

PROJET DE LOI

ENTITLED

The Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023

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PROJET DE LOI

ENTITLED

The Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023

THE STATES, in pursuance of their Resolutions of the 25th March, 2021^a, the 24th November, 2021^b and the 30th September, 2022^c, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

INTRODUCTORY

Purpose.

1. (1) The purpose of this Law is to enable property that is, or is imputed to be, recoverable property -

(a) to be forfeited in civil proceedings, and

(b) in certain circumstances, to be forfeited by the giving of a notice.

^a Article XII of Billet d'État No. VIII of 2021.

^b Article IV of Billet d'État No. XXIII of 2021.

^c Article X of Billet d'État No. XVII of 2022.

(2) The powers conferred by this Law are exercisable in relation to any property whether or not any proceedings have been brought for an offence in connection with the property.

(3) In this Law, the expression "**recoverable property**" is to be construed in accordance with Schedule 1.

"Unlawful conduct".

2. (1) Conduct is unlawful conduct for the purposes of this Law if it is within subsection (2), (3) or (4).

(2) Conduct is within this subsection if -

- (a) it occurs in any part of the Bailiwick, and
- (b) it is unlawful under the criminal law of that part.

(3) Conduct is within this subsection if -

- (a) it occurs in a country outside the Bailiwick,
- (b) it is unlawful under the criminal law applying in that country, and
- (c) had it occurred in a part of the Bailiwick, it would have been unlawful under the criminal law of that part at the time the conduct occurred.

(4) Conduct is within this subsection if -

- (a) it occurs in a country outside the Bailiwick,

- (b) it constitutes, or is connected with, the commission of a gross human rights abuse or violation, and
- (c) had it occurred in a part of the Bailiwick, it would be an offence under the criminal law of that part.

(5) For the avoidance of doubt, in determining whether or not conduct is unlawful conduct for the purposes of this Law -

- (a) it is immaterial whether the conduct occurred before or after the commencement of this Law, and
- (b) conduct may be determined to be unlawful under the criminal law applying in the Bailiwick or any other country even if -
 - (i) no person has been charged with an offence in relation to that conduct under that criminal law,
 - (ii) there is a reason why a charge cannot be brought for an offence in relation to that conduct under that criminal law, or
 - (iii) a person was charged with an offence in relation to that conduct under that criminal law, but the charge was withdrawn or the person was acquitted of the charge.

(6) Without limiting subsection (5)(b)(ii), examples of reasons referred to in that provision include -

- (a) the passage of time, and
- (b) a person who could otherwise have been charged with an offence enjoying immunity from prosecution under the laws of that country.

Conduct constituting or connected with gross human rights abuse or violation.

3. (1) Conduct constitutes the commission of a gross human rights abuse or violation for the purposes of this Law if each of the following three conditions is met.

(2) The first condition is that the conduct -

- (a) constitutes the torture of a relevant person, or
- (b) otherwise involves the cruel, inhuman or degrading treatment of a relevant person.

(3) The second condition is that the conduct is carried out in consequence of the relevant person having sought to do anything falling within subsection (8)(b)(i) or (ii).

(4) The third condition is that the conduct is carried out -

- (a) by a person who is an official, in the performance or purported performance of the person's official duties,
or

- (b) by any other person at the instigation of, or with the consent or acquiescence of, an official acting in the performance or purported performance of the latter's official duties.

(5) Conduct is connected with the commission of a gross human rights abuse or violation for the purposes of this Law if it is conduct by a person that involves -

- (a) acting as an agent for another in connection with activities relating to conduct constituting the commission of a gross human rights abuse or violation,
- (b) directing, or sponsoring, such activities,
- (c) profiting from such activities, or
- (d) materially assisting such activities.

(6) For the purposes of subsection (2)(a) -

- (a) conduct that involves the intentional infliction of severe pain or suffering on another person is conduct that constitutes torture, and
- (b) it is immaterial whether the pain or suffering is physical or mental, and whether it is caused by an act or omission.

(7) For the purposes of subsection (5)(d), the cases in which a person materially assists activities include those where the person -

- (a) provides goods or services in support of the carrying out of the activities, or
- (b) otherwise provides any financial or technological support in connection with their carrying out.

(8) In this section -

- (a) "**official**" means -
 - (i) a public official, or
 - (ii) any other person acting in an official capacity, and
- (b) "**relevant person**" means a person who has sought -
 - (i) to expose illegal activity carried out by an official, or
 - (ii) to obtain, exercise, defend or promote human rights and fundamental freedoms.

Property used in unlawful conduct.

4. For the purposes of this Law, property is used in unlawful conduct if a person uses the property for the purpose of committing, or facilitating the commission of, the conduct.

Property obtained through unlawful conduct.

5. (1) For the purposes of this Law, property is obtained through unlawful conduct if a person obtains the property by or in return for the conduct (whether the person's own conduct or another's).

(2) In deciding whether any property was obtained through unlawful conduct -

- (a) it is immaterial whether or not any money, goods or services were provided in order to put the person who carried out the conduct in a position to carry it out, and
- (b) the conduct need not be shown to be of a particular kind that is unlawful, if the property was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

Associated property.

6. (1) For the purposes of this Law, "**associated property**", in relation to any recoverable property, means property of any of the following descriptions which is not itself the recoverable property -

- (a) any interest in the recoverable property,
- (b) any other interest in the property in which the recoverable property subsists,
- (c) if the recoverable property is owned in undivided shares, the interest of the other owner or owners,

- (d) if the recoverable property is part of a larger property, but not a separate part, the remainder of that property,

and a reference to property being associated with recoverable property is to be read accordingly.

(2) No property is to be treated as associated with recoverable property consisting of rights under -

- (a) a pension scheme, within the meaning of section 59(1) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020^d, or
- (b) a collective investment scheme, within the meaning of section 79(1) of the Protection of Investors (Bailiwick of Guernsey) Law, 2020^e.

(3) For the avoidance of doubt, property ("A") may be regarded as property associated with recoverable property even if A is held, or held solely, by the person that holds the recoverable property.

^d Order in Council No. XIX of 2020; this enactment has been amended.

^e Order in Council No. XVIII of 2020; this enactment has been amended.

PART II
FORFEITURE IN THE ROYAL COURT

Application

Application of this Part.

7. This Part applies to property other than -
- (a) property that is seized or detained under Part III for the time being, or
 - (b) money held in an account maintained with a bank in the Bailiwick.

Property freezing orders

Application for property freezing order.

8. (1) His Majesty's Procureur may at any time apply to the Royal Court for a property freezing order if His Majesty's Procureur suspects that a person holds recoverable property.

- (2) A property freezing order is an order that -
- (a) specifies or describes the property to which it applies, and
 - (b) subject to any exclusions (see section 10(1)(b) and (2)), prohibits any person to whose property the order applies from in any way dealing with the property.

(3) An application for a property freezing order may be made without notice.

(4) The court may make a property freezing order if the court is satisfied that -

(a) the first condition is met, and

(b) where applicable, the second condition is also met.

(5) The first condition is that there are reasonable grounds for suspecting -

(a) that the property concerned is or includes recoverable property, and

(b) that, if any of the property concerned is not recoverable property, it is associated property.

(6) The second condition is that, if the property concerned includes property alleged to be associated property, His Majesty's Procureur has -

(a) established the identity of the person who holds the associated property,

(b) taken all reasonable steps to do so, or

(c) neither established the identity of the person nor taken reasonable steps to do so, on the grounds that doing so is likely to tip-off that person that

proceedings are being brought to prohibit or restrict dealings with that property.

(7) For the avoidance of doubt, the reference in subsection (2)(b) to any person to whose property the order applies includes a reference to any person who holds the property.

Variation and setting aside of order.

9. (1) On an application made by His Majesty's Procureur or any person affected by a property freezing order, the Royal Court may at any time vary or set aside the order.

(2) If the court is satisfied that any of the property concerned is neither recoverable property nor associated property, it must vary the order so as to exclude the property which is neither recoverable property nor associated property.

(3) Before varying or setting aside a property freezing order, the court must give the following persons an opportunity to be heard -

- (a) the parties to the proceedings, and
- (b) so far as practicable, any person who may be affected by its decision.

Exclusions.

10. (1) Without limiting section 9, the power under that section to vary a property freezing order includes -

- (a) power to exclude property from the order, and

- (b) power, otherwise than by excluding property from the order, to make exclusions from the prohibition on dealing with the property concerned.

(2) Exclusions from the prohibition on dealing with the property concerned (other than exclusions of property from the order) may also be made when the order is made.

(3) An exclusion may include provision for the purpose of enabling any person -

- (a) to meet the person's reasonable living expenses, or
- (b) to carry on any trade, business, profession or occupation.

(4) An exclusion may be made subject to terms and conditions.

(5) Where the Royal Court exercises the power to make an exclusion for the purposes of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Law, it must ensure that the exclusion -

- (a) is limited to reasonable legal expenses that the person reasonably incurs or has reasonably incurred,
- (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion, and

(c) is made subject to required conditions (if any) prescribed under section 135.

(6) In deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Law, the court -

(a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Law in which the person is a participant, and

(b) where the person is the respondent (of the property freezing order), must disregard the possibility that legal representation of the person in any such proceedings might be made available under a Scheme prescribed under section 14 of the Legal Aid (Bailiwick of Guernsey) Law, 2003^f if an exclusion were not made.

(7) The court must not make an exclusion for the purpose of enabling a person to meet living or legal expenses unless the court is satisfied that the person is unable to meet those expenses in any other way.

(8) Property excluded from the order under subsection (1)(a) must be -

(a) specified in the order, or

^f Order in Council No. VI of 2004; this enactment has been amended.

(b) described in the order in general terms.

(9) So far as practicable, the power to make exclusions must be exercised with a view to ensuring that the satisfaction of any right of His Majesty's Procureur to obtain a forfeiture order in respect of recoverable property is not unduly prejudiced.

(10) Subsection (9) -

(a) does not apply where the court is acting as required under section 9(2), and

(b) is subject to subsection (6).

Restriction on proceedings and remedies.

11. (1) While a property freezing order has effect -

(a) the Royal Court may stay any action, execution or other legal process in respect of the property to which the order applies, and

(b) no distraint may be levied against the property to which the order applies except with the leave of the court and subject to any conditions the court may impose.

(2) If a court in which proceedings of any kind are pending in respect of any property is satisfied that a property freezing order has been applied for or made in respect of the property, it may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by this section, a court must give the following persons an opportunity to be heard -

- (a) the parties to any of the proceedings concerned, and
- (b) so far as practicable, any person who may be affected by the court's decision.

Appointment of receiver in connection with property freezing orders.

12. (1) Subsection (3) applies if -

- (a) the Royal Court makes a property freezing order, and
- (b) His Majesty's Procureur applies to the court to proceed under subsection (3) (whether as part of the application for the property freezing order or at any time afterwards).

(2) An application for an order under subsection (3) may be made without notice.

(3) The Royal Court may by order appoint His Majesty's Sheriff as receiver in respect of any property to which the property freezing order applies -

- (a) to take possession of that property, and
- (b) to take steps in accordance with the directions of the court in connection with the management of any such property (including securing the detention, custody or preservation of the property in order to manage it),

subject to the provisions of any Ordinance made under section 49EA of the Proceeds of Crime Law.

(4) The court may also by order require any person, in respect of whose property His Majesty's Sheriff is appointed as receiver, to do either or both of the following -

- (a) bring the property to a place specified by His Majesty's Sheriff or place it in the custody of His Majesty's Sheriff,
- (b) anything the person is reasonably required to do by His Majesty's Sheriff for the preservation of the property.

(5) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed under this section.

(6) Where a property freezing order has been made, the Royal Court may authorise or require a police officer or His Majesty's Sheriff to seize any property in respect of which the order has been made.

(7) Any of the following persons may at any time apply to the Royal Court for directions as to the exercise of the functions of His Majesty's Sheriff in connection with a property freezing order -

- (a) His Majesty's Sheriff,

(b) any party to the proceedings for the making of the forfeiture order,

(c) any person affected by any action taken, or who may be affected by any action proposed to be taken, by His Majesty's Sheriff.

(8) Before giving any directions, the court must, so far as practicable, give an opportunity to be heard to the persons mentioned in subsection (7)(a), (b) and (c).

(9) In subsections (4), (5) and (6), a reference to property includes a reference to any document relating to the property concerned.

(10) For the avoidance of doubt, the reference in subsection (4) to any person in respect of whose property His Majesty's Sheriff is appointed as receiver includes a reference to any person who holds the property.

Forfeiture and consent orders

Proceedings for forfeiture orders.

13. (1) His Majesty's Procureur may apply to the Royal Court for an order to forfeit all or a part of frozen property if His Majesty's Procureur suspects that the property or (as the case may be) the part is recoverable property.

(2) His Majesty's Procureur must give notice of an application under subsection (1) to -

- (a) the respondent and any person to whom notice of the property freezing order in respect of the property was given, and
- (b) unless the court dispenses with service, any person who His Majesty's Procureur thinks holds any associated property which His Majesty's Procureur wishes to be subject to a forfeiture order.

(3) If any property which His Majesty's Procureur wishes to be subject to a forfeiture order is not specified in the application, it must be described in the application in general terms; and the application must state whether it is alleged to be recoverable property or associated property.

(4) On determining an application under subsection (1), the Royal Court must make an order to forfeit the property concerned unless a person opposing the application satisfies the court that that property is not recoverable property.

(5) If a person opposing the application satisfies the court that part only of the property concerned is not recoverable property, the court must make an order to forfeit the remainder of that property.

(6) In the case of a forfeiture order made under subsection (4) or (5) in respect of property which belongs to joint owners, one of whom is an excepted joint owner, the order must not apply to so much of it as the court thinks is attributable to the excepted joint owner's share.

(7) Subsection (2) applies regardless of where the person that holds the property concerned (the respondent) or any of the other persons is domiciled, resident or present.

(8) This section is subject to section 15.

(9) In this section and section 14, "**frozen property**" means property that is subject to a property freezing order.

Continuation of property freezing order pending appeal.

14. (1) This section applies where, on an application under section 13 in relation to frozen property, the court decides -

- (a) to make a forfeiture order in relation to part only of the frozen property, or
- (b) not to make a forfeiture order.

(2) His Majesty's Procurer may apply without notice to the Royal Court for an order that the property freezing order in respect of the property concerned is to continue to have effect.

(3) Where the court makes an order under subsection (2), the property freezing order continues to have effect until -

- (a) the end of the period of 14 days starting with the making of the order under subsection (2), or
- (b) if within that period of 14 days an appeal is brought under section 26 against the decision referred to in

subsection (1)(a) or (b), the time when the appeal is determined or otherwise disposed of, subject to subsection (4).

(4) If on determining an appeal, the Court of Appeal sets aside the judgment of the Royal Court and orders a new trial or hearing to be had, the Court of Appeal may order the property freezing order to continue to have effect until a time specified by the Court of Appeal.

Forfeiture orders: conditions and restrictions.

15. (1) The Royal Court must not make in a forfeiture order -
- (a) any provision in respect of any recoverable property if-
 - (i) all the conditions in subsection (2) are met, and
 - (ii) it would not be just and equitable to make the provision, or
 - (b) any provision which is incompatible with any of the Convention rights within the meaning of the Human Rights (Bailiwick of Guernsey) Law, 2000⁸.
- (2) The conditions in this subsection are that -
- (a) the respondent ("R") obtained the property in good faith,

⁸ Order in Council No. XIV of 2000; this enactment has been amended.

- (b) R took steps after obtaining the property which R would not have taken if R had not obtained it, or R took steps before obtaining the property which R would not have taken if R had not believed R was going to obtain it,
- (c) when R took those steps, R had no notice that the property was recoverable, and
- (d) if a forfeiture order were made in respect of the property, it would, by reason of those steps, be detrimental to R.

(3) In deciding whether it would be just and equitable to make the provision in the forfeiture order where all the conditions in subsection (2) are met, the court must have regard to -

- (a) the degree of detriment that would be suffered by R if the provision were made, and
- (b) His Majesty's Procurer's interest in receiving the realised proceeds of the recoverable property.

(4) A forfeiture order may sever any property.

(5) Without prejudice to the provisions of any Ordinance made under section 49EA of the Proceeds of Crime Law, a forfeiture order may impose conditions as to the manner in which His Majesty's Sheriff may deal with any property vested by the order for the purpose of realising it.

Effect of forfeiture order.

16. (1) Subject to section 18 -

- (a) property specified in a forfeiture order ("**specified property**") under section 13 vests in His Majesty's Sheriff from the date specified in the order, and
- (b) His Majesty's Sheriff must take possession of and, in accordance with the provisions of this section, manage or otherwise deal with that property.

(2) A forfeiture order may authorise or require His Majesty's Sheriff to do either or both of the following -

- (a) exercise any powers that are prescribed under an Ordinance under section 49EA of the Proceeds of Crime Law in relation to any of the specified property that the Royal Court thinks fit,
- (b) take any other steps the court thinks appropriate in connection with the management of the property (including securing the detention, custody or preservation of the property in order to manage it).

(3) A forfeiture order may require any person, in respect of whose property a forfeiture order under section 13 is made, to do either or both of the following -

- (a) bring the property to a place specified by His Majesty's Sheriff or place it in the custody of His Majesty's Sheriff,
- (b) anything that the person is reasonably required to do by His Majesty's Sheriff for the preservation of the property.

(4) Any prohibition on dealing with property imposed by a property freezing order does not prevent a person from complying with any requirements imposed under this section.

(5) Where a forfeiture order has been made, the Royal Court may authorise or require a police officer or His Majesty's Sheriff to seize any property in respect of which the order has been made.

(6) Any of the following persons may at any time apply to the Royal Court for directions as to the exercise of the functions of His Majesty's Sheriff in connection with a forfeiture order -

- (a) His Majesty's Sheriff,
- (b) any party to the proceedings for the making of the forfeiture order,
- (c) any person affected by any action taken, or who may be affected by any action proposed to be taken, by His Majesty's Sheriff.

(7) Before giving any directions, the court must, so far as practicable, give an opportunity to be heard to the persons mentioned in subsection (6)(a), (b) and (c).

(8) In subsections (3), (4) and (5), a reference to property includes a reference to any document relating to the property concerned.

(9) For the avoidance of doubt, in subsection (3), a reference to any person in respect of whose property a forfeiture order under section 13 is made includes a reference to any person who holds that property.

Associated and joint property.

17. (1) Sections 18 and 19 apply if the Royal Court makes a forfeiture order in respect of any recoverable property in a case within subsection (2) or (3).

(2) A case is within this subsection if -

(a) the property to which the proceedings relate includes property which -

(i) is associated with the recoverable property,
and

(ii) is specified or described in the application for the forfeiture order, and

(b) if the associated property is not the respondent's property -

- (i) that application has been served on the person whose property it is, or
 - (ii) the court has dispensed with service.
- (3) A case is within this subsection if -
 - (a) the recoverable property belongs to joint owners, and
 - (b) one of the joint owners is an excepted joint owner.

Agreements about associated and joint property.

18. (1) Where this section applies and His Majesty's Procureur agrees with the person specified in subsection (2), the forfeiture order may require that person to make a payment to His Majesty's Sheriff instead of vesting the recoverable property in His Majesty's Sheriff.

- (2) Subsection (1) refers to -
 - (a) in a case within section 17(2), the person that holds the associated property, and
 - (b) in a case within section 17(3), the excepted joint owner.
- (3) Subject to subsection (4), the amount of the payment is to be the amount which His Majesty's Procureur and that person agree represents -
 - (a) in a case within section 17(2), the value of the recoverable property, and

(b) in a case within section 17(3), the value of the recoverable property less the value of the excepted joint owner's share.

(4) The amount of the payment may be reduced by any amount that His Majesty's Procureur and that person agree is reasonable, if His Majesty's Procureur agrees that that person has suffered loss as a result of the property freezing order applying at any time to the property concerned.

(5) In agreeing the amount of the reduction under subsection (4), His Majesty's Procureur and that person must have regard to that loss and any other relevant circumstances.

(6) If there is more than one such item of associated property or excepted joint owner, the total amount to be paid to His Majesty's Sheriff, and the part of that amount which is to be provided by each person who holds any such associated property or (as the case may be) who is an excepted owner, is to be agreed between both (or as the case may be, all) of them and His Majesty's Procureur.

(7) A forfeiture order which makes any requirement under subsection (1) -

(a) may include provision for vesting, creating or extinguishing any interest in property so far as required to give effect to the agreement, and

(b) must make provision for any recoverable property to cease to be recoverable.

Associated and joint property – in default of agreement.

19. (1) Where this section applies, the forfeiture order may make the provision specified in subsection (2) if -

- (a) there is no agreement under section 18, and
- (b) the court thinks it just and equitable to do so.

(2) Subsection (1) refers to provision for either or both of the following -

- (a) the associated property to vest in His Majesty's Sheriff or (as the case may require) for the excepted joint owner's interest to be extinguished,
- (b) where there is an excepted joint owner, the severance of the interest of the excepted joint owner.

(3) A forfeiture order making any provision under subsection (2) may provide for either or both of the following -

- (a) His Majesty's Sheriff to pay an amount to the person who holds the associated property or (as the case may require) who is an excepted joint owner,
- (b) the creation of interests in favour of that person, or the imposition of liabilities or conditions, in relation to the property vested in His Majesty's Procureur.

(4) In making any provision in a forfeiture order under subsection (2) or (3), the court must have regard to -

- (a) the rights of any person who holds the associated property or (as the case may require) who is an excepted joint owner and the value to that person of that property or (as the case may require), of the excepted joint owner's share (including any value which cannot be assessed in terms of money), and
- (b) His Majesty's Procurer's interest in receiving the realised proceeds of the recoverable property.

Consent orders.

20. (1) The Royal Court may make an order staying any proceedings for a forfeiture order on terms agreed by the parties for the disposal of the proceedings if each person to whose property the proceedings, or the agreement, relates is a party to both the proceedings and the agreement.

(2) In addition to staying the proceedings on terms, an order under subsection (1) may do either or both of the following -

- (a) make provision for any property which may be recoverable property to cease to be recoverable,
- (b) make any further provision which the court thinks fit.

Limit on forfeiture.

21. (1) This section applies if His Majesty's Procurer seeks a forfeiture order -

- (a) in respect of both -
 - (i) original property, and
 - (ii) related property, or
- (b) in respect of original property, where a forfeiture order or a consent order has previously been made in respect of related property.

(2) For the purposes of this section and sections 22 and 23, the original property, and any items of property which represent the original property (within the meaning of Schedule 1), are to be treated as related to each other.

(3) The Royal Court must not make a forfeiture order if it is satisfied that His Majesty's Procureur's right to forfeit the original property has been satisfied by the previous forfeiture order or (as the case may be) consent order.

(4) Subject to subsection (3), the court may act under subsection (5) if it thinks that -

- (a) a forfeiture order may be made in respect of two or more related items of recoverable property, but
- (b) the making of a forfeiture order in respect of both or all of them is not required in order to satisfy His Majesty's Procureur's right to forfeit the original property.

(5) In order to satisfy the right mentioned in subsection (4)(b) to the extent required, the court may make a forfeiture order in respect of either or both of the following -

(a) only some of the related items of property,

(b) only a part of any of the related items of property,

(6) Where the court may make a forfeiture order in respect of any property, this section does not prevent the forfeiture of any profits which have accrued in respect of the property.

Section 21: matters treated as forfeiture orders.

22. (1) This section has effect for the purposes of section 21.

(2) Subsection (3) applies where -

(a) property is forfeited under a forfeiture notice, an account forfeiture notice or a no-consent forfeiture notice, and

(b) His Majesty's Procurer subsequently seeks a forfeiture order in respect of related property.

(3) The notice is to be treated as if it were a forfeiture order obtained by His Majesty's Procurer in respect of the forfeited property.

(4) Subsection (5) applies where -

- (a) a summary forfeiture order, an account forfeiture order or a no-consent forfeiture order is made for the forfeiture of any property, and
- (b) His Majesty's Procureur subsequently seeks a forfeiture order in respect of related property.

(5) The order mentioned in subsection (4)(a) is to be treated as if it were a forfeiture order obtained by His Majesty's Procureur in respect of the forfeited property.

(6) Subsection (7) applies if -

- (a) in pursuance of a judgment in civil proceedings (whether in the Bailiwick or elsewhere) the plaintiff has obtained property from the defendant (the "**judgment property**"),
- (b) the claim was based on the defendant's having obtained the judgment property or related property through unlawful conduct, and
- (c) His Majesty's Procureur subsequently seeks a forfeiture order in respect of property which is related to the judgment property.

(7) The judgment mentioned in subsection (6)(a) is to be treated as if it were a forfeiture order obtained by His Majesty's Procureur in respect of the judgment property.

(8) Subsection (9) applies if -

- (a) property has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making a confiscation order, and
- (b) His Majesty's Procureur subsequently seeks a forfeiture order in respect of related property.

(9) The confiscation order mentioned in subsection (8)(a) is to be treated as if it were a forfeiture order obtained by His Majesty's Procureur in respect of the property mentioned in subsection (8)(a).

(10) In subsection (8)(a), "**confiscation order**" means -

- (a) an order under section 2 of the Proceeds of Crime Law, or
- (b) an order under section 2 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^h.

Section 21: supplementary.

23. (1) Subsections (2) and (3) give examples of the satisfaction of His Majesty's Procureur's right to forfeit the original property for the purposes of section 21.

(2) If -

^h Ordres en Conseil Vol. XL, p. 131; this enactment has been amended.

- (a) there is a disposal, other than a part disposal, of the original property, and
- (b) other property (the related property) is obtained in its place,

His Majesty's Procurer's right to forfeit the original property is satisfied by the making of a forfeiture order in respect of either the original property or the related property.

- (3) If -
 - (a) there is a part disposal of the original property, and
 - (b) other property (the related property) is obtained in place of the property disposed of,

His Majesty's Procurer's right to forfeit the original property is satisfied by the making of a forfeiture order in respect of the remainder of the original property together with either the representative property or the property disposed of.

(4) In this section, a "**part disposal**" means a disposal to which section 138(1) applies.

Supplementary

Realisation of forfeited property.

- 24. (1) This section applies to property -
 - (a) which was vested in His Majesty's Sheriff by a forfeiture order or consent order, or

(b) which His Majesty's Sheriff obtained in pursuance of a forfeiture order or consent order.

(2) Subject to subsection (3), if the property is not realised, His Majesty's Sheriff must realise the property or make arrangements for its realisation.

(3) In the case of property vested by or obtained in pursuance of a forfeiture order, the property must not be realised -

(a) before the end of the period for appealing the order under section 26, or

(b) if an appeal is made within that period, before the appeal is determined or otherwise disposed of.

(4) The realisation of property under subsection (2) must be carried out, so far as practicable, in the manner best calculated to maximise the amount obtained for the property.

Application of realised sums.

25. (1) Subsection (2) applies to sums which are in the hands of His Majesty's Sheriff if they are -

(a) sums realised under section 24, or

(b) sums -

(i) vested in His Majesty's Sheriff by a forfeiture order or consent order, or

- (ii) obtained by His Majesty's Sheriff in pursuance of a forfeiture order or consent order.

(2) Subject to subsection (3), those sums and any accrued interest on those sums are to be credited to the Seized Assets Fund, after payment or reimbursement of any reasonable costs incurred in storing or insuring the property, and in realising the property, in the case of sums realised under section 24.

(3) In the case of sums vested by, or obtained in pursuance of, a forfeiture order, those sums and any accrued interest on those sums are not to be so credited -

- (a) before the end of the period within which an appeal against the order may be made under section 26, or
- (b) if an appeal is made within that period, before the appeal is determined or otherwise disposed of.

(4) The Committee may by regulations amend or repeal subsections (1) to (3).

Appeals.

26. For the avoidance of doubt, any decision or order of the Royal Court under any provision of this Part is to be regarded as a judgment or order of that court for the purposes of Part II of the Court of Appeal (Guernsey) Law, 1961ⁱ, and appeals may be brought and determined accordingly.

ⁱ Ordres en Conseil Vol. XVIII, p. 315; this enactment has been amended.

Victims of theft etc.

27. (1) In proceedings for a forfeiture order, a person who claims that any property alleged to be recoverable property, or any part of property alleged to be recoverable property, belongs to the person may apply to the Royal Court for a declaration under this section.

(2) If that person appears to the court to meet the following condition, the court may make a declaration to that effect.

(3) The condition is that -

(a) that person was deprived of the property that person claims, or of property which it represents, by unlawful conduct,

(b) that the property that person was deprived of was not recoverable property immediately before that person was deprived of it, and

(c) the property that person claims belongs to that person.

(4) Property to which a declaration under this section applies is not recoverable property.

Other exemptions.

28. Proceedings for a forfeiture order must not be taken against any person in circumstances prescribed by regulations made by the Committee; and the circumstances may relate to the person, the property or any other matter.

Scope of powers

Scope of powers.

29. (1) Subject to subsection (2), the Royal Court may make an order under this Part -

- (a) in respect of property wherever situated, and
- (b) in respect of a person wherever domiciled, resident or present.

(2) An order must not be made under this Part in respect of property that is outside the Bailiwick unless there is or has been a connection with the Bailiwick in the case concerned.

(3) Without limiting subsection (2), the circumstances in which there is or has been such a connection include those described in Schedule 2.

Enforcement outside the Bailiwick

Enforcement abroad before forfeiture order: His Majesty's Procureur.

30. (1) This section applies if -

- (a) the property freezing conditions are met in relation to any property,
- (b) the property is not property to which a forfeiture order applies, and
- (c) His Majesty's Procureur believes that the property is in a country outside the Bailiwick.

(2) His Majesty's Procureur may send a request for assistance to the government of that country.

(3) A request for assistance under this section is a request to the government of that country to do either or both of the following -

- (a) secure that any person is prohibited from dealing with the property,
- (b) assist in connection with the management of the property, including with securing its detention, custody or preservation.

(4) In subsection (1)(a), the "**property freezing conditions**" are the first and (if applicable) second conditions in section 8(5) and (6) respectively; and references in those provisions to the property concerned are to be read as references to the property mentioned in subsection (1)(a).

Enforcement abroad before forfeiture order: His Majesty's Sheriff.

31. (1) This section applies if -

- (a) a property freezing order has effect in relation to any property,
- (b) His Majesty's Sheriff is appointed as receiver in respect of the property under section 12, and
- (c) His Majesty's Sheriff believes that the property is in a country outside the Bailiwick.

(2) On request by His Majesty's Sheriff, His Majesty's Procureur may send a request for assistance to the government of the country.

(3) A request for assistance under this section is a request to the government of that country to do either or both of the following -

- (a) secure that any person is prohibited from dealing with the property,
- (b) assist in connection with the management of the property, including with securing its detention, custody or preservation.

Enforcement abroad: after forfeiture order.

32. (1) This section applies if -

- (a) a forfeiture order has effect in relation to any property, and
- (b) His Majesty's Procureur or His Majesty's Sheriff believes that the property is in a country outside the Bailiwick.

(2) At His Majesty's Procureur's initiative or on request by His Majesty's Sheriff, His Majesty's Procureur may send a request for assistance to the government of the country.

(3) A request for assistance under this section is a request to the government of that country for assistance in connection with the management and disposal of the property, and includes a request to do one or more of the following -

- (a) to secure the detention, custody or preservation of the property,
- (b) in the case of money, to secure that it is applied in accordance with the law of that country,
- (c) in the case of property other than money, to secure that the property is realised and the proceeds are applied in accordance with the law of that country.

(4) A certificate purporting to be issued by or on behalf of the government of that country is admissible as evidence of the facts it states, if it states -

- (a) that property has been realised in pursuance of a request under this section,
- (b) the date of realisation, and
- (c) the proceeds of realisation.

PART III

FORFEITURE OF DESIGNATED PROPERTY

Preliminary

Interpretation.

33. (1) In this Part -

- (a) "**cash**" has the meaning given by section 10 of the Cash Controls (Bailiwick of Guernsey) Law, 2007^j,
- (b) "**designated property**" has the meaning given by section 34,
- (c) "**forfeiture notice**" means a notice given under section 45,
- (d) "**objection**", in relation to a forfeiture notice, has the meaning given by section 46(6),
- (e) "**objection period**", in relation to a forfeiture notice, means the period for making objections specified in the notice under section 45(3)(f), and
- (f) "**relevant officer**", in relation to the exercise by a police officer of a power of search, seizure or detention under this Part, or in relation to property detained by a police officer, means, where the officer exercising the power or (as the case may be) detaining the property is -
 - (i) a member of the salaried police or of the special constabulary of the Island of Guernsey, a member of the salaried police force of the Island of Guernsey of at least the rank of Inspector,

^j Order in Council No. II of 2008; this enactment has been amended.

- (ii) a member of any police force which may be established by the States of Alderney or a special constable appointed under section 47 of the Government of Alderney Law, 2004^k, a member of the police force established by the States of Alderney of at least the rank of Inspector,
- (iii) an Assistant Constable of Sark or a special constable appointed under section 54 of the Reform (Sark) Law, 2008^l, the Constable or the Vingtenier,
- (iv) a customs officer, a customs officer of at least the rank of Senior Officer or Senior Investigation Officer, and
- (v) a designated person, a designated person appointed in writing as a Senior Officer by the Director of the Economic and Financial Crime Bureau.

(2) The Committee may by regulations amend the definition of "**relevant officer**" in subsection (1).

^k Order in Council No. III of 2005; this enactment has been amended.

^l Order in Council No. V of 2008; this enactment has been amended.

"Designated property".

34. (1) In this Part, "**designated property**" means an item of property that falls within one or more of the following descriptions of property -

- (a) cash,
- (b) postal orders, to the extent that these do not constitute cash,
- (c) cheques of any kind, including travellers' cheques, to the extent that these do not constitute cash,
- (d) bankers' drafts, to the extent that these do not constitute cash,
- (e) bearer bonds, or bearer shares, to the extent that these do not constitute cash,
- (f) gaming vouchers, to the extent that these do not constitute cash,
- (g) fixed value casino tokens, to the extent that these do not constitute cash,
- (h) betting receipts, to the extent that these do not constitute cash,
- (i) precious metals, to the extent that these do not constitute cash,

- (j) face-value vouchers, to the extent that these do not constitute cash,
 - (k) precious stones,
 - (l) watches,
 - (m) artistic works.
- (2) In this section -
- (a) "**artistic work**" means a piece of work falling within section 4(1)(a) of the Copyright (Bailiwick of Guernsey) Ordinance, 2005^m,
 - (b) "**betting receipt**" means a receipt in physical form that represents a right to be paid an amount in respect of a bet placed with a person who is licensed by the competent authority of the country in which the person operates to take bets,
 - (c) "**face-value voucher**" means a voucher in physical form that represents a right to receive goods or services to the value of an amount stated on it,
 - (d) "**fixed-value casino token**" means a casino token that represents a right to be paid the amount stated on it,

^m Ordinance No. XIX of 2005; this enactment has been amended.

- (e) "**gaming voucher**" means a voucher in physical form issued by a gaming machine that represents a right to be paid the amount stated on it, and
 - (f) "**precious metal**" means gold, silver or platinum (whether in an unmanufactured or a manufactured state).
- (3) The Committee may by regulations amend subsections (1) and (2).

Searches

Search on premises.

35. (1) Subsection (2) applies where a police officer -
- (a) has entered any premises under the authority of a warrant granted under subsection (3), or
 - (b) is lawfully on any premises otherwise than under the authority of a warrant granted under subsection (3).
- (2) A police officer who has reasonable grounds for suspecting that there is on the premises designated property which is recoverable property may search for the designated property there.
- (3) On an application made to an appropriate judicial authority by a police officer, if the authority is satisfied that there are reasonable grounds for suspecting that there is on any premises designated property which is recoverable property, the authority may grant a warrant authorising a police officer to enter the

premises specified in the warrant at any time within 28 days after the date of issue of the warrant using any force necessary for the purpose.

(4) A police officer entering any premises under the authority of a warrant granted under subsection (3) may be accompanied by any other person that the officer considers to be necessary.

(5) A warrant under subsection (3) -

- (a) may be granted ex parte and in chambers,
- (b) may be granted even if no notice of the application has been given to any person, and
- (c) may be granted subject to any terms and conditions that the appropriate judicial authority thinks fit.

(6) In this section, "**appropriate judicial authority**" or "**authority**" -

- (a) means a Judge of the Magistrate's Court,
- (b) in Alderney, includes either the Chairman of the Court of Alderney, or, if the Chairman is absent or unable to act, a Jurat of the Court of Alderney authorised by the Chairman to act in that capacity on the Chairman's behalf, and
- (c) in Sark, includes the Seneschal of Sark.

Search of vehicles.

36. (1) This section applies if -

- (a) a police officer has reasonable grounds for suspecting that there is designated property which is recoverable property in a vehicle,
- (b) it appears to the police officer that the vehicle is under the control of a person (the "**suspect**") who is in or in the vicinity of the vehicle,
- (c) the vehicle is -
 - (i) in any place to which, at the time of the proposed exercise of the powers, the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, or
 - (ii) in any other place to which at that time people have ready access but which is not a dwelling, and
- (d) if the vehicle is in a garden or yard or other land occupied with and used for the purposes of a dwelling, the police officer has reasonable grounds for believing -
 - (i) that the suspect does not reside in the dwelling, and

- (ii) that the vehicle is not in the place in question with the express or implied permission of a person who resides in the dwelling.

(2) The police officer may require the suspect to do either or both of the following -

- (a) permit entry to the vehicle,
- (b) permit a search of the vehicle.

(3) In exercising the powers in subsection (2), a police officer may detain the vehicle for so long as is necessary for their exercise.

(4) This section applies with any necessary modifications to vessels and aircraft as it applies to vehicles.

Search of person etc.

37. (1) This section applies if a police officer has reasonable grounds for suspecting that a person (the "**suspect**") is carrying designated property which is recoverable property.

(2) The police officer may require the suspect to do either or both of the following -

- (a) permit a search of any article the suspect has with the suspect,
- (b) permit a search of the suspect's person.

(3) In exercising the powers in subsection (2), a police officer may detain the suspect for so long as is necessary for their exercise.

(4) The powers conferred by this section do not require a person to submit to an intimate search or strip search.

(5) In this section -

(a) "**intimate search**" has the meaning given by section 72(6) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972ⁿ, and

(b) "**strip search**" has the meaning given by section 72(6) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

Searches: supplementary.

38. (1) The powers conferred by sections 35 to 37 include the power to carry out (or arrange for the carrying out of) tests on anything found during the course of the search for the purpose of establishing whether it is designated property.

(2) A power conferred by any provision of sections 35 to 37 may be exercised by a person -

(a) only so far as reasonably required for the purpose of finding designated property, and

ⁿ Ordres en Conseil Vol. XXIII, p. 573; this enactment has been amended.

(b) only with the approval of a relevant officer, unless, in the circumstances, it is not practicable to obtain that approval before exercising the power.

(3) Subsection (2)(b) does not apply where the power concerned is exercised by a senior officer.

Seizure and detention

Seizure of property.

39. (1) A police officer may seize any item of property if -
- (a) it is, or the police officer has reasonable grounds for suspecting that it is, designated property, and
 - (b) the police officer has reasonable grounds for suspecting that it is recoverable property.
- (2) A police officer may also seize any item of property -
- (a) in the case of money, where -
 - (i) the police officer has reasonable grounds for suspecting that a part of the money is recoverable property, and
 - (ii) it is not reasonably practicable to seize only that part, or
 - (b) in any other case, where -

- (i) the police officer has reasonable grounds for suspecting that the item is designated property other than money, and that part of the item is recoverable property, and
- (ii) it is not reasonably practicable to seize only that part.

(3) For the avoidance of doubt, section 18 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003^o (additional powers of seizure) applies to a police officer exercising functions under this Part.

Initial detention of seized property.

40. (1) A police officer may detain property seized under section 39 for the initial period, but only for so long as the conditions for seizure in either subsection (1) or (2) of that section are satisfied.

(2) In subsection (1), the "**initial period**" -

(a) means 48 hours, and

(b) where authorised by a relevant officer, includes a further period of 48 hours in addition to the period mentioned in paragraph (a).

(3) In calculating the period of detention, no account is to be taken of -

^o Order in Council No. XXIII of 2003; this enactment has been amended.

- (a) any Saturday or Sunday, Christmas Day or Good Friday, or
- (b) any day which is a public holiday in the part of the Bailiwick within which the property was seized.

Further detention of property.

41. (1) On an application made by or with the authority of His Majesty's Procureur, the appropriate Court may make an order to extend the period for which property seized under section 39, or any part of the property, may be detained beyond the initial period provided for in section 40; but the order must not authorise the detention of any of the property -

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

(2) The court may make an order under subsection (1) only if it is satisfied that -

- (a) the property concerned is designated property, and
- (b) condition 1, 2 or 3 is met in relation to the property concerned.

(3) Condition 1 is that there are reasonable grounds for suspecting that the property concerned is recoverable property, and that -

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

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

(ii) proceedings in connection with the property under this Law or proceedings under legislation in force in a country outside the Bailiwick relating to the forfeiture of money or other property by a court in non-conviction-based proceedings, or

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

(4) Condition 2 is that -

(a) His Majesty's Procureur believes that an application may be made under section 111 for the registration of an overseas forfeiture order in respect of the property concerned, and

(b) there are reasonable grounds for this belief.

- (5) Condition 3 is that -
 - (a) condition 1 is met in respect of part of the property concerned, and
 - (b) it is not reasonably practicable to detain only that part.

- (6) An order under subsection (1) -
 - (a) may be made ex parte and in chambers,
 - (b) may be made even if no notice of the application has been given to any person,
 - (c) must provide for notice to be given to persons affected by it, and
 - (d) may be made subject to any terms and condition that the court thinks fit.

Testing and safekeeping of property.

42. (1) A police officer may carry out (or arrange for the carrying out of) tests on any item of property seized under section 39 for the purpose of establishing whether it is designated property.

(2) A police officer must arrange for any item of property seized under section 39 to be safely stored throughout the period during which it is detained under this Part.

Interest on money.

43. (1) If a sum of money is detained under section 41 beyond the initial period provided for by section 40, it is at the first opportunity to be paid into an interest-bearing account and held there, and the interest accruing on it is to be added to it on its forfeiture or release.

(2) In the case of a sum of money detained under section 41 to which section 39(2)(a) applies, the police officer must, on paying it into the account, release the part of the money to which the suspicion does not relate.

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

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

(b) is required -

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

(ii) otherwise for the purposes of a civil forfeiture investigation, a detained property investigation, a frozen funds investigation or the investigation, prevention or detection of a criminal offence.

Release of detained property.

44. (1) This section applies while any property is detained under section 40 or 41.

(2) On an application made by the person from whom the property was seized, the appropriate Court may order the release of the whole or any part of the property if that person satisfies the court that the release condition is met in respect of the property or (as the case may require) that part of the property.

(3) An order for the release of property under this section -

- (a) may be made in chambers,
- (b) must not be made until notice of the application for it has been given to His Majesty's Procureur, and
- (c) may be made subject to any terms and conditions that the court thinks fit.

(4) Subject to subsection (5), a relevant officer may, with the authority of His Majesty's Procureur, release the whole or any part of the property being detained if satisfied that the detention of the property to be released is no longer justified.

(5) If any property is detained under section 41, the relevant officer must notify the appropriate Court before releasing the property under subsection (4).

(6) For the purposes of this section, the release condition is met in respect of any property if the property -

- (a) is not designated property, or
- (b) is not recoverable property.

Forfeiture notice

Forfeiture notice.

45. (1) This section applies while any property is detained under section 41.

(2) A relevant officer may give a notice for the purpose of forfeiting the property or a part of it if the officer has reasonable grounds to believe that the property or (as the case may be) the part is recoverable property.

(3) A forfeiture notice must -

- (a) so far as practicable, be given to every person to whom notice of the order under section 39 in respect of the property was given,
- (b) specify the property in respect of which it is given,
- (c) in the case of money, state the amount of money,
- (d) state when and where the property was seized,
- (e) confirm that the relevant officer has reasonable grounds to believe that the property or (as the case may require) the part is recoverable property,
- (f) specify a period for objecting to the proposed forfeiture, which must be at least 30 days starting on the day after the notice is given,

- (g) specify a postal or electronic address to which any objections must be sent, and
- (h) explain that the property will be forfeited unless an objection is received at that address within the objection period.

(4) The Committee may by regulations make provision about how a notice is to be given.

(5) Without limiting subsection (4), regulations under that subsection may prescribe -

- (a) the persons to whom a notice must be given,
- (b) the manner in which a notice must be given, which may include publication in a specified manner, and
- (c) the circumstances in which, and the time at which, a notice is to be regarded as having been so given.

Effect of forfeiture notice.

46. (1) This section applies if a forfeiture notice is given in respect of any property.

(2) The property must be detained until the earliest of these occurrences -

- (a) the property is forfeited under this Part,
- (b) the notice lapses under subsection (5), or

(c) the property is released under any power conferred by this Part.

(3) Subject to section 48, if no objection is made within the objection period and the notice has not lapsed, the property is forfeited at the end of the objection period.

(4) Property forfeited under subsection (3) vests in His Majesty's Sheriff, and His Majesty's Sheriff must take possession of and manage or otherwise deal with that property.

(5) A forfeiture notice lapses in relation to any property detained under subsection (2), if -

- (a) an objection is made within the objection period,
- (b) an application is made for the forfeiture of the whole or any part of that property under section 49, or
- (c) the property or any part of it is released under any power conferred by this Part.

(6) An objection -

- (a) means a written objection sent to the postal or electronic address specified in the notice,
- (b) is made when it is received at that address,
- (c) may be made by anyone, whether a recipient of the notice or not, and

(d) does not prevent forfeiture of the property under section 49.

(7) A forfeiture notice does not affect the validity or effect of an order under section 41.

Detention following lapse of notice.

47. (1) This section applies if -

- (a) a forfeiture notice is given in respect of any property,
- (b) the notice lapses under section 46(5), and
- (c) the period for which detention of the property was authorised under section 41 has expired.

(2) Subject to subsection (3), the property may be detained for a further period of up 14 days.

(3) If, within the further period mentioned in subsection (2), a relevant officer decides that neither application of the kind mentioned in subsection (4) ought to be made, the property must be released.

(4) The applications are -

- (a) an application for an order (or a further order) under section 41, or
- (b) an application for forfeiture of the property under section 49.

(5) If either application is made within the further period mentioned in subsection (2), the property may be detained until the application is determined or otherwise disposed of.

Application to set aside forfeiture.

48. (1) A person aggrieved by the forfeiture of property under section 46(3) may apply to the appropriate Court for an order setting aside the forfeiture of the property or any part of it.

(2) Subject to subsection (3), an application must be made before the end of the period of 30 days starting with the day on which the objection period ends.

(3) The court may give permission for an application under subsection (1) to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant -

(a) failed to object to the forfeiture within the objection period, and

(b) failed to make an application within the 30-day period.

(4) On an application under this section, the court may set aside the forfeiture in respect of the property or any part of it if the court is satisfied that the property or (as the case may be) the part is -

(a) not designated property, or

(b) not recoverable property.

- (5) Where the court sets aside the forfeiture of any property -
- (a) it must order the release of the property, and
 - (b) that property is to be treated as never having been forfeited.

(6) Where money is released under subsection (5), there must be added to the money on its release any interest accrued on it whilst in the account referred to in section 43(1).

Summary forfeiture orders

Summary forfeiture orders.

49. (1) This section applies to any property detained under section 41 or 47.

(2) His Majesty's Procureur may apply to the appropriate Court for an order to forfeit all or a part of the property if His Majesty's Procureur suspects that the property or (as the case may be) the part thereof is recoverable property.

(3) On determining an application under subsection (2), the court must make an order to forfeit the property concerned unless a person opposing the application satisfies the court that the release condition is met in respect of that property.

(4) If a person opposing the application satisfies the court that the release condition is met in respect of part only of the property concerned, the court must make an order to forfeit the remainder of that property.

(5) In the case of a summary forfeiture order made under subsection (3) or (4) in respect of property which belongs to joint owners, one of whom is an excepted joint owner, the order must not apply to so much of it as the court thinks attributable to the excepted joint owner's share.

(6) Where an application is made under subsection (2), the property concerned must be detained (and must not be released under any power conferred by this Part) until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded.

(7) If on determining an appeal, the court hearing the appeal ("**the appellate court**") sets aside the judgment of the court that determined the application and orders a new trial or hearing to be had, the appellate court may order the continued detention of the property concerned until a time specified by the appellate court.

(8) Where the property concerned was seized under section 39(2), subsection (6) is to be read as if it required the continued detention of the whole of the item of property.

(9) For the purposes of this section, the release condition is met in respect of any property if the property -

(a) is not designated property, or

(b) is not recoverable property.

Effect of summary forfeiture order.

50. (1) Subject to section 51 -

- (a) property forfeited under a summary forfeiture order vests in His Majesty's Sheriff from the date specified in the order, and
- (b) His Majesty's Sheriff must take possession of and, in accordance with the provisions of this section, manage or otherwise deal with that property.

(2) A summary forfeiture order may authorise or require His Majesty's Sheriff to do either or both of the following -

- (a) exercise any powers that are prescribed in an Ordinance under section 49EA of the Proceeds of Crime Law in relation to any of the property that the appropriate Court thinks fit,
- (b) take any other steps the court thinks appropriate in connection with the management of the property (including securing the detention, custody or preservation of the property in order to manage it).

(3) A summary forfeiture order may require any person, in respect of whose property a summary forfeiture order is made, to do either or both of the following -

- (a) bring the property to a place specified by His Majesty's Sheriff or place it in the custody of His Majesty's Sheriff,

(b) anything that the person is reasonably required to do by His Majesty's Sheriff for the preservation of the property.

(4) Any of the following persons may at any time apply to the appropriate Court for directions as to the exercise of the functions of His Majesty's Sheriff in connection with a summary forfeiture order -

(a) His Majesty's Sheriff,

(b) any party to the proceedings for the making of the summary forfeiture order,

(c) any person affected by any action taken, or who may be affected by any action proposed to be taken, by His Majesty's Sheriff.

(5) Before giving any directions, the court must, so far as practicable, give an opportunity to be heard to the persons mentioned in subsection (4)(a), (b) and (c).

(6) In subsections (2) and (3), a reference to property includes a reference to any document relating to the property concerned.

Associated and joint property.

51. Sections 52 and 53 apply if -

(a) an application is made under section 49 in respect of property detained under this Part,

- (b) the appropriate Court proposes to make a summary forfeiture order under section 49, and
- (c) either -
 - (i) there exists property that is associated with the property in relation to which the court proposes to make the order, or
 - (ii) the property in relation to which the court proposes to make the order belongs to joint owners and one of the joint owners is an excepted joint owner.

Agreements about associated and joint property.

52. (1) Where this section applies and the person who applied for the summary forfeiture order agrees with the person specified in subsection (2), the appropriate Court may, instead of making a summary forfeiture order, make an order requiring the person specified in subsection (2) to make a payment to His Majesty's Sheriff.

- (2) Subsection (1) refers -
 - (a) in any case within section 51(c)(i), to the person who holds the associated property, and
 - (b) in any case within section 51(c)(ii), to the excepted joint owner.

(3) Subject to subsection (4), the amount of the payment is to be the amount which the parties to the agreement under subsection (1) agree represents-

(a) in any case within section 51(c)(i), the value of the recoverable property, and

(b) in any case within section 51(c)(ii), the value of the recoverable property less the value of the excepted joint owner's share.

(4) The amount of the payment may be reduced if the person who applied for the summary forfeiture order agrees that the other party to the agreement has suffered loss as a result of the seizure of the recoverable property and any associated property under section 39 and its subsequent detention.

(5) The reduction permissible under subsection (4) is the amount that the parties to the agreement agree is reasonable, having regard to the loss suffered and any other relevant circumstances.

(6) So far as required for giving effect to the agreement, an order under subsection (1) may include provision for vesting, creating or extinguishing any interest in property.

(7) If there is more than one item of associated property or more than one excepted joint owner, the total amount to be paid under subsection (1), and the part of that amount which is to be provided by each person who holds any such associated property or (as the case may be) who is an excepted joint owner, is to be agreed between both (or all) of them and the person who applied for the order under section 49.

(8) For the purpose of paragraph 5(4) of Schedule 1, on the making of an order under subsection (1), that property is to be treated as if it had been forfeited.

Associated and joint property: default of agreement.

53. (1) Where this section applies and there is no agreement under section 52, the appropriate Court may, as well as making a summary forfeiture order, make an order -

- (a) providing for the forfeiture of the associated property or (as the case may be) for the excepted joint owner's interest to be extinguished, or
- (b) providing for the excepted joint owner's interest to be severed.

(2) An order under subsection (1) -

- (a) may be made only if the court thinks it just and equitable to do so, and
- (b) may provide for the payment of an amount to the person who holds the associated property or who is an excepted joint owner.

(3) In making an order under subsection (1), and including provision in it under subsection (2), the court must have regard to -

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the

value to that person of that property or (as the case may be) of that person's share (including any value that cannot be assessed in terms of money), and

- (b) the interest of the person who applied for the summary forfeiture order in realising the value of the forfeitable property.

Supplementary

Realisation of forfeited assets.

54. (1) This section applies to any property -

- (a) vested in His Majesty's Sheriff under section 46(4), or
- (b) which is vested in, or otherwise obtained by, His Majesty's Sheriff in pursuance of a summary forfeiture order.

(2) Subject to subsection (3), unless the property is realised, His Majesty's Sheriff must realise the property or make arrangements for its realisation.

(3) The property must not be realised -

- (a) before the end of the period for appeal, or
- (b) if an appeal is made within that period, before the appeal is determined or otherwise disposed of.

(4) The realisation of the property under subsection (1) must be carried out, so far as practicable, in the manner best calculated to maximise the amount obtained for the property.

(5) In this section, "**appeal**" -

(a) where subsection (1)(a) applies -

(i) means an application to set aside the forfeiture under section 48, and

(ii) where an application referred to in subparagraph (i) is made and refused by a court, includes any appeal against that decision under section 56, and

(b) in any other case, means an appeal against the summary forfeiture order under section 56.

Application of realised sums.

55. (1) This section applies to sums -

(a) forfeited under section 46(3),

(b) vested in, or otherwise obtained by, His Majesty's Sheriff in pursuance of a summary forfeiture order, or

(c) realised under section 54.

(2) Subject to subsection (3), those sums and any accrued interest on those sums are to be credited to the Seized Assets Fund, after payment or

reimbursement of any reasonable costs incurred in storing or insuring the property, and in realising the property, in the case of sums realised under section 54.

(3) Except in the case of sums realised under section 54, those sums and any accrued interest are not to be so credited -

(a) before the end of the period for appeal, or

(b) if an appeal is made within that period, before the appeal is determined or otherwise disposed of.

(4) If what is realised under section 54 represents part only of an item of property seized under section 39 and detained under this Part, the reference in subsection (2) to costs incurred in storing or insuring the property is to be read as a reference to costs incurred in storing or insuring the whole of the item of property.

(5) In this section, "**appeal**" -

(a) where subsection (1)(a) applies -

(i) means an application to set aside the forfeiture under section 48, and

(ii) where an application referred to in subparagraph (i) is made and refused by a court, includes any appeal against that decision under section 56, and

(b) where subsection (1)(b) applies, means an appeal against the summary forfeiture order under section 56.

(6) The Committee may by regulations amend or repeal subsections (1) to (5).

Referrals and appeals.

56. For the avoidance of doubt -

(a) an application made to the Magistrate's Court under any provision of this Part is to be regarded as a civil action in which the court has jurisdiction for the purposes of sections 17 and 18 of the Magistrate's Court (Guernsey) Law, 2008^P, and referrals and appeals may be made and determined accordingly, and

(b) any decision or order of the Royal Court under any provision of this Part is to be regarded as a judgment or order of that court for the purposes of Part II of the Court of Appeal (Guernsey) Law, 1961, and appeals may be made and determined accordingly.

Victims and other owners.

57. (1) A person who claims ownership of any property detained under this Part, or any part of the property, may apply to the appropriate Court for the property or (as the case may be) the part to be released to that person.

^P Order in Council No. XVIII of 2009; this enactment has been amended.

- (2) An application may be made -
 - (a) in the course of proceedings under section 41 or 49, or
 - (b) at any other time.

- (3) The court may order the property concerned to be released -
 - (a) to the applicant, if it appears to the court that condition 1 is met, or
 - (b) to the applicant or the person from whom that property was seized, if it appears to the court that condition 2 is satisfied.

- (4) Condition 1 is that -
 - (a) the applicant was deprived of the property concerned, or of property which it represents, by unlawful conduct,
 - (b) the property the applicant was deprived of was not, immediately before the applicant was deprived of it, recoverable property, and
 - (c) that property belongs to the applicant.

- (5) Condition 2 is that -
 - (a) the applicant is not the person from whom the property concerned was seized,

- (b) that property belongs to the applicant,
 - (c) the court is satisfied that the release condition is met in relation to that property, and
 - (d) no objection to the making of an order under this subsection has been made by the person from whom that property was seized.
- (6) The release condition is met -
- (a) in relation to property detained under section 41, if the requirement in section 41(2) for the continued detention of the property is no longer met,
 - (b) in relation to property detained under section 46(2) or 47(2), if the property is not recoverable property, and
 - (c) in relation to property detained under section 49(6), if the court decides not to make a summary forfeiture order under section 49 in relation to the property.

Code of practice.

58. The Committee may issue a code of practice in connection with the exercise by police officers (including relevant officers and senior officers) of their functions under this Part.

PART IV
FORFEITURE OF MONEY HELD IN BAILIWICK BANK ACCOUNTS

Freezing of bank accounts

Application for account freezing order.

59. (1) This section applies if His Majesty's Procureur suspects that money held in an account maintained with a bank in the Bailiwick is recoverable property.

(2) Where this section applies, His Majesty's Procureur may apply to the appropriate Court for an account freezing order in relation to the account (the "**frozen account**") in which the money is held.

(3) For the purposes of this Part -

(a) an account freezing order is an order that, subject to any exclusion under section 62, prohibits each person by or for whom the frozen account is operated from making withdrawals or payments from that account, and

(b) an account is operated by or for a person if the person is an account holder, a signatory, or identified as a beneficiary in relation to the account.

(4) An application for an account freezing order may be made without notice if the circumstances of the case are such that notice of the application would prejudice the taking of any steps under this Part to forfeit money that is recoverable property.

(5) The money referred to in subsection (1) may be all or part of the credit balance of the account.

Making of account freezing order.

60. (1) On an application for an account freezing order under section 59, the court may make the order if it is satisfied that there are reasonable grounds for suspecting that money held in the account (whether all or part of the credit balance of the account) is recoverable property.

(2) Subject to the provisions of this Part, an account freezing order ceases to have effect at the end of the period specified in the order.

(3) The period specified by the court for the purposes of subsection (2), whether when the order is first made or on a variation under section 61, must not in aggregate exceed the period of two years, starting with the day on which the account freezing order is (or was) made.

(4) An account freezing order must provide for notice to be given to persons affected by the order.

Variation and setting aside of account freezing order.

61. (1) The appropriate Court may at any time vary or set aside an account freezing order on an application made by -

(a) His Majesty's Procureur, or

(b) any person affected by the order.

(2) Before varying or setting aside an account freezing order, the court must give an opportunity to be heard to -

- (a) the parties to the proceedings, and
- (b) so far as practicable, any person who may be affected by its decision.

Exclusions.

62. (1) Without limiting section 61, the power under that section to vary an account freezing order includes power to make exclusions from the prohibition on making withdrawals or payments from the frozen account, whether at the time when the order is made or during the validity of the order.

(2) An exclusion may include provision for the purpose of enabling any person -

- (a) to meet the person's reasonable living expenses, or
- (b) to carry on any trade, business, profession or occupation.

(3) An exclusion may be made subject to conditions.

(4) Where a court exercises the power to make an exclusion for the purpose of enabling a person to meet legal expenses that the person has incurred, or may incur, in respect of proceedings under this Law, it must ensure that the exclusion -

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs,

- (b) specifies the total amount that may be released for legal expenses pursuant to the exclusion, and
- (c) is made subject to required conditions (if any) prescribed under section 135.

(5) In deciding whether to make an exclusion for the purpose of enabling a person to meet legal expenses in respect of proceedings under this Law, a court -

- (a) must have regard (in particular) to the desirability of the person being represented in any proceedings under this Law in which the person is a participant, and
- (b) where the person is a respondent, must disregard the possibility that legal representation of the person in any such proceedings might, were an exclusion not made, be made available under a Scheme prescribed under section 14 of the Legal Aid (Bailiwick of Guernsey) Law, 2003.

(6) The court must not make an exclusion for the purpose of enabling a person to meet living or legal expenses unless the court is satisfied that the person is unable to meet those expenses in any other way.

(7) So far as practicable, the power to make exclusions must be exercised with a view to ensuring that there is not undue prejudice to the taking of any steps under this Part to forfeit money that is recoverable property.

Account forfeiture notice

Account forfeiture notices.

63. (1) This section applies while an account freezing order has effect in respect of any account.

(2) His Majesty's Procureur may give a notice for the purpose of forfeiting any money held in the account (whether all or part of the credit balance of the account) if His Majesty's Procureur has reasonable grounds to believe that the money is recoverable property.

(3) An account forfeiture notice must -

- (a) so far as practicable, be given to every person to whom notice of the account freezing order was given,
- (b) state the amount of money held in the frozen account which is proposed be forfeited,
- (c) confirm that His Majesty's Procureur has reasonable grounds to believe that that amount of money is recoverable property,
- (d) specify a period for objecting to the proposed forfeiture, which must be at least 30 days starting on the day after the notice is given,
- (e) specify a postal or electronic address to which any objections must be sent, and

- (f) explain that the money will be forfeited unless an objection is received at that address within the period specified under paragraph (c) (the "**objection period**").

(4) If no objection is made within the objection period, and the notice has not lapsed under section 64 -

- (a) the amount of money stated in the notice is forfeited (subject to section 65),
- (b) the bank with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by His Majesty's Procureur, and
- (c) immediately after the transfer has been made, the account freezing order made in relation to the frozen account ceases to have effect.

(5) An objection -

- (a) means a written objection sent to the address specified in the notice,
- (b) is made when it is received at that address,
- (c) may be made by anyone, whether a recipient of the notice or not, and

(d) does not prevent forfeiture of the money under section 67.

(6) The Committee may by regulations make provision about how an account forfeiture notice is to be given.

(7) Without limiting subsection (6), regulations under that subsection may prescribe -

- (a) the persons to whom a notice must be given,
- (b) the manner in which a notice must be given, which may include publication in a specified manner, and
- (c) the circumstances in which, and the time at which, a notice is to be regarded as having been so given.

Lapse of account forfeiture notice.

64. (1) An account forfeiture notice lapses if -

- (a) an objection is made within the objection period referred to in section 63,
- (b) an application is made under section 67 for the forfeiture of money held in the frozen account, or
- (c) an order is made under section 61 setting aside the account freezing order having effect in relation to the frozen account.

(2) Subject to subsections (3) and (8), if an account forfeiture notice lapses under subsection (1)(a), the account freezing order ceases to have effect at the end of the period of 14 days starting with the making of the objection (the "**14-day period**").

(3) If within the 14-day period an application is made -

(a) for a variation of the account freezing order under section 61 so as to extend the period specified in the order, or

(b) for forfeiture of money held in the frozen account under section 67,

the account freezing order continues to have effect until the relevant time (and then ceases to have effect).

(4) Where an application of the kind mentioned in subsection (3)(a) is made, the "**relevant time**" means -

(a) if an extension is granted, the time determined in accordance with section 60(2), or

(b) if an extension is not granted, the time when the application is determined or otherwise disposed of.

(5) Where an application of the kind mentioned in subsection (3)(b) is made, the relevant time is the time determined under section 67(7) or, as the case may require, section 67(8).

(6) If, within the 14-day period mentioned in subsection (2), His Majesty's Procureur decides that neither application of the kind mentioned in subsection (3)(a) or (b) is to be made, His Majesty's Procureur must notify the bank with which the frozen account is maintained of that decision as soon as possible.

(7) If the bank is notified in accordance with subsection (6) before the expiry of the 14-day period, the freezing order ceases to have effect on the bank being so notified.

Application to set aside account forfeiture.

65. (1) A person aggrieved by the forfeiture of money under section 63(4) may apply to the appropriate Court for an order setting aside the forfeiture of the money or any part of it.

(2) Subject to subsection (3), the application must be made before the end of the period of 30 days starting with the day on which the objection period mentioned in section 63(3) ended (the "**30-day period**").

(3) The court may give permission for an application under subsection (1) to be made after the 30-day period has ended if it thinks that there are exceptional circumstances to explain why the applicant -

(a) failed to object to the forfeiture within the objection period, and

(b) failed to make an application within the 30-day period.

(4) On an application under this section, the court may set aside the forfeiture in respect of the forfeited money or an amount of the money only if the

applicant satisfies the court that that forfeited money or (as the case may require) the amount is not recoverable property.

- (5) Where the court sets aside the forfeiture of any money -
 - (a) it must order the release of that money, and
 - (b) that money is to be treated as never having been forfeited.

(6) Where money is released under subsection (5)(a), there must be added to the money on its release any interest accrued on it whilst in the account referred to in section 63(4)(b).

Application of money forfeited under account forfeiture notice.

66. (1) Subject to subsection (2), money forfeited under section 63(4)(a), and any interest accrued on it whilst in the account referred to in section 63(4)(b), are to be credited to the Seized Assets Fund.

- (2) The money and any accrued interest are not to be so credited -
 - (a) before the end of the period for appeal, or
 - (b) if an appeal is made within that period, before the appeal is determined or otherwise disposed of.
- (3) In this section -
 - (a) "**appeal**" -
 - (i) means an application under section 65, and

(ii) where an application under section 65 is made and refused by the appropriate Court, includes any appeal against that decision under section 77, and

(b) "**period for appeal**" in the case of any application that may be made under section 65, excludes the possibility of an application being permitted under section 65(3).

(4) The Committee may by regulations amend or repeal subsections (1) to (3).

Account forfeiture order

Account forfeiture order.

67. (1) This section applies while an account freezing order has effect in respect of any account.

(2) His Majesty's Procureur may apply to the appropriate Court for an order to forfeit all or a part of money held in the frozen account if His Majesty's Procureur suspects that the money or (as the case may be) the part of it is recoverable property.

(3) On determining an application under subsection (2), the court must order the forfeiture of the money that is the subject of the application unless a person opposing the application satisfies the court that that money is not recoverable property.

(4) If a person opposing the application satisfies the court that part only of the money concerned is not recoverable property, the court must make an order to forfeit the remainder of that money.

(5) In the case of an account forfeiture order made under subsection (3) or (4) in respect of money which belongs to joint owners, one of whom is an excepted joint owner, the order must not apply to so much of it as the court thinks attributable to the excepted joint owner's share.

(6) Where an application is made under subsection (2), the account freezing order continues to have effect until the time referred to in subsection (7)(b) or (8).

(7) Where money held in a frozen account is ordered to be forfeited under subsection (3) or (4) -

- (a) the bank with which the frozen account is maintained must transfer that amount of money into an interest-bearing account nominated by His Majesty's Procureur, and
- (b) immediately after the transfer has been made, the account freezing order having effect in respect of the frozen account ceases to have effect.

(8) Where an application under subsection (2) is determined or otherwise disposed of, other than by the making of an order under subsection (3) or (4), the account freezing order ceases to have effect immediately after that determination or other disposal.

(9) Subsections (6), (7)(b) and (8) are subject to section 68.

Continuation of account freezing order pending appeal.

68. (1) This section applies where, on an application under section 67(2) in relation to a frozen account, the court decides -

- (a) to make an account forfeiture order in relation to part only of the money to which the application related, or
- (b) not to make an account forfeiture order.

(2) His Majesty's Procureur may apply without notice to the appropriate Court for an order that the account freezing order is to continue to have effect.

(3) Where the court makes an order under subsection (2), the account freezing order continues to have effect until -

- (a) the end of the period of 14 days starting with the making of the order under subsection (2), or
- (b) if within that period of 14 days an appeal is brought under section 74 against the decision referred to in subsection (1)(a) or (b), the time when the appeal is determined or otherwise disposed of, subject to subsection (4).

(4) If on determining an appeal, the court hearing the appeal ("**the appellate court**") sets aside the judgment of the court that determined the application and orders a new trial or hearing to be had, the appellate court may

order the account freezing order to continue to have effect until a time specified by the appellate court.

Application of money forfeited under account forfeiture order.

69. (1) Subject to subsection (2), money forfeited by an order under section 67, and any interest accrued on it whilst in the account referred to in section 67(7)(a), is to be credited to the Seized Assets Fund.

(2) Neither the money nor any interest on it is to be so credited -

(a) before the end of the period within which an appeal may be made against the order under section 74, or

(b) if a person appeals under that section before the appeal is determined or otherwise disposed of.

(3) The Committee may by regulations amend or repeal subsections (1) and (2).

No-consent forfeiture notice

No-consent forfeiture notice.

70. (1) In any case within subsection (2), His Majesty's Procureur may serve a no-consent forfeiture notice in accordance with subsection (3) upon the holder of an account maintained with a bank in the Bailiwick.

(2) A case is within this subsection if -

- (a) His Majesty's Procureur has reasonable grounds to believe that money in the bank account is recoverable property,
 - (b) in relation to the account or any money in the bank account, a consent request has been made by any person,
 - (c) the requested consent has been refused by a member of the Financial Intelligence Unit, and
 - (d) notification of the refusal of the requested consent was given to the person making the request at least 12 months before the date on which the forfeiture notice is to be served.
- (3) A no-consent forfeiture notice must be in writing and must -
- (a) state the name of the account holder to whom it is addressed,
 - (b) specify the details of the bank account and the money in the bank account which in the opinion of His Majesty's Procureur is recoverable property,
 - (c) state a date on which, and a place and time at which, the account holder is required to attend a hearing of the appropriate Court to show cause why the money so specified is not recoverable property and should not be forfeited, and

(d) be served on -

(i) the account holder, and

(ii) the bank with which the bank account in question is maintained,

and if an address for service on the account holder is not known, service on the bank is to be taken as sufficient for the purposes of this paragraph.

(4) In this section, a "**consent request**" means a request under -

(a) section 38, 39 or 40 of the Proceeds of Crime Law for consent to do any act or deal with property held in the bank account in any way which would comprise an offence under the section in question in the absence of such consent, or

(b) section 14 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^q for consent to do any act or deal with property held in the bank account in any way which would comprise an offence under section 8, 9, 10, 11 or 11A of that Law in the absence of such consent.

^q Order in Council No. XVI of 2002; this enactment has been amended.

No-consent forfeiture order.

71. (1) If the person ("P") on whom a no-consent forfeiture notice under section 70 is served fails to attend the hearing as required by the notice, His Majesty's Procureur may apply to the appropriate Court for a no-consent forfeiture order, and the court may make such an order without further notice to P.

(2) If P appears at the hearing (whether in person or by a legal representative), P may -

(a) at the hearing, satisfy the court that the money is not recoverable property, or

(b) request that the question of whether or not the money is recoverable property be determined at such later date as the court may order.

(3) In any case where P appears at the hearing, on the application of His Majesty's Procureur, the court must make an order to forfeit the money concerned, unless P satisfies the court (whether at a hearing under subsection 2(a) or at any later date ordered by the court) that the release condition is met in respect of the money.

(4) If P satisfies the court that the release condition is met in respect of part only of the money concerned, the court must make an order to forfeit the remainder of that money.

(5) In the case of a no-consent forfeiture order made under subsection (3) or (4) in respect of money which belongs to joint owners, one of whom is an excepted joint owner, the order must not apply to so much of it as the court thinks attributable to the excepted joint owner's share.

(6) Where money held in a bank account is ordered to be forfeited under subsection (3) or (4), the bank with which the account is maintained must transfer that amount of money into an interest-bearing account nominated by His Majesty's Procureur.

(7) For the purposes of this section, the release condition is met in respect of any money if the money is not recoverable property.

Application of money forfeited under no-consent forfeiture order.

72. (1) Subject to subsection (2), money forfeited by an order under section 71, and any interest accrued on it whilst in the account referred to in section 71(6), is to be credited to the Seized Assets Fund.

- (2) Neither the money nor any interest on it is to be so credited -
- (a) before the end of the period within which an appeal may be made against the order under section 74, or
 - (b) if a person appeals under that section, before the appeal is determined or otherwise disposed of.

(3) The Committee may by regulations amend or repeal subsections (1) and (2).

Supplementary

Victims and other owners.

73. (1) A person who claims ownership of any relevant money, or any part of relevant money, may apply to the appropriate Court for the money or (as the case may be) the part to be released to that person.

- (2) An application may be made -
 - (a) in the course of proceedings under section 61, 67 or 71, or
 - (b) at any other time.

- (3) The court may order the money concerned to be released -
 - (a) to the applicant, if it appears to the court that condition 1 is met, or
 - (b) to the applicant or the person from whom that property was seized, if it appears to the court that condition 2 is satisfied.

- (4) Condition 1 is that -
 - (a) the applicant was deprived of the money concerned, or of money which it represents, by unlawful conduct,
 - (b) the money the applicant was deprived of was not, immediately before the applicant was deprived of it, recoverable property, and
 - (c) that money belongs to the applicant.

- (5) Condition 2 is that -

- (a) the applicant was not the person holding the money at the time the account was frozen or (as the case may be) the no-consent forfeiture notice was given,
- (b) that money belongs to the applicant,
- (c) the court is satisfied that the release condition is met in relation to that money, and
- (d) no objection to the making of an order under this subsection has been made by the person holding the money at the time mentioned in paragraph (a).

(6) The release condition is met in relation to any money if the money is not recoverable property.

(7) In this section "**relevant money**" means money -

- (a) held in a frozen account, or
- (b) in respect of which a no-consent forfeiture notice has been given.

Referrals and appeals.

74. (1) For the avoidance of doubt -

- (a) an application made to the Magistrate's Court under any provision of this Part is to be regarded as a civil action in which the court has jurisdiction for the purposes of sections 17 and 18 of the Magistrate's

Court (Guernsey) Law, 2008, and referrals and appeals may be made and determined accordingly, and

- (b) any decision or order of the Royal Court under any provision of this Part is to be regarded as a judgment or order of that court for the purposes of Part II of the Court of Appeal (Guernsey) Law, 1961, and appeals may be made and determined accordingly.

(2) If money is released pursuant to an order made by a court determining an appeal under this section, there must be added to the money on its release any interest accrued on it whilst in an account referred to in section 63(4)(b), 67(7)(a) or 71(6).

PART V INVESTIGATIONS

Introduction

Interpretation.

75. For the purposes of this Law -

- (a) a "**civil forfeiture investigation**" has the meaning given by section 76,
- (b) a "**detained property investigation**" is an investigation for the purposes of Part III into -

- (i) the derivation or intended use of property detained under Part III, or a part of the property, or
 - (ii) whether property detained under that Part, or a part of the property, is recoverable property,
- (c) a "**frozen funds investigation**" is an investigation for the purposes of Part IV into -
 - (i) the derivation or intended use of money held in a frozen account, or a part of the money, or
 - (ii) whether money held in a frozen account, or a part of the money, is recoverable property, and
- (d) a "**relevant investigation**" means a civil forfeiture investigation, a detained property investigation or a frozen funds investigation.

Civil forfeiture investigations.

76. (1) A civil forfeiture investigation is an investigation being conducted in the Bailiwick or elsewhere for the purpose of identifying recoverable property and, subject to subsection (2), includes an investigation into -

- (a) whether property is or has been recoverable property or associated property,
- (b) who holds or has held property,

- (c) what property a person holds or has held, or
- (d) the nature, extent or whereabouts of property.

(2) An investigation is not a civil forfeiture investigation to the extent that it relates to -

- (a) property detained under section 40 or 41, or
- (b) money held in a frozen account.

(3) For the avoidance of doubt, a civil forfeiture investigation may be conducted even if no property has been seized, detained or made subject to any order under this Law or any other enactment.

Orders and warrants sought for civil forfeiture investigations.

77. Where an application under this Part for an order or warrant specifies property that is subject to a civil forfeiture investigation, references in this Part to the investigation for which the order or warrant is sought include investigation into -

- (a) whether a person who appears to hold or to have held the specified property holds or has held other property,
- (b) whether the other property is or has been recoverable property or associated property, and
- (c) the nature, extent or whereabouts of the other property.

Offences of prejudicing investigation.

78. (1) This section applies if a person ("A") knows or suspects that an appropriate officer is acting (or proposing to act) in connection with a relevant investigation which is being or is about to be conducted.

(2) A commits an offence if -

(a) A makes a disclosure which is likely to prejudice the investigation, or

(b) A falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which are relevant to the investigation.

(3) It is a defence for a person charged with an offence under subsection (2)(a) to prove (for the avoidance of doubt, on a balance of probabilities) that -

(a) the person neither knew nor suspected that the disclosure was likely to prejudice the investigation,

(b) the disclosure was made -

(i) in the exercise of a function under a relevant enactment, or

(ii) in compliance with a requirement imposed under a relevant enactment, or

(c) the person was a professional legal adviser and the disclosure fell within subsection (4).

(4) Subject to subsection (5), a disclosure falls within this subsection if it is a disclosure -

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

(b) to any person in connection with legal proceedings or contemplated legal proceedings.

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

(6) It is a defence for a person charged with an offence under subsection (2)(b) to prove (for the avoidance of doubt, on a balance of probabilities) that -

(a) the person neither knew nor suspected that the documents were relevant to the investigation, or

(b) the person did not intend to conceal any facts disclosed by the documents from any appropriate officer carrying out the investigation.

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

- (a) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding level 5 on the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding five years, to a fine, or to both.
- (8) In this section, a "**relevant enactment**" means -
- (a) this Law,
 - (b) any other enactment within paragraph (a) of the definition of "**criminal proceeds enactment**" in section 111(1) of the Data Protection (Bailiwick of Guernsey) Law, 2017^r, or
 - (c) any other enactment relating to a criminal offence or benefit from a criminal offence.

Production orders

Production orders.

79. (1) On an application made to the Bailiff by an appropriate officer, the Bailiff may make a production order if satisfied that each requirement in section 80 for the making of the order is satisfied.

- (2) An application under subsection (1) must state that -

^r Order in Council No. VI of 2018; this enactment has been amended.

- (a) a person specified in the application is subject to a civil forfeiture investigation, or
- (b) property specified in the application is subject to a civil forfeiture investigation, detained property investigation or frozen funds investigation.

(3) An application must also state that -

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

(4) A "**production order**" is an order requiring the person mentioned in subsection (3)(c) to do either or both of the following within a period specified in the order -

- (a) produce the material mentioned in subsection (3)(b) to an appropriate officer for the appropriate officer to take away,
- (b) give an appropriate officer access to that material.

(5) The period stated in the production order must be a period of seven days beginning on the day on which the order is made, unless it appears to the

Bailiff that a longer or shorter period would be appropriate in the particular circumstances.

- (6) A production order -
 - (a) may be made ex parte and in chambers,
 - (b) may be made even if no notice of the application has been given to any person, and
 - (c) may be made subject to any terms and conditions that the Bailiff thinks fit.

Requirements for making of production order.

80. (1) The requirements for the making of a production order are as follows.

- (2) There must be reasonable grounds for suspecting that -
 - (a) in the case of a civil forfeiture investigation -
 - (i) the person the application for the order specifies as being subject to the investigation holds recoverable property or associated property,
 - (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or

- (iii) the property the application for the order specifies as being subject to the investigation is recoverable property or associated property,
- (b) in the case of a detained property investigation, the property the application for the order specifies as being subject to the investigation, or a part of that property, is recoverable property, and
- (c) in the case of a frozen funds investigation, the money the application for the order specifies as being subject to the investigation, or a part of that money, is recoverable property.

(3) There must be reasonable grounds for believing that the person the application specifies as appearing to be in possession or control of the material for which the order is sought is in possession or control of it.

(4) There must be reasonable grounds for believing that that material is likely to be of substantial value (whether or not by itself) to the investigation for which the order is sought.

(5) There must be reasonable grounds for believing that it is in the public interest for that material to be produced or for access to it to be given, having regard to -

- (a) the benefit likely to accrue to the investigation if the material is obtained, and

- (b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

Order to grant entry.

81. (1) This section applies if the Bailiff makes a production order requiring a person to give an appropriate officer access to material on any premises.

(2) On an application made by an appropriate officer to the Bailiff, specifying the premises, the Bailiff may also make an order to grant entry in relation to those premises.

(3) An order to grant entry is an order requiring any person who appears to an appropriate officer to be entitled to grant entry to those premises to allow the appropriate officer to enter those premises to obtain access to the material.

(4) An order to grant entry -

- (a) may be made ex parte and in chambers,
- (b) may be made even if no notice of the application has been given to any person, and
- (c) may be made subject to any terms and conditions that the Bailiff thinks fit.

Further provisions relating to production orders.

82. (1) A production order does not require a person to produce, or give access to, items subject to legal professional privilege or excluded material.

(2) An appropriate officer and any other person named or described in a production order may take copies of any material which is produced, or to which access is given, pursuant to the order.

(3) An appropriate officer may retain material produced pursuant to a production order for so long as it is necessary to retain it (as opposed to copies of it) in connection with the relevant investigation for which the order was made.

(4) Subsection (5) applies if an appropriate officer has reasonable grounds for believing that -

(a) that material may need to be produced for the purposes of any legal proceedings, and

(b) it might otherwise be unavailable for those purposes.

(5) Where this subsection applies, despite subsection (3), an appropriate officer may retain that material until those proceedings are concluded.

Computer information.

83. (1) This section applies if any of the material specified in an application for a production order consists of data stored by means of a computer system.

(2) If the order requires a person to produce the material to an appropriate officer for the appropriate officer to take away, it has effect as an order to produce the material in a form specified by that officer and in which -

(a) it can be taken away by the appropriate officer, and

(b) it is visible and legible.

(3) If the order requires a person to give an appropriate officer access to the material, it has effect as an order to give the appropriate officer access to the material in a form which is visible and legible.

Committees of the States.

84. (1) A production order may be made in relation to material in the possession or control of a committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark.

(2) An order so made may require any officer responsible to the committee (whether named in the order or not), or any member of the committee, who may be in possession or control of the material to comply with it.

(3) An order containing a requirement mentioned in subsection (2) must be served as if the proceedings were civil proceedings against the committee.

(4) If an order contains such a requirement -

(a) the person on whom it is served must take all reasonable steps to bring it to the attention of the officer or member concerned, and

(b) any other officer responsible to the committee, or any other member of the committee, who is in receipt of the order must also take all reasonable steps to bring it to the attention of the officer or member concerned.

(5) In this section "**officer**" -

- (a) in relation to any committee of the States of Guernsey, means an employee of the States of Guernsey,
- (b) in relation to any committee of the States of Alderney, means an employee of the States of Alderney, and
- (c) in relation to any committee of the Chief Pleas of Sark, means an employee of the Chief Pleas of Sark.

Search and seizure warrants

Search and seizure warrants.

85. (1) On an application made to the Bailiff by an appropriate officer, the Bailiff may issue a search and seizure warrant if satisfied that the requirement in subsection (5) is met.

(2) An application under subsection (1) must state that -

- (a) a person specified in the application is subject to a civil forfeiture investigation, or
- (b) property specified in the application is subject to a civil forfeiture investigation, detained property investigation or frozen funds investigation.

(3) An application must also state that -

- (a) the warrant is sought for the purposes of the investigation,

(b) the warrant is sought in relation to the premises specified in the application,

(c) the warrant is sought in relation to material specified in the application, or that there are reasonable grounds for believing that there is material falling within section 86(6), (8), (9), (10) or (11) on those premises.

(4) A search and seizure warrant is a warrant authorising a police officer -

(a) to enter and search the premises specified in the application for the warrant, and

(b) to seize and retain any material found there which is likely to be of substantial value (whether or not by itself) to the investigation for which the application is made.

(5) The requirement mentioned in subsection (1) is that -

(a) a production order made in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant, or

(b) section 86 is satisfied in relation to the warrant.

Requirements where production order not available.

86. (1) This section is satisfied in relation to a search and seizure warrant if -

- (a) subsection (2) applies, and
- (b) either the first or second condition is met.

(2) This subsection applies if there are reasonable grounds for suspecting that -

- (a) in the case of a civil forfeiture investigation -
 - (i) the person specified in the application for the warrant holds recoverable property or associated property,
 - (ii) that person has, at any time, held property that was recoverable property or associated property at the time, or
 - (iii) the property specified in the application for the warrant is recoverable property or associated property,
- (b) in the case of a detained property investigation into the derivation of property, the property specified in the application for the warrant, or a part of it, is recoverable property,

- (c) in the case of a detained property investigation into the intended use of property, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct,
- (d) in the case of a frozen funds investigation into the derivation of money held in a frozen account, the property specified in the application for the warrant, or a part of it, is recoverable property, or
- (e) in the case of a frozen funds investigation into the intended use of money held in a frozen account, the property specified in the application for the warrant, or a part of it, is intended by any person to be used in unlawful conduct.

(3) The first condition is that there are reasonable grounds for believing that -

- (a) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the investigation for which the warrant is sought,
- (b) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and

- (c) it would not be appropriate to make a production order for any one or more of the reasons in subsection (4).
- (4) The reasons are -
- (a) that it is not practicable to communicate with any person against whom the production order could be made,
 - (b) that it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises, and
 - (c) that the investigation might be seriously prejudiced unless a police officer is able to secure immediate access to the material.
- (5) The second condition is that -
- (a) there are reasonable grounds for believing that there is material on the premises specified in the application for the warrant and that the material falls within subsection (6), (8), (9), (10) or (11),
 - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained, and

(c) any one or more of the requirements in subsection (12) is met.

(6) In the case of a civil forfeiture investigation, material falls within this subsection if it cannot be identified at the time of the application but it -

(a) relates to the person or property specified in the application or to any of the questions listed in subsection (7), and

(b) is likely to be of substantial value (whether or not by itself) to the investigation for which the warrant is sought.

(7) Those questions are -

(a) where a person is specified in the application, any question as to -

(i) what property the person holds or has held,

(ii) whether the property is or has been recoverable property or associated property, or

(iii) the nature, extent or whereabouts of the property, and

(b) where property is specified in the application, any question as to -

- (i) whether the property is or has been recoverable property or associated property,
- (ii) who holds it or has held it,
- (iii) whether a person who appears to hold or to have held it holds or has held other property,
- (iv) whether the other property is or has been recoverable property or associated property, or
- (v) the nature, extent or whereabouts of the specified property or the other property.

(8) In the case of a detained property investigation into the derivation of property, material falls within this subsection if it cannot be identified at the time of the application but it -

- (a) relates to the property specified in the application, to the question of whether the property or a part of it is recoverable property, or to any other question as to its derivation, and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for which the warrant is sought.

(9) In the case of a detained property investigation into the intended use of property, material falls within this subsection if it cannot be identified at the time of the application but it -

- (a) relates to the property specified in the application, or to the question whether the property or a part of it is intended by any person to be used in unlawful conduct, and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for which the warrant is sought.

(10) In the case of a frozen funds investigation into the derivation of money held in a frozen account, material falls within this subsection if it cannot be identified at the time of the application but it -

- (a) relates to the property specified in the application, to the question of whether the property or a part of it is recoverable property, or to any other question as to its derivation, and
- (b) is likely to be of substantial value (whether or not by itself) to the investigation for which the warrant is sought.

(11) In the case of a frozen funds investigation into the intended use of money held in a frozen account, material falls within this subsection if it cannot be identified at the time of the application but it -

- (a) relates to the property specified in the application, or to the question of whether the property or a part of it is intended by any person to be used in unlawful conduct, and

- (b) is likely to be of substantial value (whether or not by itself) to the investigation for which the warrant is sought.
- (12) The requirements are -
- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises,
 - (b) that entry to the premises will not be granted unless a warrant is produced, and
 - (c) that the investigation might be seriously prejudiced unless a police officer arriving at the premises is able to secure immediate entry to them.

Exclusion of items subject to legal professional privilege and excluded material.

87. A search and seizure warrant does not confer the right to seize items subject to legal professional privilege or excluded material.

Further provisions: search and seizure warrants.

88. (1) This section applies to -
- (a) a search and seizure warrant ("a **warrant**") sought for the purposes of a civil forfeiture investigation, detained property investigation or frozen funds investigation, and
 - (b) powers conferred by or under a warrant.

(2) Unless otherwise specified on the warrant, a warrant continues in force until the end of the period of one month starting with the day on which it is issued.

(3) A warrant authorises the person it names to require any data stored in a computer system and accessible from the premises specified in the application for the warrant, and which the named person believes relates to any matter relevant to the investigation, to be produced in a form -

(a) in which it can be taken away, and

(b) in which it is visible and legible.

(4) A warrant may include provision authorising a person who is exercising powers under it to do other things which -

(a) are specified in the warrant, and

(b) need to be done in order to give effect to it.

(5) A police officer may take copies of any material seized under a warrant.

(6) Subject to subsections (7) and (8), a police officer may retain material seized under a warrant for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for which the warrant was issued.

(7) Subsection (8) applies if a police officer has reasonable grounds for believing that -

(a) the material may need to be produced for the purposes of any legal proceedings, and

(b) it might otherwise be unavailable for those purposes.

(8) Where this subsection applies, the material may be retained until those proceedings are concluded.

(9) The Committee may make regulations –

(a) applying any one or more of the provisions specified in subsection (10) in addition to, or in substitution for, subsections (2) to (8), subject to any specified modifications, and

(b) amending or repealing subsections (2) to (8).

(10) Subsection (9)(a) refers to the following provisions of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 -

(a) section 10 (search warrants - safeguards),

(b) section 11 (execution of warrants),

(c) section 16 (access and copying), and

(d) section 17 (retention).

Granting of search and seizure warrants.

89. A search and seizure warrant -

- (a) may be granted ex parte and in chambers,
- (b) may be granted even if no notice of the application has been given to any person, and
- (c) may be granted subject to any terms and conditions that the Bailiff thinks fit.

Certain offences in relation to execution of search and seizure warrants.

90. (1) A person commits an offence if the person assaults a person who is acting in the exercise of a power conferred by a search and seizure warrant.

(2) A person commits an offence if the person resists or wilfully obstructs any person who is acting in the exercise of a power conferred by a search and seizure warrant.

(3) A person guilty of an offence under subsection (1) or (2) is liable -

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

Disclosure orders

Disclosure orders.

91. (1) On an application made to the Bailiff by an appropriate officer, the Bailiff may make a disclosure order in relation to a relevant investigation if satisfied that each requirement in section 92 for the making of the order is satisfied.

(2) The application for a disclosure order must state that -

- (a) a person specified in the application is subject to a civil forfeiture investigation, or property specified in the application is subject to a civil forfeiture investigation, detained property investigation or frozen funds investigation, and
- (b) the order is sought for the purposes of the investigation.

(3) A disclosure order is an order authorising an appropriate officer to give to any person the appropriate officer considers has relevant information notice in writing requiring that person to do, with respect to any matter relevant to the investigation for which the order is sought, any or all of the following-

- (a) answer questions, at or by a time, and in a manner and form, specified in the notice,
- (b) provide information specified in the notice, at or by a time, and in a manner and form specified in the notice, in which -

(i) the information can be taken away by the appropriate officer, and

(ii) the information is visible and legible,

(c) produce documents specified or described in the notice, at or by a time, and in a manner and form, specified in the notice.

(4) Relevant information is information (whether or not contained in a document) which the appropriate officer considers to be relevant to the investigation.

(5) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to the person.

(6) A disclosure order -

(a) may be made ex parte and in chambers,

(b) may be made even if no notice of the application for it has been given to any person, and

(c) may be made subject to any terms and conditions that the Bailiff thinks fit.

Requirements for making of disclosure order.

92. (1) The requirements for the making of a disclosure order are as follows.

- (2) There must be reasonable grounds for suspecting that -
- (a) the person specified in the application for the order holds recoverable property or associated property,
 - (b) that person has, at any time, held property that was recoverable property or associated property at the time, or
 - (c) the property specified in the application for the order is recoverable property or associated property.

(3) There must be reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value (whether or not by itself) to the investigation for which the order is sought.

(4) There must be reasonable grounds for believing that it is in the public interest for that information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Further provisions in relation to disclosure orders.

93. (1) A disclosure order does not give any appropriate officer the power to require a person to -

- (a) answer any privileged question,
- (b) provide any privileged information, or
- (c) produce or give access to -

(i) any items subject to legal professional privilege, or

(ii) any excluded material.

(2) Despite subsection (1), a disclosure order may require a professional legal adviser to provide the name and address of the adviser's client.

(3) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the Royal Court.

(4) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the Royal Court.

(5) An appropriate officer and any other person named or described in a disclosure order may take copies of any material which is produced, or to which access is given, in compliance with the order.

(6) Subject to subsections (7) and (8), an appropriate officer may retain material produced pursuant to a disclosure order for so long as it is necessary to retain it (as opposed to copies of it) in connection with the relevant investigation for which the order was made.

(7) Subsection (8) applies if an appropriate officer has reasonable grounds for believing that -

(a) that material may need to be produced for the purposes of any legal proceedings, and

(b) it might otherwise be unavailable for those purposes.

(8) Where this subsection applies, despite subsection (6), an appropriate officer may retain that material until those proceedings are concluded.

(9) In this section, a reference to a "**disclosure order**" includes a reference to a notice made under the authority of a disclosure order.

Customer information orders

Customer information orders.

94. (1) On an application made to the Bailiff by an appropriate officer, the Bailiff may make a customer information order in relation to a relevant investigation if satisfied that each requirement in section 96 for the making of the order is satisfied.

(2) An application for a customer information order must state that -

(a) a person specified in the application is subject to the civil forfeiture investigation, or property specified in the application is subject to a civil forfeiture investigation, detained property investigation or frozen funds investigation,

(b) the order is sought for the purposes of the investigation, and

(c) the order is sought against one or more financial services businesses specified in the application.

(3) For the purposes of subsection (2)(c), an application for a customer information order may specify -

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

(4) A customer information order is an order that a financial services business covered by the application for the order must provide any customer information it has relating to a person specified in the application, on the financial services business being required to do so by notice in writing given by an appropriate officer.

(5) A financial services business which is required to provide information under a customer information order must provide the information to an appropriate officer in the manner, and at or by the time, required by the notice.

(6) If a financial services business, on which a requirement is imposed by a notice mentioned in subsection (5), requires the production of evidence of authority to give the notice, the financial services business is not bound to comply with the requirement unless evidence of the authority has been produced to it.

(7) A customer information order -

- (a) may be made ex parte and in chambers,

- (b) may be made even if no notice of the application for it has been given to any person, and
- (c) may be made subject to any terms and conditions that the Bailiff thinks fit.

Meaning of "customer information".

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

- (a) the matters specified in subsection (2) if the person ("A") is an individual,
 - (b) the matters specified in subsection (3) if the person ("B") is a body corporate.
- (2) The matters referred to in subsection (1)(a) are -
- (a) the account number or (as the case may be) the number of any safe deposit box,
 - (b) A's full name,
 - (c) A's date of birth,
 - (d) A's most recent home and business address and any previous such addresses,

- (e) in the case of any account, the date on which A began to hold the account and, if A has ceased to hold the account, the date on which A did so,
- (f) in the case of any safe deposit box, the date on which the box was made available to A and if the box has ceased to be so available, the date on which it so ceased,
- (g) evidence of A's identity obtained by the financial services business under or for the purposes of any legislation relating to money laundering,
- (h) the full name, date of birth and most recent home and business address, and any previous such addresses, of any person -
 - (i) who is or has been a signatory to the account, or
 - (ii) who holds or has held an account at the financial services business jointly with A,
- (i) the account number of any other account held at the bank to which A is a signatory and details of the person holding this other account,
- (j) the current balance of each account identified, and

- (k) the date on which the last three transactions (or any other number of transactions specified in the customer information order) concerning each of the accounts identified took place.
- (3) The matters referred to in subsection (1)(b) are -
- (a) the account number or (as the case may be) the number of any safe deposit box,
 - (b) B's full name,
 - (c) a description of any business which B carries on,
 - (d) the country in which B is incorporated or otherwise established and any number allocated to B in that country,
 - (e) B's registered office, and any previous registered offices, or anything similar under the legislation of the country in which B is incorporated or established,
 - (f) in the case of any account, the date or dates on which B began to hold the account and, if B has ceased to hold the account, the date on which B did so,
 - (g) in the case of any safe deposit box, the date of which the box was made available to B and, if the box has ceased to be so available, the date on which it so ceased,

- (h) evidence of B's identity obtained by the bank under or for the purposes of any legislation relating to money laundering,
 - (i) the full name, date of birth and most recent home and business address, and any previous such addresses, of any person who is or has been a signatory to the account,
 - (j) the current balance of each account identified, and
 - (k) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order) concerning each of the account identified took place.
- (4) In this section, "**money laundering**" means doing any act –
- (a) which constitutes an offence under section 38, 39 or 40 of the Proceeds of Crime Law,
 - (b) which constitutes an offence under section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, and in those sections the "**purposes of terrorism**" include, to the extent that they do not already do so -
 - (i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1 of that Law, or

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

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

(5) In this section, a "**safe deposit box**", in relation to any person, includes any procedure under which a bank provides a facility to hold items for safe keeping on behalf of the person.

(6) The Committee may by regulations -

- (a) provide for information of a class or description specified in the regulations -
 - (i) to be customer information, or
 - (ii) no longer to be customer information, and
- (b) amend this section for that purpose.

Requirements for making of customer information order.

96. (1) The requirements for the making of a customer information order are as follows.

(2) There must be reasonable grounds for suspecting that the person specified in the application under section 94(2)(a) -

- (a) holds recoverable property or associated property, or
- (b) has, at any time, held property that was recoverable property or associated property at the time.

(3) There must be reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) to the investigation for which the order is sought.

(4) There must be reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Account monitoring orders

Account monitoring order.

97. (1) On an application made to the Bailiff by an appropriate officer, the Bailiff may make an account monitoring order in relation to a relevant investigation if satisfied that each requirement in section 98 for making the order is satisfied.

- (2) An application under subsection (1) must state that -
- (a) a person specified in the application is subject to a civil forfeiture investigation, or property specified in the application is subject to a civil forfeiture investigation, detained property investigation or frozen funds investigation,
 - (b) the order is sought for the purposes of the investigation,
 - (c) the order is sought against the financial services business specified in the application, and
 - (d) the order is sought in relation to account information described in the application relating to an account specified in the application held by the person specified in the application (whether solely or jointly with another) at the financial services business specified in the application.

(3) "**Account information**", in relation to any account, is information relating to the account.

(4) For the purposes of subsection (2)(d), the application for an account monitoring order may specify -

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

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

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

(7) An account monitoring order -

- (a) may be made ex parte and in chambers,
- (b) may be made even if no notice of the application has been given to any person, and

- (c) may be made subject to any terms and conditions that the court thinks fit.

Requirements for making of account monitoring order.

98. (1) The requirements for the making of an account monitoring order are as follows.

(2) There must be reasonable grounds for suspecting that the person specified in the application holds recoverable property or associated property.

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

(4) There must be reasonable grounds for believing that it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Supplementary provisions for orders

Meaning of "relevant order".

99. In sections 100 to 103, a "**relevant order**" means -

- (a) a production order,
- (b) an order to grant entry under section 81,
- (c) a disclosure order,

(d) a customer information order, or

(e) an account monitoring order.

Offences in relation to relevant orders.

100. (1) A person commits an offence if the person fails to comply with a requirement imposed upon that person by or under a relevant order.

(2) It is a defence for a person charged with an offence under subsection (1) to prove (for the avoidance of doubt, on a balance of probabilities) that the person had a reasonable excuse for the failure to comply with the requirement.

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

(4) A person commits an offence if, in purported compliance with a relevant order, the person -

(a) makes a statement, or provides any information or document, which that person knows to be false or misleading in a material particular, or

(b) recklessly makes a statement, or recklessly provides any information or document, which is false or misleading in a material particular.

(5) A person commits an offence if the person obstructs any person acting under the authority of a relevant order.

(6) A person guilty of an offence under subsection (4) or (5) is liable -

- (a) on summary conviction, to imprisonment for a term no exceeding six months, to a fine not exceeding level 5 on the uniform scale, or to both, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both.

Discharge or variation of relevant orders.

101. (1) On an application made by a person specified in subsection (2) or any person affected by a relevant order, the Royal Court may discharge or vary the relevant order subject to any terms and conditions that the court thinks fit.

(2) Subsection (1) refers -

- (a) where His Majesty's Procureur had applied for a relevant order, to His Majesty's Procureur,
- (b) where a member of the salaried police force or of the special constabulary of the Island of Guernsey had applied for a relevant order, to a member of that force who is of the same rank or higher, or a member of that special constabulary, respectively,
- (c) where a member of any police force which may be established by the States of Alderney or a special constable appointed under section 47 of the Government of Alderney Law, 2004 had applied for a

relevant order, to a member of that force who is of the same rank or higher, or a special constable so appointed, respectively,

- (d) where an Assistant Constable of Sark or a special constable appointed under section 54 of the Reform (Sark) Law, 2008 had applied for a relevant order -
 - (i) to an Assistant Constable of Sark or a special constable so appointed, respectively, or
 - (ii) to the Constable or the Vingtenier,
- (e) where a customs officer had applied for the relevant order, to a customs officer of the same or higher rank,
- (f) where a member of the Financial Intelligence Unit had applied for the relevant order, to a member of the Financial Intelligence Unit of the same or higher rank,
- (g) where a designated person had applied for the relevant order, to a designated person of the same or higher rank or the Director of the Economic and Financial Crime Bureau.

Appeals.

102. For the avoidance of doubt, any decision or order of the Royal Court under section 101 or 108(8) is to be regarded as a judgment or order of that court for the purposes of Part II of the Court of Appeal (Guernsey) Law, 1961, and appeals may be made and determined accordingly.

Disclosure of information.

103. A relevant order has effect despite any obligation as to confidentiality or other restriction on the disclosure of information (however imposed); and, accordingly, any such obligation or restriction is not contravened by the making of a disclosure pursuant to the order.

Statements in response to orders.

104. (1) Subject to subsection (2), a statement made by a person in response to a requirement imposed on the person by or under an order specified in subsection (2) must not be used in evidence against that person in criminal proceedings.

(2) Subsection (1) refers to -

- (a) a disclosure order,
- (b) a customer information order, or
- (c) an account monitoring order.

(3) Subsection (1) does not apply -

- (a) in proceedings for contempt of court,
- (b) in proceedings for an offence under section 100 in respect of the order concerned,
- (c) where evidence relating to the statement is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or

- (d) in proceedings for any other offence where, in giving evidence, that person makes a statement inconsistent with the statement mentioned in subsection (1), but in such a case the statement mentioned in subsection (1) is only admissible to the extent necessary to establish the inconsistency.

Evidence overseas

Evidence overseas.

105. (1) This section applies if a person or property is subject to -

- (a) a civil forfeiture investigation,
- (b) a detained property investigation, or
- (c) a frozen funds investigation.

(2) On a request made by a police officer or at His Majesty's Procureur's own initiative, His Majesty's Procureur may request assistance under this section if His Majesty's Procureur thinks that there is relevant evidence in a country outside the Bailiwick.

(3) The assistance that may be requested under this section is assistance in obtaining outside the Bailiwick relevant evidence specified in the request.

(4) "**Relevant evidence**" means -

- (a) in relation to a detained property investigation, evidence as to a matter described in section 75(b)(i) or (ii),
 - (b) in relation to a frozen funds investigation, evidence as to a matter described in section 75(c)(i) or (ii), and
 - (c) in relation to a civil forfeiture investigation, evidence relevant for the purpose of identifying recoverable property or associated property, including evidence as to a matter described in section 76(1)(a) to (d).
- (5) A request for assistance under this section may be sent to -
- (a) an overseas authority of the country concerned, or
 - (b) in case of urgency, the International Criminal Police Organisation for forwarding to the overseas authority.
- (6) In this section, "**evidence**" includes any material.

Evidence overseas: restrictions on use.

106. (1) This section applies to evidence obtained by means of a request for assistance under section 105.

- (2) The evidence may be used for -
- (a) the purposes of the investigation for which it was obtained, or

- (b) the purposes of proceedings described in subsection (3) or any proceedings arising out of such proceedings.
- (3) The proceedings referred to in subsection (2)(b) are -
 - (a) if the request was made for the purposes of a civil forfeiture investigation, proceedings under Part II arising out of the investigation,
 - (b) if the request was made for the purposes of a detained property investigation, proceedings under Part III arising out of the investigation, and
 - (c) if the request was made for the purposes of a frozen funds investigation, proceedings under Part IV arising out of the investigation.
- (4) The evidence must not be used for any purpose other than -
 - (a) a purpose authorised under subsection (2), or
 - (b) a purpose for which the consent of the court, tribunal, government or other authority to whom the request for assistance was sent was obtained.

Supplementary

Overseas investigations.

107. (1) This section applies where His Majesty's Procureur receives from an overseas authority a request for assistance in obtaining evidence in the Bailiwick in connection with -

- (a) proceedings that have been instituted in that country under legislation in force there relating to the forfeiture of money or other property by a court or tribunal in non-conviction based proceedings, or
- (b) an investigation being conducted in that country with a view to proceedings (in connection with property with which the investigation is concerned) of the kind described in paragraph (a), or proceedings under this Law, being instituted.

(2) Where this section applies, His Majesty's Procureur may apply for -

- (a) a production order under section 79,
- (b) a disclosure order under section 91,
- (c) a customer information order under section 94, or
- (d) an account monitoring order under section 97.

(3) The provisions of this Part apply with any necessary modifications to -

- (a) an application for an order under subsection (2),
- (b) a decision made by the Bailiff on the application, and
- (c) any order made by the Bailiff pursuant to the application.

(4) His Majesty's Procureur may send any material obtained as a result of an order made pursuant to an application under subsection (2) to the overseas authority which made the request.

(5) When sending any material to any person under this section, His Majesty's Procureur may do any or all of the following -

- (a) impose any condition in relation to the use, disclosure, safekeeping and destruction or return of the material by that person or by any other person who may obtain the material,
- (b) require any person mentioned in paragraph (a) to enter into any undertaking in relation to the use, disclosure, safekeeping and destruction or return of the material mentioned in that paragraph,
- (c) take any other step to ensure that the confidentiality of the material is protected.

(6) The provisions of this section are in addition to and not in derogation from the power of His Majesty's Procureur or any police officer to use and disclose any material for any other lawful purpose or in any other lawful circumstance.

(7) No obligation as to confidentiality or other restriction on the disclosure of information (however imposed) is contravened by the sending of material under subsection (4).

(8) Nothing in subsection (4) authorises any material to be sent to an overseas authority in breach of the Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinance, 2018^s.

(9) In this section "**person**" includes any authority.

Order to preserve data pending request for assistance.

108. (1) Where an overseas authority has submitted or intends to submit a request for assistance under section 107, the authority may request His Majesty's Procureur to apply to the Bailiff for an order (a "**preservation order**") for the expeditious preservation of data stored by means of a computer system.

(2) The request to His Majesty's Procureur must specify -

(a) the overseas authority seeking preservation,

(b) the unlawful conduct or property that is the subject of an investigation or proceedings together with a brief summary of the relevant facts,

^s Ordinance No. XI of 2018; this enactment has been amended.

- (c) the data that is to be preserved and its relationship to the unlawful conduct or property,
- (d) any available information identifying the person in possession of the data or the computer system on which it is stored,
- (e) the reason why the preservation is necessary, and
- (f) that the authority intends to submit a request for assistance under section 107 for assistance in obtaining the data.

(3) His Majesty's Procureur may apply to the Bailiff for a preservation order under this Law, in the absence of a request by an overseas authority that His Majesty's Procureur make such an application, in circumstances where His Majesty's Procureur is satisfied that -

- (a) the preservation of the data which is the subject of the application is necessary,
- (b) the overseas authority is likely to submit a request for assistance under section 107 for assistance in obtaining the data, and
- (c) there are reasons to believe that the data may not be preserved if His Majesty's Procureur were to wait for that authority to make such a request.

(4) On receiving an application under this section, where the Bailiff considers it is in the interests of justice to do so, the Bailiwick may make an order for the data to be preserved pending a request being made under section 107 or for such time as the Bailiff thinks fit.

(5) A preservation order -

- (a) may be made ex parte and in chambers,
- (b) may be made even if no notice of the application for it has been given to any person,
- (c) must provide for notice to be given to any person named within it, and
- (d) may be made subject to any terms and conditions that the Bailiff thinks fit.

(6) A person named within a preservation order who by any act or omission causes the damage, deletion, alteration, suppression or removal of any data preserved by the order is guilty of an offence.

(7) A person guilty of an offence under subsection (6) is liable -

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

(8) A person named within a preservation order may apply to the Bailiff for the order to be revoked or varied, and on such application being made the Bailiff may either determine it or refer it to the Royal Court for determination.

Offence of unauthorised disclosure of preservation order.

109. (1) Where an order is made under section 108(4) a person must not disclose -

- (a) the existence and contents of the order,
- (b) the details of the making of the order and of any variation of it,
- (c) the existence and contents of any requirement to provide assistance with giving effect to the order,
- (d) the steps taken in pursuance of the order or of any such requirement, and
- (e) any part of the data preserved by the order.

(2) A person who contravenes subsection (1) is guilty of an offence and liable -

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

(3) It is a defence for a person charged with an offence under subsection (2) to prove (for the avoidance of doubt, on the balance of probabilities) that the person could not reasonably have been expected, after first becoming aware of any of the matters mentioned in subsection (1), to take steps to prevent the disclosure.

(4) It is a defence for a person charged with an offence under subsection (2) to prove (for the avoidance of doubt, on the balance of probabilities) -

(a) that -

(i) the disclosure was made by or to a professional legal adviser in connection with the giving, by the adviser to any client of the adviser, of advice about the effect of any provision of this Law, and

(ii) the person to whom or, as the case may be, by whom it was made was the client or a representative of the client,

(b) that the disclosure was made only to the extent necessary to enable compliance with the order, or

(c) that the disclosure was made by a professional legal adviser -

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

(ii) for the purposes of those proceedings.

(5) None of subsection (4)(a), (b) or (c) applies in the case of a disclosure made with a view to furthering any criminal purpose.

Code of practice.

110. The Committee may issue a code of practice in connection with the exercise by appropriate officers of their functions under this Part.

PART VI

ENFORCEMENT OF FORFEITURE ORDERS MADE OUTSIDE THE BAILIWICK

Enforcement of overseas forfeiture orders.

111. (1) On an application made by His Majesty's Procureur, the Royal Court may register an overseas forfeiture order in the records of the court if -

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal,
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable that person 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) An overseas forfeiture order is an order for the forfeiture of property made by a court exercising jurisdiction in a country outside the Bailiwick under legislation in force there relating to the forfeiture of money or other property by a court or tribunal in non-conviction based proceedings.

(4) Where an application for the registration of an overseas forfeiture order is made under this section, the property to which the order relates is to be detained or, as the case may be, frozen in accordance with this Law (and must not be released under any power conferred by this Law) until any proceedings in pursuance of the application for registration are concluded, except -

- (a) in the court's exercise of a power to make an exclusion for the purpose of enabling a person to meet legal expenses under section 10, or
- (b) in the court's exercise of a power under section 27.

(5) Following registration of an overseas forfeiture order under subsection (1), the order has effect and is enforceable in all respects as if it were an order of the Royal Court for the forfeiture of property made under Part II.

(6) The Royal Court must cancel the registration of an overseas forfeiture order if it is satisfied that the order has been satisfied.

(7) Despite subsection (5) and section 26, there is no right of appeal to the Court of Appeal in respect of -

- (a) an overseas forfeiture order registered under subsection (1), or
- (b) the registration of an overseas forfeiture order.

PART VII
GENERAL PROVISIONS

Customs officers may exercise powers of police officers.

112. (1) A customs officer may exercise any power conferred on a police officer under any provision of this Law in relation to any item of property or recoverable property if the customs officer has reasonable grounds for suspecting that the unlawful conduct relates to an assigned matter within the meaning given by section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

(2) Where a customs officer exercises a power of a police officer under any provision of this Law by virtue of subsection (1), any provision of this Law which imposes or confers any other function on a police officer in respect of or in connection with the exercise of the power applies to the customs officer as if the customs officer were a police officer.

(3) In subsection (1), the "**unlawful conduct**", in relation to any property, means the unlawful conduct to which the property relates.

Functions of His Majesty's Procureur.

113. (1) His Majesty's Procureur may, either generally or for the purposes of a particular case or class of cases, arrange for any of His Majesty's Procureur functions under this Law, other than this power of delegation, to be exercised in the name of His Majesty's Procureur by a Crown Advocate or other Advocate of the Royal Court; and references in this Law to His Majesty's Procureur are to be construed accordingly.

(2) A function exercised by a Crown Advocate or other Advocate pursuant to an arrangement under subsection (1) is for all purposes exercised by His Majesty's Procureur; and every decision taken or other thing done by the Crown Advocate or other Advocate pursuant to the arrangement has the same effect as if taken or done by His Majesty's Procureur.

(3) An arrangement under subsection (1) for the exercise of a function -

(a) may be varied or terminated at any time by His Majesty's Procureur, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement, and

(b) does not prevent the exercise of the function by His Majesty's Procureur while the arrangement subsists.

(4) Any requirement imposed under this Law (however expressed) to provide or produce material to His Majesty's Procureur, or to give His Majesty's Procureur access to any material or premises, includes a requirement to provide or produce the material, or to give access to the material or premises, to any

person nominated by His Majesty's Procureur or otherwise acting for and on behalf of His Majesty's Procureur.

(5) References in this Law to a person authorised by His Majesty's Procureur are references to a person, or a member of a class or description of persons, authorised by His Majesty's Procureur either generally or for the purposes of a particular case or class of cases.

(6) This section is without prejudice to any other enactment or rule of law.

Offence of obstruction.

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

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

Standard of proof and civil proceedings.

115. (1) For the avoidance of doubt -

- (a) in any proceedings under this Law, the standard of proof required for a court to determine any matter required to be determined, or to be satisfied of any

matter, is that applicable in civil proceedings (that is to say, a balance of probabilities), and

- (b) proceedings under this Law are for the purposes of the law of the Bailiwick to be regarded as civil proceedings.

(2) Subsection (1) does not apply to proceedings for an offence created under this Law.

Insolvency, set-off and secured interests

Leave for forfeiture or freezing proceedings in désastre or winding up.

116. (1) This section applies to property if -

- (a) it is held by a person whose affairs have been declared in a state of désastre, or
- (b) it is held by a Bailiwick company and -
 - (i) an order for the winding up of the company has been made, or
 - (ii) a resolution has been passed by the company for its voluntary winding up.

(2) No proceedings for a relevant forfeiture order may be taken or continued, and no relevant forfeiture notice may be given, in respect of property to which this section applies unless -

- (a) the relevant court gives leave for the proceedings to be taken or (as the case may require) the notice to be given, and
- (b) the proceedings are taken or continued, or (as the case may require) the notice given, in accordance with any terms and conditions imposed by that court.

(3) No application of the following kind may be made in respect of property to which this section applies, unless the court to which the application is made gives leave -

- (a) an application under section 8 for a property freezing order,
- (b) an application under section 41 for an order for the further detention of property,
- (c) an application under section 59 for an account freezing order in respect of any account in which is held money to which this section applies, or
- (d) an application under section 61 for an extension of the period specified in an account freezing order.

(4) An application for leave under subsection (2) or (3) may be made to the court without notice to any person.

(5) In subsection (2), the "**relevant court**" means -

- (a) in the case of proceedings for a relevant forfeiture order, the court in which those proceedings are to be taken,
 - (b) in the case of the giving of a forfeiture notice, the court that made the order to detain the property under section 41,
 - (c) in the case of the giving of an account forfeiture notice, the court that made the account freezing order in respect of the frozen account under section 60, and
 - (d) in the case of the giving of a no-consent forfeiture notice, the appropriate Court.
- (6) The States may by Ordinance amend or repeal subsections (1) to (5).

Frozen or detained property in the case of désastre.

117. (1) This section applies to any property that -
- (a) is held by a person whose affairs have been declared in a state of désastre, and
 - (b) is -
 - (i) subject to a property freezing order,
 - (ii) subject to an account freezing order, or
 - (iii) detained under Part III.

(2) Subject to subsection (3), property to which this section applies is excluded from the estate of the person mentioned in subsection (1)(a) for the purposes of those désastre proceedings.

(3) If satisfied that it would be appropriate to do so in the interests of justice, the relevant court may make an order to include property to which this section applies in the estate of the person mentioned in subsection (1)(a) for the purposes of those désastre proceedings in any particular case subject to any terms and conditions it thinks fit.

(4) In this section and section 118, the "**relevant court**" means -

- (a) in the case of property that is subject to a property freezing order or an account freezing order, the court that made the order, and
- (b) in any other case, the appropriate Court.

(5) The States may by Ordinance amend or repeal any provision of subsections (1) to (4).

Frozen or detained property where company is wound up.

118. (1) This section applies where -

- (a) any property is held by a Bailiwick company,
- (b) the property is -
 - (i) subject to a property freezing order,
 - (ii) subject to an account freezing order, or

(iii) detained under Part III, and

(c) 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.

(2) Subject to subsection (3), where this section applies, the functions of the liquidator or provisional liquidator must not be exercised in relation to the property.

(3) If satisfied that it would be appropriate to do so in the interests of justice, the relevant court may make an order to authorise the liquidator or provisional liquidator to exercise the functions of the liquidator or (as the case may be) provisional liquidator in any particular case subject to any terms and conditions the court thinks fit.

(4) The States may by Ordinance amend or repeal subsections (1) to (3).

Set-off and secured interests in the case of frozen or detained property.

119. (1) This section applies to any property that -

(a) is -

(i) subject to a property freezing order,

(ii) subject to an account freezing order, or

(iii) detained under Part III, or

(b) is subject to proceedings for a relevant forfeiture order.

(2) Subject to subsection (4), no person may exercise or realise a right or interest specified in subsection (3) in respect of property to which this section applies.

(3) Subsection (2) refers to -

(a) any right of set-off,

(b) any secured interest, or

(c) any right of enforcement relating to a right or interest mentioned in paragraph (a) or (b).

(4) The relevant court may make an order to authorise a person to exercise or realise a right or interest specified in subsection (3) in any particular case subject to any terms and conditions that it thinks fit, if satisfied -

(a) that the right or interest was obtained, given or created in good faith, or

(b) that for any other reason it would be appropriate to do so in the interests of justice.

(5) In this section -

(a) the "**relevant court**" -

- (i) in the case of property subject to a property freezing order or an account freezing order, means the court that made the order,
- (ii) in the case of property detained under Part III, means the appropriate Court, and
- (iii) in the case of property subject to proceedings for a relevant forfeiture order, means the court in which those proceedings are brought or (as the case may be) heard, and

(b) **"secured interest" -**

- (i) means any mortgage, charge, hypothèque, lien or other security, and
- (ii) includes any security interest within the meaning of the Security Interests (Guernsey) Law, 1993^t.

(6) The States may by Ordinance amend or repeal subsections (1) to (5).

^t Ordres en Conseil Vol. XXXIV, p. 299; this enactment has been amended.

Exclusion of liability and compensation

Exclusion of liability.

120. (1) Subject to subsection (3), a person specified in subsection (2) is not liable in costs or damages for anything done or omitted to be done in the discharge, or purported discharge, of the functions conferred by or under this Law.

(2) Subsection (1) refers to -

- (a) His Majesty's Procureur,
- (b) His Majesty's Sheriff,
- (c) the Committee, any other Committee of the States of Guernsey, or any member of or officer responsible to any such committee,
- (d) a police officer, and
- (e) any servant, agent or delegate of any of the aforesaid.

(3) Subsection (1) does not apply -

- (a) if it is shown that the act was done, or the thing omitted to be done, in bad faith, or
- (b) so as to prevent an award of damages made in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

(4) Without limiting subsection (1), a person specified in subsection (2) is not liable for costs incurred in respect of any proceedings under this Law, except where it is shown that the proceedings were commenced, or (having been lawfully commenced) were continued, in bad faith.

(5) The States may by Ordinance amend this section.

Compensation in case of bad faith.

121. (1) This section applies where it is shown that any act was done in bad faith -

- (a) in the discharge, or purported discharge, of a function conferred on any person under this Law, and
- (b) in respect of any property seized, detained or otherwise taken into custody, frozen or forfeited under this Law.

(2) Where this section applies, the person that has suffered loss or damage in respect of the property may make an application to the Royal Court for compensation.

(3) On an application under subsection (2), the court may order the States of Guernsey to pay compensation to the applicant if -

- (a) the court is satisfied that the person has suffered loss or damage as a result of the said act, and
- (b) having regard to all the circumstances, the court considers it appropriate to make the order.

(4) The amount of compensation to be paid under subsection (3) is the amount the court thinks reasonable having regard to -

- (a) the loss or damage suffered by the person, and
- (b) any other relevant circumstances.

Limitation of actions

Passage of time.

122. (1) For the avoidance of doubt, despite any other enactment, or rule of custom or other law to the contrary, the passage of time from the time that any unlawful conduct occurred or is suspected or believed to have occurred, or any property is suspected or believed to be recoverable property, does not limit or restrict the exercise of -

- (a) any right or power of an appropriate officer to make an application under this Law, or
- (b) any power of a court to make an order under this Law.

(2) Subsection (1) does not limit the effect of -

- (a) section 2(5)(a), or
- (b) section 2(5)(b)(ii) and (6)(a).

Liability of directors, etc.

Criminal liability of directors, etc.

123. (1) Where an offence under this Law is committed by a company or other legal person and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a company, any director, controller, secretary or other similar officer thereof,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a limited liability partnership, any member,
- (d) in the case of a foundation, any foundation official, or
- (e) any person purporting to act in any capacity described in paragraph (a), (b), (c) or (d),

the person referred to in the relevant paragraph above as well as the company or other legal person (as the case may be) is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a company or other legal person are managed by its members, subsection (1) applies to a member in connection with that member's functions of management as if that member were a director.

Criminal proceedings against unincorporated bodies.

124. (1) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of -
 - (i) a partnership, any partner thereof, but subject to the provisions of subparagraph (ii),
 - (ii) a limited partnership without legal personality, any general partner thereof,
- (b) in the case of any other unincorporated body, any director of that body or other officer thereof who is bound to fulfil any duty the breach of which is an offence, or, if there is no such officer, any member of the committee or other similar governing body, or any controller of that body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

the person referred to in the relevant paragraph above as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence are, without

prejudice to subsection (1), to be brought in the name of that body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under the provisions of this Law must be paid from the funds of that body.

Defence of due diligence.

125. (1) In any proceedings for an offence under this Law it is a defence for a person charged with the offence to prove (for the avoidance of doubt, on a balance of probabilities) that the person took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by that person and by any other person under the control of that person.

(2) Nothing in subsection (1) limits any other defence available under any other provision of this Law to a person charged with an offence.

Ordinances, regulations, etc.

Ordinances may amend Law to provide for orders or powers in relation to property.

126. (1) The States may by Ordinance amend or repeal any provision of this Law to provide for, or facilitate, the making of an order or the exercise of a power, in relation to -

- (a) property of any kind, or
- (b) any item of property in connection with property of any kind.

- (2) Without limiting subsection (1) -
- (a) an example of property mentioned in subsection (1)(a) is a cryptoasset, and
 - (b) examples of an item mentioned in subsection (1)(b) are -
 - (i) a crypto wallet, and
 - (ii) any other cryptoasset-related item.

(3) Without limiting subsection (1), an Ordinance made under it may provide for the conversion to money of any property or item to which the Ordinance relates.

(4) An Ordinance may be made under subsection (1) in relation to property or items even if orders may be made or powers may be exercised under this Law in relation to the property or (as the case may be) those items if the Ordinance were not made.

- (5) In this section -
- (a) "**crypto wallet**" means -
 - (i) software,
 - (ii) hardware,
 - (iii) a physical item, or

(iv) any combination of the things mentioned in subparagraphs (i) to (iii),

which is used to store the cryptographic private key that allows a cryptoasset to be accessed,

(b) "**cryptoasset**" means a cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology and can be transferred, stored or traded electronically, and

(c) "**cryptoasset-related item**" means an item of property that is, or that contains or gives access to information that is, likely to assist in the seizure of cryptoassets that -

(i) are recoverable property, or

(ii) represent, or are associated with, recoverable property.

(6) The States may by Ordinance amend or repeal all or any of the definitions in subsection (5).

Ordinances may amend Law for legal expenses.

127. (1) The States may by Ordinance -

(a) provide for any restrictions or limits relating to the payment of legal expenses incurred, or which may be

incurred, in respect of any proceedings under this Law, and

(b) amend or repeal any provision of this Law for this purpose.

(2) Without limiting subsection (1)(b), the following are examples of provisions that may be amended or repealed under subsection (1)(b) -

(a) section 10, and

(b) section 62.

Ordinances may amend this Law for specified purposes.

128. (1) The States may by Ordinance amend this Law where it appears to them to be necessary or expedient to do so for the purpose of -

(a) the enabling of any person or body within the Bailiwick with functions under this Law to carry out those functions,

(b) enhancing or protecting the reputation or economic interests of the Bailiwick or any part of the Bailiwick, or

(c) discharging any international obligation to which the Bailiwick is subject.

(2) The power conferred on the States by subsection (1) is in addition to any other power conferred on it to amend or repeal any provision of this Law by Ordinance.

Ordinances may make consequential provision, etc.

129. (1) The States may by Ordinance make such consequential, incidental and supplemental provision as they think fit in connection with the commencement of any provision of this Law.

(2) Without limiting subsection (1), an Ordinance under that subsection may make any amendment to an enactment consequential upon the coming into force of any provision of this Law that the States consider fit.

Ordinances: general provisions.

130. (1) The States may by Ordinance make provision -

- (a) for the purpose of carrying this Law into effect, and
- (b) in respect of anything in relation to which provision may be made under this Law by Ordinance of the States.

(2) An Ordinance may empower the Committee or any other body (including any court), to make or issue rules, orders, codes, guidance, principles, policies and instructions, in respect of anything in relation to which provision may be made by Ordinance of the States.

(3) Nothing in subsection (2) limits section 20(d) of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016^u.

(4) Before recommending the States to agree to make any Ordinance under this Law, the Committee must consult -

(a) in the case of an Ordinance having effect in Alderney, the Policy & Finance Committee of the States of Alderney, and

(b) in the case of an Ordinance having effect in Sark, the Policy & Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate an Ordinance.

(5) An Ordinance made under this Law ceases to have effect -

(a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove its application to Alderney, and

(b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

^u Order in Council No. V of 2018; this enactment has been amended.

(6) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with subsection (5), the Ordinance ceases to have effect in Alderney or (as the case may be) in Sark, but without prejudice to -

- (a) anything done under the Ordinance in Alderney or (as the case may be) in Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) in Sark.

(7) In this section "**approval date**" means the date on which the Ordinance is approved by the States of Deliberation.

Regulations: general provisions.

131. (1) Before making any regulations under this Law, the Committee must consult -

- (a) in the case of regulations having effect in Alderney, the Policy & Finance Committee of the States of Alderney, and
- (b) in the case of regulations having effect in Sark, the Policy & Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed regulations; but a failure to comply with this subsection does not invalidate any regulations.

(2) Regulations made under this Law cease to have effect -

- (a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove the application of those regulations to Alderney, and
- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove the application of those regulations to Sark.

(3) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of any regulations in accordance with subsection (2), those regulations cease to have effect in Alderney or (as the case may be) Sark, but without prejudice to -

- (a) anything done under those regulations in Alderney or (as the case may be) in Sark, or
- (b) the making of new regulations having effect in Alderney or (as the case may be) Sark.

(4) Regulations of the Committee made under this Law must be laid before a meeting of the States of Deliberation as soon as possible after being made; and if at that or the next meeting the States resolve to annul them, those regulations cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(5) In this section "**approval date**", in relation to any regulations, means the date on which the Committee makes those regulations.

Rules of court.

132. (1) The Royal Court sitting as a Full Court has power to make rules of court for the purposes of this Law.

(2) Rules of court made under subsection (1) may provide for all procedural, practical and incidental matters to be followed in connection with proceedings under this Law or which may be necessary for bringing this Law into effect.

(3) Rules of court made under subsection (1) may apply any other rules of court, including (without limitation) rules which relate to courts other than the Royal Court, and in such a case those rules may be applied -

- (a) to any extent,
- (b) with or without modifications, and
- (c) as amended from time to time,

as the Royal Court thinks fit.

(4) Rules of court under this Law may, instead of providing for any matter, refer to provision made or to be made about that matter by practice direction.

(5) Nothing in this section limits section 23 of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.

Codes of practice.

133. (1) Before the Committee issues a code of practice under this Law, the Committee must consult –

- (a) in the case of a code having effect in Alderney, the Policy & Finance Committee of the States of Alderney, and
- (b) in the case of a code having effect in Sark, the Policy & Finance Committee of the Chief Pleas of Sark,

but a failure to comply with this subsection does not invalidate any code of practice.

(2) A contravention by any person of a provision of a code of practice issued under this Law does not of itself make that person liable to any criminal or civil proceedings, but in any legal proceedings (criminal or otherwise), whether or not brought or determined under this Law, the provision of the code is admissible in evidence and may be taken into account in determining any question arising in those proceedings.

(3) A code of practice issued under this Law -

- (a) is to be brought into force by Order of the Committee after being issued, and
- (b) must be laid at a meeting of the States of Deliberation as soon as possible after being issued; and if, at that or the next meeting, the States resolve to annul the code, that code ceases to have effect but without prejudice

to anything done under it or to the issuing of a new code.

Miscellaneous

Reconsideration based on new evidence.

134. (1) The Committee may by regulations provide for any person affected by the forfeiture of any property under a relevant forfeiture notice or relevant forfeiture order to make an application to the relevant court for the matter to be reconsidered in the light of new evidence.

(2) Any provision made by regulations under subsection (1) is without prejudice to any right of appeal under this Law and must be construed accordingly.

(3) Before making any regulations under subsection (1), the Committee must consult the Royal Court and His Majesty's Procureur.

(4) In this section, the "**relevant court**" means -

- (a) in the case of a forfeiture order made in respect of frozen property (within the meaning given by section 13(9)), the Royal Court, and
- (b) in any other case, the appropriate Court.

Required conditions.

135. (1) The Committee may by regulations specify the required conditions for the purposes of this Law.

(2) Without limiting subsection (1), a required condition may do one or more of the following -

- (a) restrict who may receive sums released in pursuance of an exclusion under section 10 or 62 ("**an exclusion**"),
- (b) restrict or otherwise control the amount of any sum released in pursuance of an exclusion in respect of an item of expenditure,
- (c) limit the amount of remuneration allowable in respect of work done by representatives, or items of expense incurred by representatives or by a party to proceedings.

Service of documents.

136. (1) This section applies to any document to be given or served under any provision of this Law.

(2) Any document to which this section applies may be given or served upon -

- (a) an individual ("A"), by being delivered to A, or by being left at, or sent by post to, A's usual or last known place of abode, or by being transmitted to A's relevant electronic address,
- (b) a company or other legal person with a registered office in the Bailiwick, by being left at, or sent by post

to, that office, or by being transmitted to its relevant electronic address,

(c) a company or other legal person without a registered office in the Bailiwick, by being left at, or sent by post to -

(i) its principal or last known principal place of business in the Bailiwick, or

(ii) if there is no such place, its registered office or principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(d) an unincorporated body -

(i) by being given to or served on any partner (not being a limited partner in a limited partnership), member of the committee or other similar governing body, director or other similar officer thereof in accordance with paragraph (a), or

(ii) by being left at, or sent by post to -

(A) the body's principal or last known principal place of business in the Bailiwick, or

(B) if there is no such place, its principal or last known principal place of business elsewhere,

or by being transmitted to its relevant electronic address,

(e) His Majesty's Procureur, by being left at, or sent by post to, the offices of His Majesty's Procureur, or by being transmitted to the electronic address of His Majesty's Procureur, and

(f) the Committee or any other committee of the States of Guernsey, by being left at, or sent by post to, its principal office in the Bailiwick, or by being transmitted to its electronic address.

(3) If a person notifies His Majesty's Procureur, a police officer or any other person charged under this Law with giving or serving a document (as the case may be) of -

(a) an address for service within the Bailiwick, or

(b) an electronic address at which the service of documents may be effected on that person,

any document to be given to or served upon that person may be given or served by being left at, or sent by post to, that address in the Bailiwick or (as the case may be) by being transmitted to that electronic address.

(4) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published on two occasions in La Gazette Officielle.

(5) Subsections (2), (3) and (4) are without prejudice to any other lawful method of service.

(6) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be given to or served on His Majesty's Procureur, a police officer (including a senior officer), or the Committee or any other committee of the States of Guernsey is to be regarded to have been given or served until it is received.

(7) If a person upon whom a document is to be served is a minor or person who lacks capacity within the meaning of the Capacity (Bailiwick of Guernsey) Law, 2020^v, the document must be served on the person's guardian; and if there is no guardian, His Majesty's Procureur, a police officer (including a senior officer) or other person charged under this Law with giving or serving a document on that minor or person who lacks capacity (as the case may be) may apply to the relevant court for the appointment of a person to act as guardian for the purposes of the relevant provision of this Law; and in this subsection the "**relevant court**" means-

^v Order in Council No. II of 2021; this enactment has been amended.

- (a) the Court of Alderney, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court,
- (b) the Court of the Seneschal, where the person in respect of whom the guardian is to be appointed is within the jurisdiction of that Court, and
- (c) the Royal Court, in any other case.

(8) Unless the contrary is shown, a document sent by post is deemed to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a business day.

(9) Service of any document sent by post may be proved by showing the date of posting, the address thereon and the fact of prepayment.

(10) A document is deemed for the purposes of this Law to have been -

- (a) addressed to the person concerned, and

- (b) delivered to any person, or left at or transmitted to a place or address,

if the person effecting service certifies that it was addressed, and delivered, left or transmitted (as the case may be), in accordance with the provisions of this section, and the document is, unless the contrary is shown, deemed for those purposes to have been received when it was delivered, left or transmitted (as the case may be).

(11) In this section -

- (a) "**by post**" means by special delivery, recorded or signed for delivery or ordinary letter post,

- (b) "**relevant electronic address**" means an electronic address -

- (i) with which, in the opinion of His Majesty's Procureur or the police officer or other person charged under this Law with giving or serving the document, the person concerned has a personal, business or other connection, and

- (ii) a document transmitted to which is likely to come to the attention of the person concerned, and

- (c) "**transmitted**" means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the

production of a document containing the text of the communication.

(12) Subsections (1) to (11) -

(a) are subject to any rules of Court made under this Law, and

(b) may be amended or repealed by regulations made by the Committee.

Meaning of "property" and related expressions.

137. (1) In this Law -

(a) "**interest**", in relation to property, includes right, and

(b) "**property**" includes-

(i) money and all other property, real or personal, immovable or moveable,

(ii) things in action and other intangible or incorporeal property, and

(iii) for the avoidance of doubt, cash.

(2) For the purposes of this Law -

(a) property is held by any person if that person holds or is beneficially entitled (under a trust, as a member of a

company or otherwise) to that property or any interest in it,

(b) property is disposed of by one person to another if the former transfers or grants to the latter any interest in the property.

(3) In this Law -

(a) a reference to property held by a person includes a reference to property vested in the committee of creditors of that person or in a liquidator (of that person), and

(b) a reference to an interest held by a person beneficially in property includes a reference to an interest which would be held by that person beneficially if the property were not vested as described in paragraph (a).

(4) In this Law, a reference to a person's property (whether expressed as a reference to the property that the person holds or otherwise) is to be read as follows -

(a) in relation to land, it is a reference to any interest that the person holds in the land, and

(b) in relation to any other property, it is a reference -

(i) to the property (if it belongs to the person), or

- (ii) to any other interest which the person holds in the property.

(5) For the avoidance of doubt, property may be regarded for the purposes of this Law as being held by a person even if His Majesty's Sheriff or another person has been appointed as receiver in respect of the property (for example, in a case where the property is subject to a property freezing order).

(6) The States may by Ordinance amend or repeal subsections (1) to (5).

Obtaining and disposing of property.

138. (1) In this Law, a reference to a person disposing of the person's property includes a reference -

- (a) to the person disposing of a part of it, or
- (b) to the person granting an interest in it,

(or to both); and a reference to the property disposed of is a reference to any property obtained on the disposal.

(2) A person who makes a payment to another is to be treated as making a disposal of the person's property to the other, whatever form the payment takes.

(3) Where a person's property passes to another under a will or intestacy or by operation of law, it is to be treated as disposed of by the person to the other.

Meaning of "senior officer".

139. (1) In this Law, a "**senior officer**" means -
- (a) a member of the salaried police force of the Island of Guernsey of at least the rank of Inspector,
 - (b) a member of any police force established by the States of Alderney of at least the rank of Inspector,
 - (c) a customs officer of at least the grade of Senior Officer or Senior Investigation Officer,
 - (d) a designated person appointed in writing as a Senior Officer by the Director of the Economic and Financial Crime Bureau, or
 - (e) in relation to Sark, the Constable or the Vingtenier.
- (2) The Committee may by regulations amend subsection (1).

Meaning of "excluded material".

140. (1) In this Law, "**excluded material**" means -
- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which the person holds in confidence,

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

(2) A person holds material other than journalistic material in confidence for the purposes of subsection (1) if the person holds it subject to -

- (a) an express or implied undertaking to hold it in confidence, or
- (b) a restriction on disclosure or an obligation of secrecy contained in any enactment, whether made before or after the commencement of this Law.

(3) A person holds journalistic material in confidence for the purposes of subsection (1) if the person holds it subject to -

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

- (b) a restriction on disclosure or an obligation of secrecy contained in any enactment, whether made before or after the commencement of this Law, and

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

Meaning of "items subject to legal professional privilege".

141. (1) In this Law, "items subject to legal professional privilege", subject to subsection (2), means any of the following, where they are in the possession of a person who is entitled to possession of them -

- (a) communications between a professional legal adviser and the adviser's client or any person representing the adviser's client made in connection with the giving of legal advice to the client,
- (b) communications -
 - (i) between a professional legal adviser and the adviser's client or any person representing the adviser's client, or
 - (ii) between a professional legal adviser or the adviser's client or any person representing the adviser's client, and any other person,

made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

(c) items enclosed with or referred to in any communications specified in paragraph (a) or (b) and made -

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

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

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

Meaning of " appropriate Court".

142. (1) In this Law, "**appropriate Court**", in relation to an application in respect of any property, means -

(a) where the person making the application believes that the aggregate value of the property which is the subject of the application is less than the designated sum, the Magistrate's Court, and

(b) in any other case, the Royal Court.

(2) Despite subsection (1), if, after an application to the Magistrate's Court has been made, that court is of the opinion that the aggregate value of the property which is the subject of the application is, or exceeds, the designated sum -

- (a) the Magistrate's Court may transfer the proceedings to the Royal Court with a view to it being dealt with in the Royal Court, and
- (b) for the purposes of those proceedings and any related proceedings, the Royal Court is to be regarded as the appropriate Court.

(3) Despite subsection (1), if, after an application to the Royal Court has been made, that court is of the opinion that the aggregate value of the property which is the subject of the application is less than the designated sum -

- (a) the Royal Court may transfer the proceedings to the Magistrate's Court with a view to it being dealt with in the Magistrate's Court, and
- (b) for the purposes of those proceedings and any related proceedings, the Magistrate's Court is to be regarded as the appropriate Court.

(4) In this section, "**aggregate value**", where the property concerned consists of money held in an account (or two or more linked or associated accounts) maintained with a bank in the Bailiwick, means the aggregate of the credit balance in the account (or those accounts).

Documents relating to property.

143. (1) In this Law, a reference to documents relating to property includes -

(a) any item that is, contains or gives access to information that is likely to assist in seizing or taking custody of the property, and

(b) any item in which an item described in paragraph (a) is stored or recorded.

(2) For the purposes of subsection (1), "**item**" means any -

(a) software,

(b) hardware,

(c) physical item, or

(d) combination of any of the things mentioned in paragraphs (a) to (c).

(3) Nothing in this section limits the definition of "**document**" in the Schedule to the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.

(4) The States may by Ordinance amend this section.

Interpretation.

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

"account forfeiture notice" means a notice given under section 63,

"account forfeiture order" means an order to forfeit money in a frozen account under section 67,

"account freezing order" means an order under section 60,

"account information": see section 97(3),

"account monitoring order" means an order under section 97,

"appropriate Court": see section 142,

"appropriate officer" means -

- (a) a police officer, or
- (b) His Majesty's Procureur,

"associated property": see section 6,

"Bailiwick company" means -

- (a) a company incorporated under the Companies (Guernsey) Law, 2008^w, or
- (b) a company incorporated under the Companies (Alderney) Law, 1994^x,

^w Order in Council No. VIII of 2008; this enactment has been amended.

"**bank**", in relation to the Bailiwick, means the holder of a banking licence granted under the Banking Supervision (Bailiwick of Guernsey) Law, 2020^y,

"**cash**": see section 33(1),

"**civil forfeiture investigation**": see section 76,

"**commission of a gross human rights abuse or violation**": see section 3,

the "**Committee**" means the States of Guernsey Committee for Home Affairs,

"**consent order**" means an order under section 20,

"**country**" includes territory,

"**custody**", for the avoidance of doubt, includes control,

"**customer information**": see section 95,

"**customer information order**" means an order under section 94,

"**customs officer**" means the Chief Revenue Officer or any other person authorised by the States of Guernsey Committee for Home Affairs to act as an officer of Customs and Excise,

^x Ordres en Conseil Vol. XXXV(2), p. 777; this enactment has been amended.

^y Order in Council No. XX of 2020; this enactment has been amended.

"dealing" with property includes -

- (a) disposing of it,
- (b) taking possession of it, or
- (c) removing it from the Bailiwick,

"derivation", in relation to an investigation into the derivation of property, includes determining whether the property is or has been used in unlawful conduct,

"designated person" has the meaning given by section 2(2) of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022^z,

"designated property": see section 34,

"designated sum" means -

- (a) £25, 000, or
- (b) any other sum of money prescribed by regulations made by the Committee in place of the sum in paragraph (a).

"detained property investigation": see section 75(b),

"Director of the Economic and Financial Crime Bureau" has the

^z Order in Council No. XII of 2022; this enactment has been amended.

meaning given by section 1(2) of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022,

"disclosure order" means an order under section 91,

"disposing of property": see section 138,

"documents relating to property": see section 143,

"electronic address" includes, without limitation, an e-mail address and telecommunications address,

"excepted joint owner", in relation to any property, means any person who obtained the property in circumstances in which it would not be recoverable against the person; and a reference to the excepted joint owner's share of any recoverable property is to so much of the recoverable property as would have been the excepted joint owner's if the interest of the excepted joint owner had been severed,

"excluded material": see section 140,

"evidence": see section 105(6),

"Financial Intelligence Unit" means the unit so named and maintained under the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022,

"financial services business"

- (a) has the meaning given by section 49 of the Proceeds of Crime Law, and

(b) includes a person carrying on such a business,

"**followed**", in relation to property: see paragraphs 1 and 2 of Schedule 1,

"**forfeiture notice**" means a notice given under section 45,

"**forfeiture order**" means an order to forfeit property under section 13,

"**frozen account**" -

(a) means an account to which an account freezing order applies, and

(b) in relation to an account freezing order, means the account to which the order applies,

"**frozen funds investigation**": see section 75(c),

"**gross human rights abuse or violation**": see section 3,

"**hold**", in relation to property: see section 137,

"**initial period**": see section 40(2),

"**interest**", in relation to property: see section 137(1),

"**items subject to legal professional privilege**": see section 141,

"**material**" includes -

(a) documents, and

(b) information in any form other than documents,

"member of the Financial Intelligence Unit", for the avoidance of doubt, includes the Head of the Financial Intelligence Unit,

"no-consent forfeiture notice" means a notice served under section 70,

"no-consent forfeiture order" means an order made under section 71,

"objection": see sections 33 and 46(6),

"objection period": see section 33(1),

"obtain", in relation to property: see section 138,

"obtained through unlawful conduct", in relation to property: see section 5,

"overseas authority", in relation to any kind of request for assistance, means -

(a) a court or tribunal of a country outside the Bailiwick,

(b) the government of a country outside the Bailiwick, or

(c) any other authority recognised by the government of, or under the laws of, a country outside the Bailiwick as the appropriate authority for receiving (or as the

case may be) making requests for assistance of that kind,

"police officer" -

(a) means -

(i) a member of the salaried police force or of the special constabulary of the Island of Guernsey,

(ii) a member of any police force which may be established by the States of Alderney or a special constable appointed under section 47 of the Government of Alderney Law, 2004,

(iii) the Constable of Sark, the Vingtenier, an Assistant Constable of Sark or a special constable appointed under section 54 of the Reform (Sark) Law, 2008,

(iv) a customs officer, where section 112 applies, and

(c) for the avoidance of doubt, and subject to any regulations made under section 8(3) of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022, includes -

(i) the Director of the Economic and Financial Crime Bureau,

(ii) a member of the Financial Intelligence Unit,
and

(iii) a designated person,

"**premises**" includes any place and includes -

(a) any vehicle, vessel or aircraft,

(b) any offshore installation, and

(c) any tent or moveable structure,

"**Proceeds of Crime Law**" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^{aa},

"**production order**" means an order under section 79,

"**property**": see section 137,

the "**property concerned**" -

(a) in relation to an application for an order, means the property to which the application relates,

(b) in relation to any proceedings for an order, means the property to which the order is sought to apply, and

^{aa} Ordres en Conseil Vol. XXXIX, p. 137; this enactment has been amended.

- (c) in relation to an order, means the property specified or described in the order as the property to which the order applies,

"property freezing order" means an order under section 8,

"property obtained through unlawful conduct": see section 5,

"property used in unlawful conduct": see section 4,

"recoverable property" is to be construed in accordance with Schedule 1,

"related property": see section 21(2),

"relevant forfeiture notice" means any -

- (a) forfeiture notice,
- (b) account forfeiture notice, or
- (c) no-consent forfeiture notice,

"relevant forfeiture order" means any -

- (a) forfeiture order,
- (b) summary forfeiture order,
- (c) account forfeiture order, or

(d) no-consent forfeiture order,

"**relevant investigation**": see section 75(d),

"**relevant officer**": see section 33(1),

"**relevant order**": see section 99,

"**Royal Court**" means the Royal Court sitting as an Ordinary Court and constituted by the Bailiff sitting alone,

"**search and seizure warrant**" means a warrant issued under section 85,

"**Seized Assets Fund**" means the fund held by the States of Guernsey known as the Seized Assets Fund,

"**senior officer**": see section 139,

"**share**", in relation to an excepted joint owner: see the definition of "**excepted joint owner**" in this subsection,

"**summary forfeiture order**" means an order to forfeit property under section 49,

"**unlawful conduct**": see sections 2 and 112(3), and paragraph 4 of Schedule 2,

"**used in unlawful conduct**", in relation to property: see section 4,

"**value**" means market value,

"**vehicle**" includes a caravan and a railway vehicle, and

"**vessel**" includes any ship, boat, hover vehicle, raft and any other apparatus constructed or adapted for floating on water.

(2) A reference to an investigation into, the determination of, or the question of, the derivation of any property includes a reference to an investigation into, the determination of, or (as the case may be) the question of, whether the property is or has been used for unlawful conduct.

(3) For the purpose of deciding whether property was recoverable at any time (including any time before the commencement of this Law), it is to be assumed that this Law was in force at that and any other relevant time.

(4) Proceedings against any person for an offence are concluded when the person is convicted or acquitted or the prosecution is discontinued.

Index of defined expressions.

145. Schedule 3 sets out an index of the expressions defined or given meaning by this Law.

Repeals.

146. The following enactments are repealed -

- (a) the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007^{bb},

^{bb} Order in Council No. XVII of 2008; this enactment has been amended.

- (b) the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (Commencement) Ordinance, 2008^{cc},
- (c) the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (Amendment) Ordinance, 2008^{dd},
- (d) the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012^{ee},
- (e) the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012 (Commencement) Ordinance, 2015^{ff},
- (f) the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022^{gg},
- (g) the Forfeiture of Money in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022 (Commencement etc.) Regulations, 2022^{hh},

^{cc} Ordinance No. XXVII of 2008.

^{dd} Ordinance No. XXX of 2008.

^{ee} Order in Council No. XVI of 2012.

^{ff} Ordinance No. XLIV of 2015.

^{gg} Ordinance No. XX of 2022.

- (h) the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022 (Commencement) Regulations, 2023ⁱⁱ,
- (i) the Forfeiture of Money, etc in Civil Proceedings (Designation of Countries) (Bailiwick of Guernsey) Regulations, 2008^{jj},
- (j) the Forfeiture of Money, etc in Civil Proceedings (Designation of Countries) (Bailiwick of Guernsey) Regulations, 2009^{kk},
- (k) the Forfeiture of Money, etc in Civil Proceedings (Designation of Countries) (Bailiwick of Guernsey) (Amendment) Regulations, 2017^{ll},
- (l) the Forfeiture of Money, etc in Civil Proceedings (Designation of Countries) (Bailiwick of Guernsey) Regulations, 2022^{mm}, and

hh G.S.I. No. 103 of 2022.
ii G.S.I. No. 5 of 2023.
jj G.S.I. No. 77 of 2008.
kk G.S.I. No. 39 of 2009.
ll G.S.I. No. 77 of 2017.
mm G.S.I. No. 77 of 2022.

- (m) the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Rules, 2012ⁿⁿ.

Transitional and savings.

147. (1) Schedule 4 has effect.
- (2) The Committee may by regulations amend Schedule 4.

Consequential amendments.

148. (1) Schedule 5 has effect.
- (2) The Committee may by regulations amend Schedule 5.

Relationship with other enactments.

149. For the avoidance of doubt -
- (a) nothing in this Part limits or restricts the effect or application of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006^{oo}, and
- (b) the provisions of this Law conferring powers of search and seizure on police officers are in addition to and not in derogation from any such powers conferred on them by or under any other enactment.

ⁿⁿ Orders of the Royal Court (No. II of 2012).

^{oo} Order in Council No. XXII of 2007; this enactment has been amended.

Citation.

150. This Law may be cited as the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023.

Commencement.

151. This Law shall come into force on the day appointed by regulations of the Committee; and different dates may be appointed for different provisions and for different purposes.

SCHEDULE 1

Section 1(3)

MEANING OF "RECOVERABLE PROPERTY"

Recoverable property: original property.

1. (1) Subject to subparagraph (4), the following property ("**original property**") is recoverable property -

- (a) property that is or has been used in unlawful conduct,
- (b) property that is or was obtained through unlawful conduct, or
- (c) property that is intended to be used in unlawful conduct.

(2) For the purposes of subparagraph (1)(a) and (b) respectively, it is immaterial whether the property -

- (a) was used in unlawful conduct, or
- (b) was obtained through unlawful conduct,

before or after the commencement of this Law.

(3) Where the question as to whether any property is intended to be used in unlawful conduct arises in any proceedings under this Law at any time, the reference to property that is intended to be used in unlawful conduct in

subparagraph (1)(c) is deemed to include a reference to property that was so intended at the earliest occurrence of any of the following -

- (a) an application being made for a property freezing order or account freezing order in respect of the property,
- (b) the property being seized or detained under Part III,
- (c) an application being made for any warrant under this Law in respect of the property,
- (d) an application being made for an order under Part V for the purposes of a relevant investigation (within the meaning of section 75(d)) involving or otherwise relating to the property,
- (e) an application being made for a relevant forfeiture order in respect of the property,
- (f) a relevant forfeiture notice being given in respect of the property.

(4) If original property has been disposed of (since it was so used, obtained, or, as the case may be, intended to be used) it is recoverable property only if it is held by a person into whose hands it may be followed under subparagraph (5).

(5) Original property may be followed into the hands of a person obtaining it on a disposal by -

- (a) where subparagraph (1)(a) applies, the person who used the property in unlawful conduct,
- (b) where subparagraph (1)(b) applies, the person who obtained the property through the unlawful conduct,
- (c) where subparagraph (1)(c) applies, the person who intended to use the property in unlawful conduct, and
- (d) in all cases, a person into whose hands it may (by virtue of item (a), (b) or (c)) be followed.

Tracing property, etc.

2. (1) Where original property is or has been recoverable, any property which represents the original property is also recoverable property.

(2) Property ("A") represents the original property if a person enters into a transaction by which -

- (a) the person disposes of recoverable property, whether the original property or property which (by virtue of this Schedule) represents the original property, and
- (b) the person obtains A in place of that recoverable property.

(3) If a person disposes of recoverable property which represents the original property, the property -

- (a) may be followed into the hands of the person who obtains it, and
- (b) continues to represent the original property.

Mixing property.

3. (1) Subparagraph (2) applies if recoverable property is mixed with any other property (regardless of whether or not both properties are held by the same person).

(2) The portion of the mixed property which is attributable to the recoverable property represents the recoverable property.

(3) Recoverable property is mixed with other property if (for example) it is used -

- (a) to increase funds held in a bank account,
- (b) in part payment for the acquisition of an asset,
- (c) for the restoration or improvement of land,
- (d) for the discharge (in whole or in part) of a mortgage, charge, hypothèque, lien or other security, or
- (e) by a person holding a leasehold interest in the property to acquire the freehold.

Recoverable property: accruing profits.

4. (1) This section applies where a person who has recoverable property, or any other person, obtains further property consisting of profits accruing in respect of the recoverable property.

(2) The further property is to be treated as representing the original property.

General exceptions.

5. (1) Subparagraph (2) has effect despite anything to the contrary in paragraph 1, 2 or 3 of this Schedule.

(2) Subject to subparagraph (9), where any of subparagraphs (3) to (8) apply, the property concerned is -

(a) not recoverable, and

(b) where previously recoverable, ceases to be recoverable.

(3) This subparagraph applies where -

(a) a person disposes of recoverable property, and

(b) the person who obtains it on the disposal does so in good faith, for value and without notice that it was recoverable property,

and in this case, the property may not be followed into the hands of the person who obtained it on that disposal.

(4) This subparagraph applies where recoverable property is vested, forfeited or otherwise disposed of in the exercise of powers under this Law.

(5) This subparagraph applies where -

(a) a defendant makes a payment to a plaintiff, or a plaintiff otherwise obtains property from a defendant, in satisfaction of a judgment in civil proceedings (whether in the Bailiwick or elsewhere),

(b) the plaintiff's claim is based on the defendant's unlawful conduct, and

(c) apart from this subparagraph, the sum received or property obtained by the plaintiff would be recoverable property.

(6) This subparagraph applies where -

(a) an amount is paid to or distributed among any persons in accordance with an order made under section 46 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020^{PP}, and

(b) apart from this subsection, the sum received by any of those persons would be recoverable property.

^{PP} Order in Council No. XVII of 2020; this enactment has been amended.

(7) This subparagraph applies where either of the following applies to property -

- (a) an order under section 26 of the Proceeds of Crime Law,
- (b) an order under section 26 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000.

(8) This subparagraph applies where property has been taken into account in deciding the amount of a person's benefit from criminal conduct for the purpose of making either -

- (a) an order under section 2 of the Proceeds of Crime Law, or
- (b) an order under section 2 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000.

(9) Where a person enters into a transaction to which paragraph 2(2) of this Schedule applies, and by which the person obtains any property ("A") in place of recoverable property, the recoverability of A under paragraph 2(1) and (2) is not affected by reason only that the disposal of the property is one to which subparagraph (3) or (4) of this paragraph applies.

Granting interests.

6. (1) If a person grants an interest in the person's recoverable property, the question whether the interest is also recoverable is to be determined in the same manner as it is on any other disposal of recoverable property.

(2) Accordingly, on the person granting an interest in the property ("the property in question") -

- (a) where the property in question is original property, the interest is also to be treated as recoverable property, and
- (b) where the property in question represents in that person's hands original property, the interest is also to be treated as representing in that person's hands the original property.

Relationship with sections 20 and 27.

7. For the avoidance of doubt, the provisions of this Schedule are subject to sections 20(2)(a) and 27.

SCHEDULE 2

Section 29(3)

CONNECTION WITH THE BAILIWICK

Conduct.

1. (1) There is a connection with the Bailiwick where the unlawful conduct occurred entirely or partly in the Bailiwick.

(2) There has been a connection with the Bailiwick where the property in question has been in the Bailiwick, but only if it was recoverable property in relation to the unlawful conduct for some or all of the time it was here.

(3) There is a connection with the Bailiwick where there is other property in the Bailiwick that is recoverable property in relation to the unlawful conduct.

(4) There has been a connection with the Bailiwick where, at any time, there has been other property in the Bailiwick that, at the time, was recoverable property in relation to the unlawful conduct.

Person.

2. (1) There is or has been a connection with the Bailiwick where a person described in subparagraph (2) -

(a) is linked to the Bailiwick,

(b) was linked to the Bailiwick at a time when the unlawful conduct, or some of the unlawful conduct, was taking place, or

(c) has been linked to the Bailiwick at any time since that conduct took place.

(2) Those persons are -

(a) a person whose conduct was, or was part of, the unlawful conduct,

(b) a person who was deprived of property by the unlawful conduct,

(c) a person who holds the property in question,

(d) a person who has held the property in question, but only if it was recoverable property in relation to the unlawful conduct at the time,

(e) a person who holds other property that is recoverable property in relation to the unlawful conduct, and

(f) a person who, at any time, has held other property that was recoverable property in relation to the unlawful conduct at the time.

(3) A person is linked to the Bailiwick if the person is -

(a) a body incorporated or constituted under the law of any part of the Bailiwick,

(b) a person domiciled, resident or present in the Bailiwick, or

- (c) a person carrying on a business in the Bailiwick.

Property held on trust.

3. (1) There is a connection with the Bailiwick where the property in question is property held on trust, or an interest in property held on trust, and -

- (a) the trust arises under the law of any part of the Bailiwick,
- (b) the trust is entirely or partly governed by the law of any part of the Bailiwick,
- (c) one or more of the trustees is linked to the Bailiwick, or
- (d) one or more of the beneficiaries of the trust is linked to the Bailiwick.

(2) A person is linked to the Bailiwick if the person falls within paragraph 2(3).

(3) "**Beneficiaries**" includes beneficiaries with a contingent interest in the trust property and potential beneficiaries.

Interpretation.

4. In this Schedule, the "**unlawful conduct**" means -

- (a) in a case in which the property in question is or has been used in unlawful conduct, that conduct,

- (b) in a case in which the property in question is or was obtained through unlawful conduct, that conduct,
- (c) in a case in which the property in question is intended to be used in unlawful conduct, that conduct,
- (d) in a case in which the property in question represents original property, the unlawful conduct in relation to the original property, or
- (e) in a case in which the property in question was obtained through unlawful conduct of one of a number of kinds or represents property so obtained (see section 5(2)(b)), one or more of those kinds of conduct.

SCHEDULE 3

Section 145

INDEX OF DEFINED EXPRESSIONS

Each expression in the left-hand column of the table below is defined or given meaning by the corresponding provision of this Law in the right-hand column.

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SCHEDULE 4

Section 147

TRANSITIONAL AND SAVINGS

Interpretation.

1. (1) In this Schedule -

"**commencement**" means the day on which sections 146 and 147 come into force, and

the "**former Law**" means the Forfeiture of Money etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007.

(2) The provisions of this Schedule have effect on and from commencement.

Seizure or detention of cash under former Law.

2. (1) Cash seized by a police officer under section 6 of the former Law is to be treated as if seized by a police officer under section 39 of this Law.

(2) Cash detained under section 7(1) of the former Law is to be treated as if detained under section 40 of this Law.

(3) An order of the Bailiff to further detain cash under section 7(2) of the former Law has effect as if it were an order made by the Royal Court under section 41 of this Law, but there is to be no right of appeal to the Court of Appeal in respect of -

(a) the order, or

(b) any refusal of the Bailiff to make the order.

(4) An application for an order to further detain cash under section 7(2) of the former Law which has not been determined before commencement, is to be determined under that provision as if that Law were still in force, but subparagraph (3) applies to any order or decision made pursuant to the application.

Freezing of bank accounts under former Law.

3. (1) An order of the Bailiff under section 10(1) of the former Law prohibiting funds or part of funds from being transferred or withdrawn from, or otherwise paid out of, a bank account has effect as if it were an account freezing order made by the appropriate Court under section 60 of this Law, but there is to be no right of appeal in respect of -

(a) the order, or

(b) any refusal of the Bailiff to make the order.

(2) An order of the Bailiff under section 10(3) of the former Law extending the period for which funds are frozen under section 10(1) of the former Law has effect as if it were a variation of an account freezing order under section 61 of this Law, but there is to be no right of appeal in respect of -

(a) the order, or

(b) any refusal of the Bailiff to make the order.

(3) An application for an order of the kind specified in subparagraph (1) or (2) which has not been determined before commencement, is to

be determined under section 10 of the former Law as if that Law were still in force, but subparagraph (1) or (as the case may require) (2) respectively applies to any order or decision made under section 10(1) or (3) of the former Law pursuant to the application.

Summary forfeiture notices and procedure under former Law.

4. (1) A summary forfeiture notice served under section 12A(1) of the former Law, where no forfeiture order has been made under section 12B of the former Law pursuant to the notice, has effect as if it were a no-consent forfeiture notice given under section 70 of this Law.

(2) A forfeiture order made by the Royal Court under section 12B(1) or (3) of the former Law has effect as if it were a no-consent forfeiture order made by that court under section 71 of this Law on the day on which the forfeiture order was made under section 12B(1) or (3) of the former Law, and the following may be appealed accordingly –

(a) the order, and

(b) any refusal of the Royal Court to make the order.

(3) An application for a forfeiture order under section 12B(1) or (3) of the former Law which has not been determined before commencement, is to be determined under section 12B of the former Law as if that Law were still in force, but subparagraph (2) applies to any order or decision made pursuant to the application.

Standard forfeiture under former Law.

5. (1) A forfeiture order made by the Royal Court under section 13 of the former Law in respect of money detained under section 7 of the former Law

has effect as if it were a forfeiture order made by that court under section 13 of this Law, and the following may be appealed accordingly -

- (a) the order, and
- (b) any refusal of the Royal Court to make the order.

(2) A forfeiture order made by the Royal Court under section 13 of the former Law in respect of money frozen under section 10 of the former Law has effect as if it were an account forfeiture order made by that court under section 67 of this Law, and the following may be appealed accordingly -

- (a) the order, and
- (b) any refusal of the Royal Court to make the order.

(3) An application for a forfeiture order under section 13 of the former Law in respect of money detained under section 7, or frozen under section 10, of the former Law, which has not been determined before commencement, is to be determined under section 13 of the former Law as if that Law were still in force, but subparagraph (1) or (as the case may require) (2) respectively applies to any order or decision made pursuant to the application.

Applications for release of money under former Law.

6. An application under section 16(1) of the former Law for the release of money or any part of money detained under section 7, or frozen under section 10, of the former Law, which has not been determined before commencement, is to be determined under section 16 of the former Law as if that Law were still in force.

Production orders, etc. under former Law.

7. (1) A production order made by the Bailiff under section 20(1) of the former Law has effect as if it were a production order made under section 79 of this Law.

(2) An application for a production order under section 20(1) of the former Law which has not been determined before commencement, is to be determined under sections 20 and 21 of the former Law as if the former Law were still in force, but subparagraph (1) applies to any production order made pursuant to the application.

(3) An order to grant entry made by the Bailiff under section 22(2) of the former Law has effect as if it were an order to grant entry made under section 81 of this Law.

(4) An application for an order to grant entry under section 22(2) of the former Law which has not been determined before commencement, is to be determined under section 22 of the former Law as if the former Law were still in force, but subparagraph (3) applies to any order to grant entry made pursuant to the application.

Customer information orders under former Law.

8. (1) A customer information order made by the Bailiff under section 28(1) of the former Law has effect as if it were a customer information order made under section 94 of this Law.

(2) An application for a customer information order under section 28(1) of the former Law which has not been determined before commencement, is to be determined under sections 28, 29 and 30 of the former Law as if the former Law

were still in force, but subparagraph (1) applies to any customer information order made pursuant to the application.

Account monitoring orders under former Law.

9. (1) An account monitoring order made by the Bailiff under section 35(1) of the former Law has effect as if it were an account monitoring order made under section 97 of this Law.

(2) An application for an account monitoring order under section 35(1) of the former Law which has not been determined before commencement, is to be determined under sections 35 and 36 of the former Law as if the former Law were still in force, but subparagraph (1) applies to any account monitoring order made pursuant to the application.

Disclosure orders under former Law.

10. (1) A disclosure order made by the Bailiff under section 41(1) of the former Law has effect as if it were a disclosure order made under section 91 of this Law.

(2) An application for a disclosure order under section 41(1) of the former Law which has not been determined before commencement, is to be determined under sections 41 and 42 of the former Law as if the former Law were still in force, but subparagraph (1) applies to any disclosure order made pursuant to the application.

Requests in connection with overseas civil forfeiture investigations.

11. A request in connection with a civil forfeiture investigation received from a country designated under section 53 of the former Law is to be treated as if it were a request for assistance in obtaining evidence in the Bailiwick under section 107 of this Law.

Overseas forfeiture orders.

12. (1) An overseas forfeiture order registered in the records of the Royal Court under section 49 of the former Law has effect as if it were registered by the Royal Court under section 111 of this Law.

(2) An application to register an overseas forfeiture order under section 49 of the former Law which has not been determined before commencement, is to be determined under section 49 of the former Law as if the former Law were still in force, but subparagraph (1) applies to an overseas forfeiture order registered pursuant to the application.

Delegations by His Majesty's Procureur under former Law.

13. (1) This section applies where His Majesty's Procureur has, under section 51(1) of the former Law, made an arrangement for any Crown Advocate or other Advocate of the Royal Court to exercise in the name of His Majesty's Procureur the functions of His Majesty's Procureur under the former Law.

(2) The arrangement has effect as if it were an arrangement made by His Majesty's Procureur under section 113(1) of this Law for the Crown Advocate or other Advocate to exercise in the name of His Majesty's Procureur the functions of His Majesty's Procureur under this Law.

(3) For the avoidance of doubt, subparagraph (2) does not authorise the Crown Advocate or other Advocate to exercise any function of His Majesty's Procureur under section 113(1) or (3) of this Law.

SCHEDULE 5

Section 148

CONSEQUENTIAL AMENDMENTS

The Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022.

1. (1) The Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 is amended as follows.

(2) In section 2 of that Law -

(a) for subsection (1)(b)(iii), substitute the following subparagraph-

"(iii) the seizure, freezing, restraint, detention, forfeiture, confiscation, custody or preservation of the proceeds of criminal conduct or recoverable property, whether in response to a request for mutual legal assistance or otherwise",

(b) in subsection (1)(c), for "and/or the proceeds of unlawful conduct", substitute "or recoverable property",

(c) in subsection (6), for paragraph (b), substitute the following paragraph -

"(b) **"recoverable property"** is to be construed in

accordance with Schedule 1 to the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023".

(3) In paragraph 1 of Schedule 2 to that Law, for "Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007", substitute "Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023".

Charities, etc. (Guernsey and Alderney) Ordinance, 2021.

2. (1) The Charities, etc. (Guernsey and Alderney) Ordinance, 2021⁹⁹ is amended as follows.

(2) In paragraph 2(2) of Schedule 2 to that Ordinance, for item (c), substitute the following item -

"(c) the conduct of any relevant investigation within the meaning of section 75(d) of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023, or any proceedings under that Law or under corresponding legislation in force in a country outside the Bailiwick,".

Data Protection (Bailiwick of Guernsey) Law, 2017.

3. (1) The Data Protection (Bailiwick of Guernsey) Law, 2017 is amended as follows.

⁹⁹ Ordinance No. XXIV of 2021; this enactment has been amended.

(2) In section 111(1) of that Law, in the definition of "**criminal proceeds enactment**", in paragraph (a)(vi), for "Forfeiture of Money etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007", substitute "Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023".

Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinance, 2018.

4. (1) The Data Protection (Law Enforcement and Related Matters) (Bailiwick of Guernsey) Ordinance, 2018 is amended as follows.

(2) In section 50(1) of that Ordinance, in the definition of "**criminal proceeds enactment**", in paragraph (a)(vi), for "Forfeiture of Money etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007", substitute "Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023".

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

5. (1) The Proceeds of Crime Law is amended as follows.

(2) In section 49EA of that Law –

(a) in subsection (1), immediately after "applicable to", insert ", and may confer on any person any powers in relation to",

(b) in subsection (2)(e), for "Forfeiture of Money etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007", substitute "Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023", and

(c) immediately after subsection (2), insert the following subsections -

"(2A) Without limiting subsection (1), an Ordinance under it may make provision in respect of -

- (a) the appointment of receivers,
- (b) the exercise or realisation of any right or interest in relation to the property -
- (c) where the affairs of the property holder have been declared in a state of *désastre*,
- (d) where the property holder is 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,
- (e) where the property holder has a right of set-off or a secured interest (within the meaning given by section 119(5)) in respect of the property, or
- (f) in any other circumstances.

(2B) In subsection (2A) -

- (a) "**Bailiwick company**" means -

- (i) a company incorporated under the Companies (Guernsey) Law, 2008, or
 - (ii) a company incorporated under the Companies (Alderney) Law, 1994,
- (b) "**property holder**", in relation to any property falling within subsection (2), means -
 - (i) any person that holds the property, or
 - (ii) any person that held the property immediately before it was seized, restrained, frozen, confiscated, forfeited or otherwise detained or (as the case may be) removed, and
- (c) "**secured interest**" -
 - (i) means any mortgage, charge, hypothèque, lien or other security, and
 - (ii) includes any security interest within the meaning of the Security Interests (Guernsey) Law, 1993."

Disclosure (Bailiwick of Guernsey) Law, 2007.

6. (1) The Disclosure (Bailiwick of Guernsey) Law, 2007^{rr} is amended as follows.

(2) In section 6(1) of that Law -

(a) for paragraph (e), substitute the following paragraph -

"(e) any relevant investigation within the meaning of section 75(d) of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey) Law, 2023," and

(b) in paragraph (f) -

(i) for "designated under section 53 of that Law", substitute "outside the Bailiwick", and

(ii) delete "section 56(1) of".

(3) In section 8(2)(da) of that Law -

(a) for subparagraph (i), substitute the following subparagraph -

"(i) any relevant investigation within the meaning of section 75(d) of the Forfeiture of Assets in Civil Proceedings (Bailiwick of Guernsey)

^{rr} Order in Council No. XVI of 2007; this enactment has been amended.

Law, 2023, or", and

(b) in subparagraph (ii) -

(i) for "designated under section 53 of that Law",
substitute "outside the Bailiwick", and

(ii) delete "section 56(1) of".

(4) In section 10(6) of that Law, immediately after paragraph (c),
insert the following paragraph -

"(ca) a designated person (within the meaning given
by section 2(2) of the Economic and Financial
Crime Bureau and Financial Intelligence Unit
(Bailiwick of Guernsey) Law, 2022) appointed
in writing as a Senior Officer by the Director of
the Economic and Financial Crime Bureau, or".