council made by Her Majesty under section 96 of

the Criminal Justice Act 1988^r (a "**designated country**") that, subject to such modifications as may be specified, sections 25 to 34 shall apply-

- (i) to orders which are made by courts in the designated country for purposes that appear to the States similar to those for which confiscation orders are made under this Law ("**external confiscation orders**"), and which are registered under section 36; and
 - (ii) to proceedings in which external confiscation orders may be made that have been instituted but not concluded in that country or that are to be instituted there; and
- (b) make-
- (i) provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
 - (ii) provision as to evidence or proof of any matter for the purposes of this section and section 36; and
 - (iii) incidental, consequential and transitional provision; and
- (c) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds

^r An Act of Parliament (1988 c. 33).

arising out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such an extent as may be specified.

(2) An Ordinance under this section may make different provision in relation to different designated countries and for different cases or classes of circumstances; and a modification made by such an Ordinance may confer power on a person to exercise a discretion.

Registration of external confiscation orders.

36. (1) On application made by Her Majesty's Procureur on behalf of the government of a designated country, the Royal Court sitting as an Ordinary Court may register an external confiscation order made there if-

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in the Bailiwick would not be contrary to the interests of justice.

(2) In subsection (1) "**appeal**" includes-

- (a) any proceedings by way of discharging or setting aside a judgment; and

(b) an application for a new trial or a stay of execution.

(3) The Royal Court sitting as an Ordinary Court shall cancel the registration of an external confiscation order if it appears to it that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving a term of imprisonment in default of payment or by any other means.

Interpretation of Part I

Interpretation of Part I.

37. (1) This section shall have effect for the interpretation of this Part of this Law.

(2) Proceedings for an offence are instituted in the Bailiwick when a person is charged with an offence against the laws of the Bailiwick; and where the application of this subsection would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

(3) Proceedings for an offence are concluded-

(a) when the defendant is acquitted on all counts;

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

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

(4) An application under section 13, 14 or 19 is concluded-

- (a) if the Court decides not to make a confiscation order against the defendant, when it makes that decision; or
 - (b) if a confiscation order is made against him as a result of that application, when the order is satisfied.
- (5) An application under section 15 or 16 is concluded-
- (a) if the Court decides not to vary the confiscation order in question, when it makes that decision; or
 - (b) if the Court varies the confiscation order as a result of the application, when the order is satisfied.
- (6) A confiscation order is satisfied when no amount is due under it.
- (7) For the purposes only of section 32, a confiscation order shall be deemed to be satisfied when the defendant in respect of whom it was made has served a term of imprisonment under section 9 without satisfying the amount due under the order.
- (8) An order is subject to appeal until (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could be varied or set aside.

PART II
OFFENCES IN CONNECTION WITH THE PROCEEDS
OF CRIMINAL CONDUCT

Concealing or transferring proceeds of criminal conduct.

38. (1) A person is guilty of an offence if he-

- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of criminal conduct; or
- (b) converts or transfers that property or removes it from the Bailiwick;

for the purpose of avoiding prosecution for criminal conduct or the making or enforcement in his case of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he-

- (a) conceals or disguises that property; or
- (b) converts or transfers that property or removes it from the Bailiwick;

for the purpose of assisting any person to avoid prosecution for criminal conduct or the making or enforcement of a confiscation order.

(3) In subsections (1) and (2) the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights in respect of it.

(4) A person guilty of an offence under this section is liable-

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

exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both; or

- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years, a fine, or both.

(5) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

Assisting another person to retain the proceeds of criminal conduct.

39. (1) Subject to subsection (3), if a person enters into or is otherwise concerned in an arrangement whereby-

- (a) the retention or control by or on behalf of another person (called in this Law "A") of A's proceeds of criminal conduct is facilitated (whether by concealment, removal from the Bailiwick, transfer to nominees or otherwise); or
- (b) A's proceeds of criminal conduct-
 - (i) are used to secure that funds are placed at A's disposal; or
 - (ii) are used for A's benefit to acquire property by way of investment;

knowing or suspecting that A is a person who is or has been engaged in criminal conduct or has benefited from criminal conduct, he is guilty of an offence.

(2) In this section, references to any person's proceeds of criminal conduct include a reference to any property which in whole or in part directly or

indirectly represents in his hands his proceeds of criminal conduct.

(3) Where a person discloses to a police officer a suspicion or belief that any funds or investments are derived from or used in connection with criminal conduct or discloses to a police officer any matter on which such a suspicion or belief is based-

(a) if he does any act in contravention of subsection (1) and the disclosure relates to the arrangement concerned, he does not commit an offence under this section if-

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer (and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act); or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it; and

(b) the disclosure-

(i) shall not be treated as a breach of any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise; and

(ii) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(4) In proceedings against a person for an offence under this section, it is a defence to prove-

- (a) that he did not know or suspect that the arrangement related to any person's proceeds of criminal conduct;
- (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in subsection (1)(b); or
- (c) that-
 - (i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (3) in relation to the arrangement; but
 - (ii) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3)(a).

(5) In the case of a person who was in employment at the relevant time, subsections (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(6) A person guilty of an offence under this section shall be liable-

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the

uniform scale, or both; or

- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years, a fine, or both.

(7) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

Acquisition, possession or use of proceeds of criminal conduct.

40. (1) A person is guilty of an offence if, knowing that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct, he acquires or uses that property or has possession of it.

(2) It is a defence to a charge of committing an offence under this section that the person charged acquired or used the property or had possession of it for adequate consideration.

(3) For the purposes of subsection (2)-

- (a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and
- (b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in criminal conduct shall not be treated as consideration for the purposes of subsection (2).

(5) Where a person discloses to a police officer a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of criminal conduct or discloses to a police officer any matter on which such a suspicion or belief is based-

(a) if he does any act in relation to that property in contravention of subsection (1), he does not commit an offence under this section if-

(i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer (and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act); or

(ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it; and

(b) the disclosure-

(i) shall not be treated as a breach of any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise; and

(ii) shall 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, having possession of any property

shall be taken to be doing an act in relation to it.

(7) In proceedings against a person for an offence under this section, it is a defence to prove that-

- (a) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in subsection (5); but
- (b) there is reasonable excuse for his failure to make disclosure in accordance with subsection (5)(a).

(8) In the case of a person who was in employment at the relevant time, subsections (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.

(9) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of such conduct.

(10) A person guilty of an offence under this section shall be liable-

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years, a fine, or both.

(11) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

Tipping off.

41. (1) A person is guilty of an offence if-

- (a) he knows or suspects that a police officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering; and
- (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

(2) A person is guilty of an offence if-

- (a) he knows, or suspects that a disclosure ("**the disclosure**") has been made to a police officer under section 39 or 40; and
- (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(3) A person is guilty of an offence if-

- (a) he knows or suspects that a disclosure of a kind mentioned in sections 39(5) or 40(8) ("**the disclosure**") has been made; and
- (b) he discloses to any person information or any other matter

which is likely to prejudice any investigation which might be conducted following the disclosure.

(4) Nothing in subsections (1) to (3) makes it an offence for a professional legal adviser to disclose any information or other matter-

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person-

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) In this Law "**money laundering**" means doing any act-

(a) which constitutes an offence under section 38, 39 or 40; or

(b) in the case of an act done otherwise than in the Bailiwick, which would constitute such an offence if done in the Bailiwick.

(8) For the purposes of subsection (7), having possession of any property shall be taken to be doing an act in relation to it.

(9) No police officer or other person shall be guilty of an offence under this section in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct.

(10) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both;

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

(11) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

Restrictions on disclosure under this Part.

42. (1) Information which is disclosed to a police officer-

(a) under section 39;

(b) under section 40; or

(c) under any order made under section 49;

shall not be disclosed by that police officer, or by any person who obtains the information directly or indirectly from him, unless its disclosure is permitted under

section 43 or 44.

(2) A person who contravenes subsection (1) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, a fine not exceeding level 4 on the uniform scale or both.

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

(4) No prosecution shall be instituted for an offence under this section without the consent of Her Majesty's Procureur.

(5) The States may by Ordinance amend or repeal this section or any provision hereof.

Disclosure for purposes within the Bailiwick.

43. (1) Section 42 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 42 does not prohibit the disclosure of information, for other purposes in the Bailiwick, to-

- (a) Her Majesty's Procureur;
- (b) the Commission;
- (c) a police officer; or
- (d) any other person who is for the time being authorised in

writing by Her Majesty's Procureur to obtain that information.

(3) The States may by Ordinance amend or repeal this section or any provision hereof.

Disclosure for purposes outside the Bailiwick.

44. (1) Section 42 does not prohibit the disclosure of information if-

- (a) Her Majesty's Procureur has consented to the disclosure and has not withdrawn his consent; and
- (b) the information is disclosed-
 - (i) for the purposes of the investigation of crime outside the Bailiwick or for the purposes of criminal proceedings outside the Bailiwick; or
 - (ii) 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 Committee.

(2) Her Majesty's Procureur may give his consent-

- (a) generally or specifically; and
- (b) unconditionally or subject to such conditions as he may stipulate.

(3) Without prejudice to the generality of subsection (2), the consent of

Her Majesty's Procureur may be given in terms that permit the disclosure from time to time (as the occasion requires) of such a class or description of information as is specified in the consent to such a person or authority or class or description of persons or authorities as is so specified.

- (4) Without prejudice to the generality of subsection (2), a condition-
- (a) may be expressed generally or in respect of any specified information;
 - (b) may provide that information may only be disclosed in specified circumstances or for a specified purpose; or
 - (c) may provide that any person or authority to whom information is disclosed shall not himself or itself disclose it to any other person or body without the prior consent of Her Majesty's Procureur.

(5) The States may by Ordinance amend or repeal this section or any provision hereof.

PART III
MISCELLANEOUS AND SUPPLEMENTAL

Investigations into criminal conduct

Order to make material available.

45. (1) Subject to subsection (10), a police officer may for the purposes of an investigation into whether any person has benefited from criminal conduct or into the extent or whereabouts of the proceeds of criminal conduct, apply to the Bailiff for an order under subsection (2) in relation to particular material or material of a

particular description.

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

- (a) produce it to a police officer for him to take away; or
- (b) give a police officer access to it;

within such period as the order may specify; provided always that this subsection has effect subject to section 48(10).

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

(4) The conditions referred to in subsection (2) are-

- (a) that there are reasonable grounds for suspecting that a specified person has benefited from criminal conduct;
- (b) that there are reasonable grounds for suspecting that the material to which the application relates-
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made; and
 - (ii) does not consist of or include items subject to legal

professional privilege; and

- (c) that there are reasonable grounds for believing that it is in the public interest, having regard-
 - (i) to the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) to the circumstances under which the person in possession of material holds it;

that the material should be produced or that access to it should be given.

(5) Where the Bailiff makes an order under subsection (2)(b) in relation to material on any premises he may, on the application of a police officer, subject to subsection (10), order any person who appears to him to be entitled to grant entry to the premises to allow a police officer to enter the premises to obtain access to the material.

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

(7) Provision may be made by rules of Court as to-

- (a) the discharge and variation of orders under this section; and
- (b) proceedings relating to such orders.

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

- (a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(9) An order under subsection (2)-

- (a) shall not confer any right to production of, or access to, items subject to legal professional privilege;
- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise; and
- (c) may be made in relation to material in the possession of the States of Guernsey, States of Alderney or Chief Pleas of Sark.

(10) No application for an order under this section may be made without the consent of Her Majesty's Procureur.

Authority for search.

46. (1) Subject to subsection (6), a police officer may, for the purposes of an investigation into whether any person has benefited from criminal conduct or into the extent or whereabouts of the proceeds of criminal conduct, apply to the Bailiff for a warrant under this section in relation to specified premises.

(2) On such an application the Bailiff may issue a warrant authorising a

police officer to enter and search the premises if the Bailiff is satisfied-

- (a) that an order made under section 45 in relation to material on the premises has not been complied with;
 - (b) that the conditions in subsection (3) are fulfilled; or
 - (c) that the conditions in subsection (4) are fulfilled.
- (3) The conditions referred to in subsection (2)(b) are-
- (a) that there are reasonable grounds for suspecting that a specified person has benefited from criminal conduct;
 - (b) that the conditions in section 45(4)(b) and (c) are fulfilled in relation to any material on the premises; and
 - (c) that it would not be appropriate to make an order under that section in relation to the material because-
 - (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer can secure immediate access

to the material.

- (4) The conditions referred to in subsection (2)(c) are-
- (a) that there are reasonable grounds for suspecting that a specified person has benefited from criminal conduct;
 - (b) that there are reasonable grounds for suspecting that there is on the premises any such material relating-
 - (i) to the specified person; or
 - (ii) to the question of whether that person has benefited from criminal conduct or to any question as to the extent or whereabouts of the proceeds of any criminal conduct;as is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purposes of which the application is made, but that the material cannot at the time of the application be particularised; and
 - (c) that-
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or

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

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

(6) No application for a warrant under this section may be made without the consent of Her Majesty's Procureur.

Offence of prejudicing an investigation.

47. (1) Where, in relation to an investigation of a nature described in section 45(1) or 46(1)-

- (a) an order under section 45 has been made or has been applied for and has not been refused; or
- (b) a warrant under section 46 has been issued;

a person is guilty of an offence if, knowing or suspecting that the investigation is taking place, he makes any disclosure which is likely to prejudice the investigation.

(2) In proceedings against a person for an offence under this section it is a defence to prove-

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or

(b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter-

(a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or

(b) to any person-

(i) in contemplation of, or in connection with, legal proceedings; and

(ii) for the purpose of those proceedings.

(4) Subsection (3) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(5) A person guilty of an offence under this section shall be liable-

(a) on summary conviction, to imprisonment for a term not exceeding 12 months, a fine not exceeding level 5 on the uniform scale, or both;

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

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) 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), subsection 25(4) shall apply 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 appointed as receiver under section 26 or 29 or in pursuance of a charging order.

(5) The Court shall not make an order under subsection (1) unless a reasonable opportunity has been given for an officer of the States department to make representations to the Court.

(6) The Court may by order authorise the disclosure to a person mentioned in subsection (7) 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 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.

(7) The persons referred to in subsection (6) are-

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

(8) Material disclosed in pursuance of an order under subsection (6) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to the investigation of-

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

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

(10) 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 an order containing any requirement by virtue of this subsection shall be served as if the proceedings were civil proceedings against the department.

(11) Where any requirement is included in any order by virtue of subsection (10), the person on whom the 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).

(12) In this section "**States department**" means any committee, board, authority or other department of the States of Guernsey, States of Alderney or Chief Pleas of Sark.

Financial services businesses

Financial services businesses and the duties thereof.

49. (1) The persons and bodies specified in the Schedule shall be financial services businesses for the purposes of this Law.

(2) The Committee may by regulation amend the Schedule by adding, deleting or substituting any class or description of person or body.

(3) The Committee 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 prejudice to the generality of the foregoing, regulations under subsection (3)-

- (a) shall prescribe the identification procedures, record-keeping procedures, internal reporting procedures and training procedures to be established and maintained by financial services businesses;
- (b) may prescribe supervisory or regulatory authorities for the purposes of the regulations;
- (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 to be guilty of offences under the regulations;
 - (ii) the penalties which may be imposed; and
 - (iii) the defences which are to be available;
- (e) shall prescribe for the purposes of the regulations the guidance which the 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 guidance-
 - (i) which, in the opinion of the Court, is relevant to the duty or requirement in question; and
 - (ii) which has been issued or approved by the Commission; and
- (f) may make such other provision as in the opinion of the

Committee 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 secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise; and
- (b) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure.

Interpretation of Law

Meaning of "property" and related expressions.

50. (1) In this Law "**property**" includes money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property.

(2) This Law applies to property whether it is situated in the Bailiwick or elsewhere.

(3) In this Law "**interest**", in relation to property, includes right.

(4) In this Law-

- (a) references to property held by a person include a reference to property vested in his committee of creditors or in a liquidator; and

- (b) references to an interest held by a person beneficially in property include a reference to an interest which would be held by him beneficially if the property were not so vested.
- (5) For the purposes of this Law-
- (a) property is held by any person if he holds or is beneficially entitled (under a trust, as a member of a body corporate or otherwise) to that property or any interest in it; and
 - (b) property is transferred by one person to another if the first person transfers or grants to the other any interest in the property.

General interpretation.

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

"Alderney company" means a body corporate the memorandum and articles of which are registered in the Register of Companies within the meaning of section 163(1) of the Companies (Alderney) Law, 1994^s;

"Alderney land register" means the register established under Part III of the Alderney Land and Property, etc, Law, 1949^t;

"Bailiwick" means the Bailiwick of Guernsey;

"Bailiwick company" means-

^s Order in Council No. XXXIV of 1994

^t Ordres en Conseil Vol. XIV, p. 67; Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156; and No. VII of 1994.

- (a) a body corporate the memorandum and articles of which are registered in the Register of Companies within the meaning of section 117(1) of the Companies (Guernsey) Law, 1994^u;
or
- (b) an Alderney company;

"charging order" means a realty charging order or a personalty charging order;

"collective investment scheme" means any arrangement such as is identified and described in paragraph 1 of Schedule 1 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987^v;

"Commission" means the Guernsey Financial Services Commission;

"Committee" means the States of Guernsey Advisory and Finance Committee;

"Court of Appeal" means the Court established by the Court of Appeal (Guernsey) Law, 1961^w;

"defendant" means a person against whom proceedings have been

^u Order in Council No. XXXIII of 1994; No. XIV of 1996.

^v Ordres en Conseil Vol. XXX, p. 281; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Order in Council No. XII of 1995; Ordinance No. X of 1998.

^w Ordres en Conseil Vol. XVIII, p. 315.

instituted, within the meaning of section 37(2), for an offence, whether or not he has been convicted;

"Her Majesty's Procureur" includes Her Majesty's Comptroller;

"police officer" means-

- (a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;
- (b) in relation to Alderney, a member of the said salaried police force, 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 by the Court of Alderney under section 15 of the Government of Alderney Law, 1987^x;
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of the Island of Guernsey; and
- (d) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^y.

^x Ordres en Conseil Vol. XXX, p. 37; Vol. XXXI, pp. 83 and 306; No. XI of 1993; No. IX of 1995; No. IV of 1996; and No. IV of 1998.

^y Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^z shall apply to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment, statutory instrument or rule of court is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

Index of defined expressions.

52. In this Law, unless the context requires otherwise, each expression listed below is defined by, or otherwise falls to be construed in accordance with, the provision of this Law indicated in parentheses immediately after the expression-

"Alderney company" (section 51(1));

"Alderney land register" (section 51(1));

"amount that might be realised" (section 6(1));

"amount to be recovered" (section 5(1) and (3));

"Bailiwick" (section 51(1));

"Bailiwick company" (section 51(1));

"benefited from criminal conduct" (section 2(3));

"charging order" (section 51(1));

"collective investment scheme" (section 51(1));

^z Ordres en Conseil Vol. XIII, p. 355.

"Commission" (section 51(1));

"Committee" (section 51(1));

"concluded", in relation to proceedings for an offence (section 37(3));

"concluded", in relation to an application under section 13, 14 or 19 (section 37(4));

"concluded", in relation to an application under section 15 or 16 (section 37(5));

"confiscation order" (section 2(10));

"Court" (section 2(1));

"Court of Appeal" (section 51(1));

"criminal conduct" (section 1(1));

"defendant" (section 51(1));

"designated country" (section 35(1)(a));

"drug trafficking" (section 1(2));

"drug trafficking offence" (section 1(2));

"external confiscation order" (section 35(1)(a)(i));

"financial services business" (section 49(1));

"gift caught by this Law" (section 8(1));

"held", in relation to property (section 50(4)(a) and (5)(a));

"Her Majesty's Procureur" (section 51(1));

"instituted", in relation to proceedings for an offence (section 37(2));

"interest", in relation to property (section 50(3));

"making a gift" (section 8(2));

"money laundering" (section 41(7));

"personalty charging order" (section 28);

"police officer" (section 51(1));

"proceeds of criminal conduct" (section 4(1)(a));

"property" (section 50(1));

"realisable property" (section 6(2));

"realty charging order" (section 27(2));

"restraint order" (section 26(1));

"satisfied", in relation to a confiscation order (section 37(6) and (7));

"subject to appeal", in relation to an order (section 37(8));

"transferred", in relation to property (section 50(5)(b));

"value of a gift" (section 7(2));

"value of proceeds of criminal conduct" (section 4(1)(b));

"value of property" (section 7(1)).

Constitution of Court

Constitution of Court for purposes of Part I of this Law.

53. (1) Rules of Court may provide that, for the purposes of performing such functions of the Court, whether sitting as a Full Court or as an Ordinary Court, under the provisions of Part I of this Law as may be specified in the rules-

- (a) the Court shall be properly constituted if its consists of the Bailiff-
 - (i) sitting unaccompanied by the Jurats; or
 - (ii) sitting accompanied by such number of the Jurats as may be so specified; and
- (b) the Court may, where it consists of the Bailiff sitting as mentioned in paragraph (a)(i) or (a)(ii), sit in chambers.

(2) A function performed in pursuance of rules of Court under subsection (1) shall be considered for all purposes to have been performed by the

Court; and any order or finding made or other thing done pursuant to the rules shall have effect as if made or done by the Court.

(3) The provisions of this section and of any rules hereunder are without prejudice to any provision of this Law conferring functions upon the Bailiff or, as the case may be, permitting matters to be heard in chambers.

Ordinances, regulations and rules

General provisions as to subordinate legislation.

54. (1) Any Ordinance of the States, regulations of the Committee or rules of Court under this Law-

- (a) may be amended or repealed by a subsequent Ordinance or, as the case may be, by subsequent regulations or rules hereunder;
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the States or, as the case may be, the Committee or the Court to be necessary or expedient;
- (c) shall, in the case of regulations, be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(2) Any power conferred upon the States, the Committee or the Court by this Law to make an Ordinance or, as the case may be, regulations or rules of Court 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.

Citation and commencement

Citation and commencement.

55. (1) This Law may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999.

(2) This Law shall come into operation on the day appointed by Ordinance of the States, and such an Ordinance may appoint different days for different provisions and different purposes.

SCHEDULE

Section 49

Financial services businesses

1. Any person or body carrying on or providing services in relation to the business of banking, bureaux de change, cheque cashers, insurance, investment, asset management or administration, trusteeship, company or trust formation and administration, the establishment of business enterprises or any matter ancillary to any such business.

2. Any person providing legal services.

3. Any person providing accountancy services.