

PROJET DE LOI

ENTITLED

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

[CONSOLIDATED TEXT]

NOTE

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* No. XVII of 2008; as amended by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012 (No. XVI of 2012); the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (Amendment) Ordinance, 2008 (No. XXX of 2008, Recueil d'Ordonnances Tome XXXIII, p. 133); the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 472); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVI of 2018); the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVII of 2018). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015); the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018 (*supra*).

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ARRANGEMENT OF SECTIONS

PART I CASH

Searches for cash

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

Seizure and detention of cash

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

PART II BANK ACCOUNTS

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

PART III FORFEITURE AND RELEASE OF MONEY

Interpretation

12. ...

Forfeiture

Consolidated text

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

Supplementary

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

PART IV
INVESTIGATIONS

Civil forfeiture investigations

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

Production orders

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

Customer information orders

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

Account monitoring orders

35. Account monitoring orders.
36. Requirements for making of account monitoring order.
37. Offences in relation to account monitoring orders.
38. Statements.
39. Disclosure of information.

Consolidated text

40. Supplementary.

Disclosure orders

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

Overseas investigations

47. Overseas investigations.

Code of practice

48. Code of practice for Part IV.

PART V
ENFORCEMENT OF ORDERS MADE OUTSIDE
THE BAILIWICK

49. Enforcement of overseas forfeiture orders.

PART VI
GENERAL

50. Constitution and jurisdiction of Royal Court.
51. Functions of Her Majesty's Procureur.
52. Disclosure to Director of the Revenue Service.
53. Designated countries.
54. Respondent's legal expenses.
55. Set-off and security interests, etc, unaffected.
55A. Categorisation of proceedings under this Law.
56. Interpretation.
57. "Items subject to legal professional privilege".
58. "Excluded material".
59. "Proceeds of unlawful conduct".
60. "Minimum amount".
61. "Unlawful conduct".
62. Rules of Court.
63. Amendment by Ordinance and extension by regulation.
64. General provisions as to subordinate legislation.
65. Savings for powers of search under other enactments.
66. Repeal of Part III of Drug Trafficking Law.

- 67. Citation.
- 68. Commencement.

SCHEDULE Legal expenses of respondents, etc.

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

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

PART I

CASH

Searches for cash

Search of premises.

- 1.** (1) A police officer –
 - (a) who has entered any premises under the authority of a warrant granted under subsection (2), or
 - (b) who is, otherwise than under the authority of such a warrant, lawfully on any premises and who has reasonable grounds for suspecting that there is on the premises cash –
 - (i) which is any person's proceeds of unlawful conduct or which is intended by any person for use in unlawful conduct, and

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

b Article XXII of Billet d'État No. XIII of 2006.

- (ii) the amount of which is not less than the minimum amount,

may search for cash there.

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

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

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

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

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

^c Order in Council No. XXIII of 2003.

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

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

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

[(7) A warrant under this section –

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

NOTES

In section 1, subsection (7) was inserted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, section 3, with effect from 30th October, 2015.

The following cases have referred to this Law:

In re Forfeiture of money, funds held in cash, and application by H.M. Procureur (2011) (Unreported, Royal Court, 2nd September) (Guernsey Judgment No. 26/2011);

In the matter of Forfeiture of Money etc and in the matter of £9,368.36 in cash (2014) (Unreported, Royal Court, 13th May) (Guernsey Judgment No. 23/2014);

Forfeiture of Money in Civil Proceedings (2017) (Unreported, Royal Court, 17th February) (Guernsey Judgment No. 8/2017);

In the matter of Forfeiture of Money in Civil Proceedings, Heykers v. Her Majesty's Comptroller (2018) (Unreported, Royal Court, 28th November) (Guernsey Judgment No. 41/2018);

Her Majesty's Procureur v. Hugo Heykers and ABM Amro Channel Islands Ltd (2018) (Unreported, Royal Court, 19th July) (Guernsey Judgment No. 44/2018).

Search of persons.

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

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

he may exercise the following powers.

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

- (a) to permit a search of any article he has with him, and
- (b) to permit a search of his person.

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

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

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

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

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

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

- (a) is being worn (wholly or partly) on the trunk,
- (b) is being worn either next to the skin or next to an article of underwear.

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

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

term not exceeding 2 years, or to a fine, or to both.

Meaning of "cash".

3. (1) In this Law "**cash**" means –

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

[...].

(2) "**Cash**" also includes any kind of monetary instrument which-

- (a) ...
- (b) is of a class or description specified by regulations of the [Committee for Home Affairs] made after consultation with the Policy and Finance Committee of the States of Alderney and the [Policy and Finance Committee] of the Chief Pleas of Sark.

NOTES

In section 3,

first, the words omitted in square brackets in subsection (1) and, second, paragraph (a) of subsection (2) were repealed by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, respectively section 4 and section 5, with effect from 30th October, 2015;

the words "Committee for Home Affairs" in square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016;

the words "Policy and Finance Committee" in square brackets in subsection (2) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.¹

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.²

Prior approval.

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

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

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

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

Code of practice for Part I.

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

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

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

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

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

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

NOTE

In section 5, the words "Committee for Home Affairs" in square brackets,

wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.

Seizure and detention of cash

Seizure of cash.

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

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

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

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

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

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

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

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

Detention of seized cash.

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

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

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

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

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

following conditions is met.

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

(a) its continued detention is justified while its origin or derivation is further investigated or consideration is given to bringing –

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

[(ii) proceedings in connection with the cash under Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of cash 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.

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

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

- (i) proceedings in the Bailiwick or elsewhere against any person for an offence with which the cash is connected, or
 - [(ii) proceedings in connection with the cash under Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of cash 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.

[(5A) An application for an order under subsection (2) may also be made by or with the authority of Her Majesty's Procureur where he has grounds for believing that an application may be made under section 49 for the registration of an overseas forfeiture order in respect of the cash to be further detained, and the Bailiff may make the order if satisfied that there are reasonable grounds for such belief.]

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

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

(7) An order under subsection (2) –

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

NOTE

In section 7, first, paragraph (a)(ii) of subsection (4), second, paragraph (a)(ii) of subsection (5) and, third, subsection (5A) were, respectively, substituted, substituted and inserted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, respectively section 6, section 7 and section 8, with effect from 30th October, 2015.

Interest.

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

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

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

- (a) is required as evidence of an offence or evidence in proceedings under this Law, or
- (b) is required –
 - (i) for the purposes of examination (for example, to determine its origin, derivation or use), or
 - (ii) otherwise for the purposes of a civil forfeiture investigation or the investigation, prevention or detection of crime.

Release of detained cash.

9. (1) This section applies while any cash is detained under section 7.
- (2) The Bailiff may direct the release of the whole or any part of the cash if the following condition is met.
- (3) The condition is that the Bailiff is satisfied, on an application by the person from whom the cash was seized, that the conditions in section 7 for the detention of the cash are no longer met in relation to the cash to be released.
- (4) An order for the release of cash under this section –
- (a) may be made in chambers,
 - (b) may not be made until notice of the application for it has been given to Her Majesty's Procureur, and
 - (c) may be made subject to such terms and conditions as

the Bailiff thinks fit.

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

PART II BANK ACCOUNTS

Freezing of bank accounts.

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

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

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

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

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

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

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

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

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

- (a) the making of the order is justified while the origin or derivation of the funds is further investigated or consideration is given to bringing –
 - (i) proceedings in the Bailiwick or elsewhere against any person for an offence with which the funds are connected, or
 - [(ii) proceedings in connection with the funds under Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of funds 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.

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

- (a) the making of the order is justified while their intended use is further investigated or consideration is given to bringing –

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

- [(ii) proceedings in connection with the funds under Part III or V of this Law or proceedings under legislation in force in a country designated under section 53 relating to the forfeiture of funds 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.

[(6A) An application for an order under subsection (1) or (3) may also be made by or with the authority of Her Majesty's Procureur where he has grounds for believing that an application may be made under section 49 for the registration of an overseas forfeiture order in respect of any funds or part of any funds in an account maintained at a bank, and the funds or the part of the funds are not less than the minimum amount, and the Bailiff may make the order if satisfied that there

are reasonable grounds for such belief.]

- (7) An order under subsection (1) or (3) –
 - (a) may be made *ex parte* and in chambers,
 - (b) may be made notwithstanding that notice of the application for it has not been given to any other person,
 - (c) must provide for notice to be given to persons affected by it, and
 - (d) may be made subject to such terms and conditions as the Bailiff thinks fit.

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

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

- (10) The Bailiff may, on an application made –
 - (a) by a person whose account is frozen, or
 - (b) by or with the authority of Her Majesty's Procureur,

by order permit any funds which are frozen to be transferred to an interest-bearing

account at the same bank and held there.

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

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

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

(12) An order under subsection (10) –

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

NOTE

In section 10, first, paragraph (a)(ii) of subsection (5), second, paragraph (a)(ii) of subsection (6) and, third, subsection (6A) were, respectively, substituted, substituted and inserted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, respectively section 9, section 10 and section 11, with effect from 30th October, 2015.

Release of frozen bank accounts.

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

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

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

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

(a) may be made in chambers,

(b) may not be made until notice of the application for it has been given to Her Majesty's Procureur, and

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

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

PART III

FORFEITURE AND RELEASE OF MONEY

Interpretation

Meaning of "money".

12. ...

NOTE

Section 12 was repealed by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, section 12, with effect from 30th October, 2015.³

Forfeiture

Forfeiture.

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

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

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

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

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

NOTE

The following cases have referred to section 13:

In re Forfeiture of money, funds held in cash, and application by H.M. Procureur (2011) (Unreported, Royal Court, 2nd September) (Guernsey Judgment No. 26/2011);

In the matter of Forfeiture of Money etc and in the matter of £9,368.36 in cash (2014) (Unreported, Royal Court, 13th May) (Guernsey Judgment No. 23/2014);

Forfeiture of Money in Civil Proceedings (2017) (Unreported, Royal Court, 17th February) (Guernsey Judgment No. 8/2017);

In the matter of Forfeiture of Money in Civil Proceedings, Heykers v. Her Majesty's Comptroller (2018) (Unreported, Royal Court, 28th November) (Guernsey Judgment No. 41/2018).

Appeal against forfeiture.

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

(2) For the avoidance of doubt an appeal under this section is an appeal in a civil matter for the purposes of Part II of the Court of Appeal (Guernsey) Law, 1961^d.

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

Application of forfeited money.

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

(2) Money and accrued interest thereon shall not be so credited –

(a) before the end of the period within which an appeal under section 14 may be made,

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

- (b) if a person appeals under that section, before the appeal is finally disposed of, or
- (c) if the money and interest is to be paid elsewhere (for example, into any seized asset fund) pursuant to a direction of the [Policy & Resources Committee].

NOTES

In section 15, the words in square brackets in paragraph 6 were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 15(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

Supplementary

Application for release of money by victims and other owners.

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

(2) The application may be made in the course of proceedings under [section 7, 10, 13 or 49] or at any other time.

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

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

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

- (4) If –
 - (a) it appears to the Royal Court that –
 - (i) the money to which the application relates belongs to the applicant, but
 - (ii) the applicant is not the person from whom the cash was seized under section 6 or, as the case may be, whose account was frozen under section 10, and
 - (b) the Royal Court –
 - (i) [except where an application described in subparagraph (ii) or (iii) has been made,] is

satisfied that the conditions in section 7 for the detention of the cash or, as the case may be, the conditions in section 10 for the freezing of the account are no longer met, or

- (ii) if an application for forfeiture has been made under section 13, decides not to make an order under that section in relation to the money, [or]
 - [(iii) if an application for the registration of an overseas forfeiture order has been made under section 49, decides not to register the order in the records of the Court, and]
- (c) no objection to the making of an order under this subsection has been made by the person from whom the cash was seized or, as the case may be, whose account was frozen,

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

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

NOTE

In section 16, first, the words and figures in square brackets in subsection (2)

were substituted, second, the words in square brackets in paragraph (b) of subsection (4) were inserted, third, the word in square brackets at the end of paragraph (b)(ii) of subsection (4) was substituted and, fourth, paragraph (b)(iii) of subsection (4) was inserted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, section 13, respectively paragraph (a), paragraph (b), paragraph (c) and paragraph (d), with effect from 30th October, 2015.

Compensation.

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

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

may make an application to the Royal Court for compensation.

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

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

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

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

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

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

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

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

PART IV INVESTIGATIONS

Civil forfeiture investigation

Civil forfeiture investigations.

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

- (a) whether any money is any person's proceeds of unlawful conduct or is intended by any person for use

in unlawful conduct,

- (b) any person who holds the money or to whom it belongs,
or
- (c) the extent or whereabouts of the money,

[with a view to proceedings in connection with the money being taken under Part III or V of this Law or proceedings being taken under legislation in force in a country designated under section 53 relating to the forfeiture of money or other property by a court in non-conviction based proceedings].

NOTE

In section 18, the words in square brackets were substituted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, section 14, with effect from 30th October, 2015.

Offence of prejudicing investigation.

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

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

- (3) A person does not commit an offence under subsection (2)(a) if
-
- (a) he does not know or suspect that the disclosure is likely to prejudice the investigation,
 - (b) the disclosure is made in the exercise of a function under this Law or any other enactment relating to unlawful conduct or benefit from unlawful conduct or in compliance with a requirement imposed under or by virtue of this Law, or
 - (c) he is a professional legal adviser and the disclosure falls within subsection (4).
- (4) A disclosure falls within this subsection if it is a disclosure –
- (a) to (or to a representative of) a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
 - (b) to any person in connection with legal proceedings or contemplated legal proceedings.
- (5) But a disclosure does not fall within subsection (4) if it is made with the intention of furthering a criminal purpose.
- (6) A person does not commit an offence under subsection (2)(b) if
-

Consolidated text

- (a) he does not know or suspect that the documents are relevant to the investigation, or
 - (b) he does not intend to conceal any facts disclosed by the documents from Her Majesty's Procureur or any person carrying out the investigation.
- (7) A person guilty of an offence under subsection (2) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both.

Production orders

Production orders.

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

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

- (3) The application must also state that –
- (a) the order is sought for the purposes of the investigation,
 - (b) the order is sought in relation to material, or material of

a description, specified in the application,

(c) a person specified in the application appears to be in possession or control of the material.

(4) A production order is an order –

(a) requiring the person specified in the application for the order as appearing to be in possession or control of material to produce it to Her Majesty's Procureur or a police officer for him to take away, or

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

within the period stated in the order.

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

(6) A production order –

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

(b) may be made notwithstanding that notice of the application for it has not been given to any other person, and

(c) may be made subject to such terms and conditions as

the Bailiff thinks fit.

Requirements for making of production order.

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

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

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

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

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

- (a) the benefit likely to accrue to the investigation if the material is obtained,
- (b) the circumstances under which the person the application specifies as appearing to be in possession or control of the material holds it.

Order to grant entry.

22. (1) This section applies if the Bailiff makes a production order requiring a person to give Her Majesty's Procureur or a police officer access to material on any premises.

(2) The Bailiff may, on an application made by or with the authority of Her Majesty's Procureur specifying the premises, make an order to grant entry in relation to the premises.

(3) An order to grant entry is an order requiring any person who appears to Her Majesty's Procureur or a police officer to be entitled to grant entry to the premises to allow him to enter the premises to obtain access to the material.

(4) An order to grant entry –

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

(b) may be made notwithstanding that notice of the application for it has not been given to any other person, and

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

Disclosure of information and further provisions.

23. (1) A production order does not require a person to produce, or give access to –

(a) items subject to legal professional privilege, or

(b) excluded material.

"Items subject to legal professional privilege" and "excluded material" are defined in sections 57 and 58.

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

(3) Her Majesty's Procureur, a police officer and any other person named or described in a production order may take copies of any material which is produced, or to which access is given, in compliance with the order.

(4) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the civil forfeiture investigation for the purposes of which the order was made.

(5) Notwithstanding subsection (4), if Her Majesty's Procureur has reasonable grounds for believing that –

- (a) the material may need to be produced for the purposes of any legal proceedings, and
- (b) it might otherwise be unavailable for those purposes,

it may be retained until the proceedings are concluded.

Computer information.

24. (1) This section applies if any of the material specified in an application for a production order consists of information contained in a computer.

(2) If the order is an order requiring a person to produce the material so that it can be taken away, it has effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible.

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

Departments of the States.

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

(2) An order so made may require any officer of the department (whether named in the order or not) who may for the time being be in possession or control of the material to comply with it.

Offences in relation to production orders, etc.

26. (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed by or under a production order or an order to grant entry.

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

(3) A person commits an offence if in purported compliance with a production order he –

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

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

(4) A person commits an offence if he obstructs any person acting under the authority of an order to grant entry.

(5) A person guilty of an offence under subsection (3) or (4) is liable –

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

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

Supplementary.

27. (1) An application to discharge or vary a production order may be made to the Royal Court by –

(a) Her Majesty's Procureur,

(b) any person affected by the order.

(2) The Royal Court, subject to such terms and conditions as it thinks fit –

(a) may discharge the order,

(b) may vary the order.

Customer information orders

Customer information orders.

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

(2) The application for a customer information order must state that –

(a) money specified in the application is subject to a civil forfeiture investigation, and

(b) a person specified in the application appears to hold all or some of the money or all or some of the money appears to belong to a person so specified.

(3) The application must also state that –

(a) the order is sought for the purposes of the investigation,

(b) the order is sought against the bank specified in the application.

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

(a) all banks,

(b) a particular description of banks, or

(b) a particular bank.

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

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

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

(8) A customer information order –

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

(b) may be made notwithstanding that notice of the application for it has not been given to any other person, and

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

Meaning of "customer information".

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

—

- (a) the matters specified in subsection (2) if the person is an individual,
 - (b) the matters specified in subsection (3) if the person is a body corporate.
- (2) The matters referred to in subsection (1)(a) are –
- (a) the account number or the number of any safe deposit box,
 - (b) the person's full name,
 - (c) his date of birth,
 - (d) his most recent home and business address and any previous such address,
 - (e) in the case of an account, the date on which he began to hold the account and, if he has ceased to hold the account, the date on which he did so,
 - (f) in the case of a safe deposit box, the date on which the box was made available to him and, if the box has ceased to be available to him, the date on which it so ceased,
 - (g) such evidence of his identity as was obtained by the bank under or for the purposes of any legislation

relating to money laundering,

- (h) the full name, date of birth and most recent home and business address, and any previous such address, of any person –
 - (i) who is or has been a signatory to the account, or
 - (ii) who holds or has held an account at the bank jointly with him, or
 - (i) the account number of any other account held at the bank to which he is a signatory and details of the person holding the other account,
 - (j) the current balance of each account identified, and
 - (k) the dates on which the last three transactions (or such other number of transactions as may be specified in the customer information order) concerning each of the accounts identified took place.
- (3) The matters referred to in subsection (1)(b) are –
- (a) the account number or the number of any safe deposit box,
 - (b) the person's full name,
 - (c) a description of any business which the person carries on,

Consolidated text

- (d) the country in which it is incorporated or otherwise established and any number allocated to it,
- (e) its registered office, and any previous registered office, or anything similar under the legislation of the country of incorporation or establishment,
- (f) any address from which it conducts or has conducted its business,
- (g) in the case of an account, the date on which it began to hold the account and, if it has ceased to hold the account, the date on which it did so,
- (h) in the case of a safe deposit box, the date on which the box was made available to it and, if the box has ceased to be available to it, the date on which it so ceased,
- (i) such evidence of its identity as was obtained by the bank under or for the purposes of any legislation relating to money laundering,
- (j) the full name, date of birth and most recent home and business address, and any previous such address, of any person who is or has been a signatory to the account,
- (k) the current balance of each account identified, and
- (l) the dates on which the last three transactions (or such other number of transactions as may be specified in the

customer information order) concerning each of the accounts identified took place.

(4) For the purposes of this Law "**money laundering**" means doing any act –

(a) which constitutes an offence under section 38, 39 or 40 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^e,

(b) which constitutes an offence under section 8, 9, 10 or 11 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^f, and in those sections the "purposes of terrorism" include, to the extent that they do not already do so –

(i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1 of that Law, or

(ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,

(c) which constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law,

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

^f Order on Council No. XVI of 2002.

2000^g,

- (d) which constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a), (b) or (c),
- (e) which constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), (b) or (c), or
- (f) which would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b), (c), (d) or (e) if done in the Bailiwick,

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

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

(6) The [Committee for Home Affairs] may by regulations made after consultation with the Policy and Finance Committee of the States of Alderney and the [Policy and Finance Committee] of the Chief Pleas of Sark provide for information of a class or description specified in the regulations –

- (a) to be customer information, or

^g Order on Council No. VII of 2000.

- (b) no longer to be customer information.

NOTES

In section 29,

the words "Committee for Home Affairs" in square brackets in subsection (6) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016;

the words "Policy and Finance Committee" in square brackets in subsection (6) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.⁴

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.⁵

Requirements for making of customer information order.

30. (1) These are the requirements for the making of a customer information order.

(2) There must be reasonable grounds for suspecting that –

- (a) the money specified in the application for the order is any person's proceeds of unlawful conduct or is intended by any person for use in unlawful conduct, and
- (b) the person specified in the application holds all or some of the money or all or some of the money belongs to

him.

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

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

Offences in relation to customer information orders.

31. (1) A bank commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it by or under a customer information order.

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

(3) A bank commits an offence if in purported compliance with a customer information order it –

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

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

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

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

Statements.

[32. A statement made by a bank in response to a customer information order –

- (a) may be used in evidence against the bank in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against the bank in criminal proceedings except –
 - (i) 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 bank, or
 - (ii) in proceedings for –
 - (A) an offence under section 31(1) or (3),
 - (B) some other offence where, in giving evidence, the bank makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.]

NOTE

Section 32 was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Disclosure of information.

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

Supplementary.

34. (1) An application to discharge or vary a customer information order may be made to the Royal Court by –

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

(2) The Royal Court may, subject to such terms and conditions as it thinks fit –

- (a) discharge the order,
- (b) vary the order.

Account monitoring orders

Account monitoring orders.

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

(2) The application for an account monitoring order must state that

–

(a) money specified in the application is subject to a civil forfeiture investigation, and

(b) a person specified in the application appears to hold all or some of the money or all or some of the money appears to belong to a person so specified.

(3) The application must also state that –

(a) the order is sought for the purposes of the investigation,

(b) the order is sought against the bank specified in the application in relation to account information of the description so specified.

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

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

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

(6) An account monitoring order is an order that the bank specified in the application for the order must, for the period stated in the order, provide account information of the description specified in the order to Her Majesty's Procureur or a police officer in the manner, and at or by the time, stated in the order.

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

(8) An account monitoring order –

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

Requirements for making of account monitoring order.

36. (1) These are the requirements for the making of an account monitoring order.

- (2) There must be reasonable grounds for suspecting that –
- (a) the money specified in the application for the order is any person's proceeds of unlawful conduct or is intended by any person for use in unlawful conduct, and
 - (b) the person specified in the application holds all or some of the money or all or some of the money belongs to him.

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

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

Offences in relation to account monitoring orders.

37. (1) A bank commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it by or under an account monitoring order.

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

(3) A bank commits an offence if in purported compliance with an account monitoring order it –

- (a) makes a statement which it knows to be false or misleading in a material particular, or
 - (b) recklessly makes a statement which is false or misleading in a material particular.
- (4) A person guilty of an offence under subsection (3) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

Statements.

[38. A statement made by a bank in response to an account monitoring order –

- (a) may be used in evidence against the bank in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against the bank in criminal proceedings except –
 - (i) 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

- (ii) in proceedings for –
 - (A) an offence under section 37(1) or (3),
 - (B) some other offence where, in giving evidence the bank makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.]

NOTE

Section 38 was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Disclosure of information.

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

Supplementary.

40. (1) An application to discharge or vary an account monitoring order may be made to the Royal Court by –

- (a) Her Majesty's Procureur,

- (b) any person affected by the order.
- (2) The Royal Court may, subject to such terms and conditions as it thinks fit –
- (a) discharge the order,
 - (b) vary the order.

Disclosure orders

Disclosure orders.

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

- (2) The application for a disclosure order must state that –
- (a) money specified in the application is subject to a civil forfeiture investigation, and
 - (b) the order is sought for the purposes of the investigation.

(3) A disclosure order is an order authorising Her Majesty's Procureur or a person authorised by him to give notice in writing to any person whom they consider to have relevant information requiring that person to do, in respect of any matter relevant to the investigation for the purposes of which the order is sought, all or any of the following –

- (a) to answer questions, at or by a time specified in the notice or at once, and at a place so specified,

- (b) to provide information, or information of a class or description, specified in the notice, at or by a time and in a manner so specified,
- (c) to produce documents, or documents of a class or description, specified in the notice, at or by a time so specified or at once, and in a manner so specified.

(4) Relevant information is information (whether or not contained in a document) which Her Majesty's Procureur or a person authorised by him considers to be relevant to the investigation.

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

(6) A disclosure order –

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

Requirements for making of disclosure order.

42. (1) These are the requirements for the making of a disclosure order.

(2) There must be reasonable grounds for suspecting that the money specified in the application for the order is any person's proceeds of unlawful conduct or is intended by any person for use in unlawful conduct.

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

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

Offences in relation to disclosure orders.

43. (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

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

(3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he –

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

- (4) A person guilty of an offence under subsection (3) is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or to both.

Statements.

[44. A statement made by a person in response to a requirement imposed on him under a disclosure order –

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for –
 - (A) an offence under section 43(1) or (3),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is

only admissible to the extent necessary
to establish the inconsistency,

(C) perjury, or

(D) perverting the course of justice.]

NOTE

Section 44 was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Disclosure of information and further provisions.

45. (1) A disclosure order does not confer the right to require a person

–

(a) to answer any privileged question,

(b) to provide any privileged information, or

(c) to produce or give access to –

(i) items subject to legal professional privilege, or

(ii) excluded material,

except that a lawyer may be required to provide the name and address of a client.

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

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

(4) **"Items subject to legal professional privilege"** and **"excluded material"** are defined in sections 57 and 58.

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

(6) Her Majesty's Procureur, a police officer and any other person named or described in a disclosure order may take copies of any documents which are produced, or to which access is given, in compliance with a requirement imposed under the order.

(7) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the civil forfeiture investigation for the purposes of which the disclosure order was made.

(8) Notwithstanding subsection (7), if Her Majesty's Procureur has reasonable grounds for believing that –

- (a) the documents may need to be produced for the purposes of any legal proceedings, and
- (b) they might otherwise be unavailable for those purposes,

they may be retained until the proceedings are concluded.

Supplementary.

46. (1) An application to discharge or vary a disclosure order may be made to the Royal Court by –

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

(2) The Royal Court may, subject to such terms and conditions as it thinks fit –

- (a) discharge the order,
- (b) vary the order.

Overseas investigations

Overseas investigations.

47. [(1) If Her Majesty's Procureur receives from a country designated under section 53 a request in connection with a civil forfeiture investigation being conducted there with a view to proceedings in connection with money with which the investigation is concerned being taken under Part III or V of this Law or under legislation in force in that country relating to the forfeiture of money or other property by a court in non-conviction based proceedings, Her Majesty's Procureur may apply for an order under section 20, 28, 35 or 41.]

(2) Any information obtained as a result of an order applied for pursuant to subsection (1) may be sent by Her Majesty's Procureur to the person who made the request.

(3) Her Majesty's Procureur may, when disclosing any information to any person pursuant to this section –

- (a) impose such conditions in relation to the use, disclosure, safekeeping and return of the information by that person or by any other person who may obtain the information from him,
- (b) require any such person to enter into such undertakings in relation to such use, disclosure, safekeeping and return, and
- (c) take such other steps to ensure that any confidentiality of the information is protected,

as Her Majesty's Procureur thinks fit.

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

(5) No obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise is contravened by the sending of information pursuant to subsection (2).

(6) In this section "**person**" includes any body or authority.

NOTE

In section 47, subsection (1) was substituted by the Forfeiture of Money, etc

*in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012,
section 15, with effect from 30th October, 2015.*

Code of practice

Code of practice for Part IV.

48. (1) The [Committee for Home Affairs] may issue a code of practice in connection with the exercise by police officers of their functions under this Part.

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

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

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

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

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

NOTE

In section 48, the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.

PART V
ENFORCEMENT OF ORDERS MADE OUTSIDE
THE BAILIWICK

Enforcement of overseas forfeiture orders.

49. (1) The Royal Court shall, on the application of Her Majesty's Procureur, register an overseas forfeiture order in the records of the Court.

[(2) An overseas forfeiture order is an order of a court exercising jurisdiction in a country designated under section 53 for the forfeiture of monies found by that court to be the proceeds of unlawful conduct or intended for use in unlawful conduct, being an order made in non-conviction based proceedings under legislation in force in that country relating to the forfeiture of money by a court in non-conviction based proceedings.

(2A) Where an application for the registration of an overseas forfeiture order is made under this section, the money to which that order relates is to be detained or, as the case may be, frozen (and may not, subject to sections 16 and 54, be released under any power conferred by this Law) until any proceedings in pursuance of the application for registration are concluded.]

(3) Following registration of an overseas forfeiture order under subsection (1) the order has effect and is enforceable in all respects as if it were an order of the Royal Court for the forfeiture of monies made under Part III of this Law.

(4) However, the right of appeal to the Court of Appeal conferred by section 14 against an order for the forfeiture of monies made under Part III of this

Law does not apply in respect of –

- (a) an overseas forfeiture order registered under subsection (1), or
- (b) the registration thereof.

(5) Monies forfeited pursuant to an overseas forfeiture order registered under subsection (1) and any accrued interest thereon shall be dealt with in accordance with section 15 (monies to be credited to the General Revenues of the States of Guernsey subject to specified exceptions).

NOTE

In section 49, subsection (2) was substituted and subsection (2A) inserted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, section 16, with effect from 30th October, 2015.

PART VI
GENERAL

Constitution and jurisdiction of Royal Court.

50. For the purposes of this Law, the Royal Court –

- (a) has, in relation to functions conferred on it by this Law, jurisdiction throughout the Bailiwick, and
- (b) is constituted by the Bailiff sitting unaccompanied by the Jurats.

Functions of Her Majesty's Procureur.

51. (1) Her Majesty's Procureur may, either generally or for the

purposes of a particular case or class of cases, arrange for any of his functions under this Law, other than this power of delegation, to be exercised in his name by a Crown Advocate or other Advocate of the Royal Court; and references in this Law to Her Majesty's Procureur shall be construed accordingly.

(2) A function exercised by a Crown Advocate or other Advocate pursuant to an arrangement under subsection (1) is for all purposes exercised by Her Majesty's Procureur; and every decision taken or other thing done by the Crown Advocate or other Advocate pursuant to the arrangement has the same effect as if taken or done by Her Majesty's Procureur.

(3) An arrangement under subsection (1) for the exercise of a function by a Crown Advocate or other Advocate –

- (a) may be varied or terminated at any time by Her Majesty's Procureur, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,
- (b) does not prevent the exercise of the function by Her Majesty's Procureur while the arrangement subsists.

(4) Any requirement imposed by or under this Law (however expressed) to provide or produce material to Her Majesty's Procureur, or to give Her Majesty's Procureur access to any material or premises, includes a requirement to provide or produce the material, or to give access to the material or premises, to any person nominated by Her Majesty's Procureur or otherwise acting for him and on his behalf.

In this subsection "**material**" includes documents and information.

(5) References in this Law to a person authorised by Her Majesty's Procureur are references to a person, or a member of a class or description of persons, authorised by him either generally or for the purposes of a particular case or class of cases.

(6) This section is without prejudice to any other enactment or rule of law.

Disclosure to the [Director of the Revenue Service].

52. (1) Her Majesty's Procureur may disclose to the [Director of the Revenue Service] any document, information or material obtained or received –

(a) for the purposes of, or in connection with proceedings under, this Law, or

(b) in the course of a civil forfeiture investigation.

(2) The [Director of the Revenue Service] may use any document, information or material disclosed to him under subsection (1) for the purposes of performing any of his functions.

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

(4) No obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise is contravened by the making of a disclosure under this section.

NOTE

In section 52, and the marginal note thereto, the words in square brackets were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance.⁶

Designated countries.

53. [(1) The [Committee for Home Affairs] may by regulations made after consultation with the Policy and Finance Committee of the States of Alderney and the [General Purposes and Advisory Committee of the Chief Pleas of Sark] designate any country for the purposes of this Law if it appears to the [Committee for Home Affairs] to have legislation in force relating to the forfeiture by a court in non-conviction based proceedings of money or other property which is the proceeds of unlawful conduct or intended for use in unlawful conduct.]

(2) When making a designation under subsection (1) the [Committee for Home Affairs] may also designate those persons, bodies or authorities in the designated country on whose behalf any action under this Law may be taken.

NOTES

In section 53,

subsection (1) was substituted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, section 17, with effect from 30th October, 2015;

the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.

The following Regulations have been made under section 53:

Forfeiture of Money, etc in Civil Proceedings (Designation of Countries) (Bailiwick of Guernsey) Regulations, 2008;

Forfeiture of Money, etc in Civil Proceedings (Designation of Countries) (Bailiwick of Guernsey) Regulations, 2009;

Forfeiture of Money, etc in Civil Proceedings (Designation of Countries) (Bailiwick of Guernsey) (Amendment) Regulations, 2017.

In accordance with the provisions of the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015, the Sark General Purposes and Advisory Committee has since been replaced by the Sark Policy and Performance Committee; and the functions, rights and liabilities of the Sark General Purposes and Advisory Committee and of its Chairman arising under or by virtue of this Law have been transferred to and vested in, respectively, the Sark Policy and Performance Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance. In accordance with the provisions of the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018, the Sark Policy and Performance Committee has since been replaced by the Sark Policy & Finance Committee; and the functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law have been transferred to and vested in, respectively, the Sark Policy & Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.

Respondent's legal expenses.

54. The Schedule applies to the funding of the legal expenses of respondents and other parties.

Set-off and security interests, etc, unaffected.

55. (1) For the avoidance of doubt and without limitation –
- (a) rights of set-off and secured interests, including security interests within the meaning of the Security Interests (Guernsey) Law, 1993^h, and

^h No. III of 1993.

- (b) rights of enforcement thereof,

[are, except when and to the extent that the Royal Court orders otherwise under subsection (2), unaffected by –

- (i) an order freezing funds under section 10,
- (ii) proceedings for the forfeiture of money under Part III, or
- (iii) proceedings for the registration of an overseas forfeiture order under Part V.]

(2) The Royal Court may, subject to such terms and conditions as it thinks fit, order otherwise when satisfied –

- (a) that the right or interest was not obtained, given or created in good faith, or
- (b) that for any other reason it would be appropriate to do so in the interests of justice.

NOTE

In section 55, the words in square brackets in subsection (1) were substituted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, section 18, with effect from 30th October, 2015.

[Categorisation of proceedings under this Law.]

55A. For the avoidance of doubt, proceedings under this Law (other than proceedings for an offence) are for the purposes of the law of the Bailiwick

(including, without limitation, the purposes of evidence and procedure) to be categorised as civil proceedings.]

NOTE

Section 55A was inserted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, section 19, with effect from 30th October, 2015.⁷

Interpretation.

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

"account information": see section 35(4),

"account monitoring order": see section 35,

"appropriate judicial officer" means –

- (a) in Alderney, the Chairman of the Court of Alderney or, if he is absent or unable to act, a Jurat of the Court of Alderney authorised by him to act in that capacity on his behalf,
- (b) in Sark, the Seneschal of Sark or, if he is absent or unable to act, his deputy,

"authorised" by Her Majesty's Procureur and related expressions: see section 51(5),

"Bailiff" means the Bailiff, Deputy Bailiff, Lieutenant Bailiff[, Judge of the Royal Court] or Juge Délégué,

"Bailiwick" means the Bailiwick of Guernsey,

"bank"[, in relation to the Bailiwick,] means a holder of a banking licence granted under the Banking Supervision (Bailiwick of Guernsey) Law, 1994ⁱ,

"body corporate" means a body of whatever description incorporated or established with or without limited liability in any part of the world, including (without limitation) a company the memorandum and articles of which are registered in the Register of Companies kept under the Companies (Guernsey) Law, 1994 or the Companies (Alderney) Law, 1994,

"cash": see section 3,

"civil forfeiture investigation": see section 18,

"country" includes a territory,

[**"court"** includes any tribunal or person holding judicial office,]

"customer information ": see section 29,

"customer information order": see section 28,

"department" of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any department, council, committee, board or like body thereof,

"disclosure order": see section 41,

ⁱ Order in Council No. XIII of 1994.

"document" includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form –

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

"electronic form", in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology,

"excluded material": see section 58,

"financial instrument" means –

- (a) securities within the meaning of the Uncertificated Securities (Enabling Provisions) (Guernsey) Law, 2005^j,
- (b) any instrument to which section 5 of the Forgery and Counterfeiting (Bailiwick of Guernsey) Law, 2006 applies,

"financial services business" means a person or body specified in

^j Order in Council No. VI of 2006.

Schedule 1 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^k,

"frozen" and related expressions, in relation to an account or funds in an account: see section 10(1),

"funds" means any credit balance on an account held at a bank and includes any investment or other asset held or managed by or on behalf of the bank and representing any such credit balance,

"Her Majesty's Procureur" includes Her Majesty's Comptroller, and see section 51,

"[Committee for Home Affairs]" means the States [Committee for Home Affairs],

"items subject to legal professional privilege": see section 57,

"journalistic material": see section 58,

[**"legislation"**, in sections 7(4)(a)(ii), 7(5)(a)(ii), 10(5)(a)(ii), 10(6)(a)(ii), 18, 47(1), 49(2), 53(1) and 55(1), includes law of any description,]

"minimum amount": see section 60,

[**"money"** means cash and funds,]

^k Order in Council No. VIII of 1999; Schedule 1 was substituted by Guernsey Statutory Instrument No. 27 of 2002 and renumbered by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007.

"money laundering": see section 29(4),

[**"non-conviction based proceedings"**: see subsection (1A),]

"order to grant entry": see section 22,

"overseas forfeiture order": see section 49(1),

"personal records": see section 58,

"premises" includes any place and also includes –

- (a) any vehicle, vessel or aircraft,
- (b) any offshore installation, and
- (c) any tent or moveable structure,

"police officer" means a member of the salaried police force of the Island of Guernsey and an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972¹, and also –

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney

¹ Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

and, within the limits of his jurisdiction, a special constable appointed pursuant to section 47 of the Government of Alderney Law, 2004^m, and

- (c) in relation to Sark, the Constable and the Vingtenier,

"proceeds of unlawful conduct": see section 59,

"production order": see section 20,

"regulatory Laws" means –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987ⁿ,
- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994^o,
- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^p,
- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002^q, and

m Order in Council No. III of 2005.
n Ordres en Conseil Vol. XXX, p. 281.
o Order in Council No. XIII of 1994.
p Order in Council No. I of 2001.
q Order in Council No. XXI of 2002.

- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002^r,

"relevant business" means a person or body specified in Schedule 2 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^s,

"Royal Court" means the Royal Court sitting as an Ordinary Court, constituted in accordance with section 50,

"safe deposit box": see section 29(5),

"security" means any mortgage, charge, hypothèque, lien or other security, and **"secured interest"** shall be read accordingly,

"senior police officer" means –

- (a) in relation to –
- (i) a member of the salaried police force, or the special constabulary, of the Island of Guernsey, and
 - (ii) a special constable appointed pursuant to section 47 of the Government of Alderney Law, 2004,

^r Order in Council No. XXII of 2002.

^s Order in Council No. VIII of 1999; Schedule 2 was inserted by the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Law, 2007.

a member of the salaried police force of the Island of Guernsey of at least the rank of Inspector, and

- (b) in relation to an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^t, an officer of at least the grade of Senior Investigation Officer,

"States" means the States of Guernsey,

"uniform scale" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^u,

"unlawful conduct": see section 61.

[(1A) Non-conviction based proceedings are those pursuant to which an order for the forfeiture of money or other property which is the proceeds of unlawful conduct or intended for use in unlawful conduct may be made by a court on grounds or in circumstances which are not dependent upon the conviction of any person of unlawful conduct.]

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) The provisions of the Interpretation (Guernsey) Law, 1948^v

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

^u Ordres en Conseil Vol. XXXI, p. 278.

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

apply to the interpretation of this Law throughout the Bailiwick.

NOTES

In section 56,

first, the words in square brackets in the definition of the expression "Bailiff", second, the words in square brackets in the definition of the expression "bank" and, third, the definition of the expression "court" in subsection (1) were inserted, fourth, the definition of the expression "legislation" and, fifth, the definition of the expression "money" in subsection (1) were substituted, sixth, the definition of the expression "non-conviction based proceedings" therein was inserted and, seventh, subsection (1A) was inserted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, respectively section 20(a), section 20(b), section 20(c), section 20(d), section 20(e), section 20(f) and section 21, with effect from 30th October, 2015;

the words "Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the references herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016,

section 28(a), with effect from 1st October, 2018.

"Items subject to legal professional privilege".

57. (1) Subject to subsection (2), **"items subject to legal professional privilege"** means –

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

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

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

"Excluded material".

58. (1) Subject to subsections (2) and (3), **"excluded material"** means –

- (a) personal records which a person has acquired or created in the course of any trade, business, profession or other occupation or for the purposes of any paid or unpaid office and which he holds in confidence,
- (b) human tissue or tissue fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence, and
- (c) journalistic material which a person holds in confidence and which consists of –
 - (i) documents, or
 - (ii) records other than documents.

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

- (a) an express or implied undertaking to hold it in confidence, or
- (b) a restriction on disclosure or an obligation of secrecy contained in any enactment, whether passed before or after the commencement of this Law.

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

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

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

- (a) his physical or mental health,
- (b) spiritual counselling or assistance given or to be given to him, or
- (c) counselling or assistance given or to be given to him, for the purposes of his personal welfare, by any voluntary organisation or by any individual who –
 - (i) by reason of his office or occupation has responsibilities for his personal welfare, or
 - (ii) by reason of an order of a court has responsibilities for his supervision.

(5) Subject to subsection (6), in this section "**journalistic**

material" means material acquired or created for the purposes of journalism.

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

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

"Proceeds of unlawful conduct".

59. References in this Law to money or other property which is the proceeds of unlawful conduct include references to money or other property which, in whole or in part, directly or indirectly represents the proceeds of unlawful conduct.

"Minimum amount".

60. (1) In this Law the "**minimum amount**" means £1,000 or such other amount in sterling as may be specified by regulations of the [Committee for Home Affairs] made after consultation with the Policy and Finance Committee of the States of Alderney and the [Policy and Finance Committee] of the Chief Pleas of Sark.

(2) For that purpose the amount of any money held in a currency other than sterling must be taken to be its sterling equivalent, calculated in accordance with the prevailing rate of exchange.

NOTES

In section 60,

the words "Committee for Home Affairs" in square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph

6(a), with effect from 1st May, 2016;

the words "Policy and Finance Committee" in square brackets in subsection (1) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.⁸

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.⁹

"Unlawful conduct".

61. (1) Conduct which occurs in any place in the Bailiwick is **"unlawful conduct"** if it is unlawful under the criminal law of that place.

(2) Conduct which –

- (a) occurs in a country outside the Bailiwick and is unlawful under the criminal law of that country, and
- (b) if it occurred in any place in the Bailiwick, would be unlawful under the criminal law of that place,

is also unlawful conduct.

(3) The Royal Court must decide on a balance of probabilities whether it is proved –

- (a) that any matters alleged to constitute unlawful conduct have occurred,
- (b) that any money is any person's proceeds of unlawful

conduct, or

- (c) that any person intended to use any money in unlawful conduct.

NOTE

The following case has referred to section 61:

Forfeiture of Money in Civil Proceedings (2017) (Unreported, Royal Court, 17th February) (Guernsey Judgment No. 8/2017).

Rules of Court.

- 62.** (1) The Royal Court sitting as a Full Court may make rules –
- (a) in respect of the practice and procedure to be followed in connection with proceedings relating to –
 - (i) production orders and orders to grant entry,
 - (ii) customer information orders,
 - (iii) account monitoring orders,
 - (iv) disclosure orders,
 - (b) without prejudice to paragraph (a), generally in respect of –
 - (i) applications to the Bailiff and Royal Court and appeals to the Court of Appeal under this Law, and

- (ii) practice and procedure under this Law before the Bailiff, Royal Court and Court of Appeal,
 - (c) in respect of evidence including, without limitation, rules as to the admission of evidence and evidential presumptions,
 - (d) in respect of the giving of notice of applications or appeals to persons affected, and
 - (e) in respect of the joinder of such persons as parties.
- (2) Subsection (1) is without prejudice to any other power to make rules.

NOTE

The following Rules have been made by Order of the Royal Court under section 62:

Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Rules, 2012.

Amendment by Ordinance and extension by regulation.

- 63.** [(1) The States may by Ordinance -
- (a) amend section 7 or 9, Part III or section 51 or 55, where it appears to the States to be necessary or expedient to do so for the purpose of -
 - (i) enhancing or protecting the reputation or

economic interests of the Bailiwick,

- (ii) improving or enhancing the investigation, prevention or detection of crime,
 - (iii) facilitating the instigation of, or otherwise for the purposes of, any criminal proceedings,
 - (iv) facilitating the detection, seizure and forfeiture of the proceeds of crime or assets intended for use in crime,
 - (v) discharging any international obligation to which the Bailiwick is subject, or
 - (vi) assisting, in the interests of the public or otherwise, any authority which appears to the States to exercise in a place outside the Bailiwick functions corresponding to any of the functions of Her Majesty's Procureur or the police under this Law, and
- (b) make such additional provision as they think fit for the purposes of carrying this Law into effect.]

(2) Without prejudice to subsection (1), the [Committee for Home Affairs] may, by regulation made after consultation with the Policy and Finance Committee of the States of Alderney and the [Policy and Finance Committee] of the Chief Pleas of Sark –

- (a) extend the application of this Law to any description of

financial instrument, and

- (b) amend the expression "bank" so as to include –
 - (i) any other class or description of person or body licensed by the Guernsey Financial Services Commission under the regulatory Laws, and
 - (b) any other class or description of financial services business or relevant business.

(3) Subsections (1) and (2) are without prejudice to any other provision of this Law conferring power to enact Ordinances, orders, regulations or rules (and vice versa).

(4) An Ordinance under this section does not have effect unless approved by the States of Alderney and the Chief Pleas of Sark.

(5) For the purposes of subsection (4), an Ordinance shall be deemed to have been approved by the States of Alderney or the Chief Pleas of Sark at the expiration of a period of four months immediately following the day of its approval by the States of Deliberation unless, within that period –

- (a) the States of Alderney resolve to disapprove its application to Alderney or, as the case may be,
- (b) the Chief Pleas of Sark resolve to disapprove its application to Sark.

NOTES

In section 63,

subsection (1) was substituted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (Amendment) Ordinance, 2008, section 1, with effect from 24th September, 2008;

the words "Committee for Home Affairs" in square brackets in subsection (2) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016;

the words "Policy and Finance Committee" in square brackets in subsection (2) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.¹⁰

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.¹¹

General provisions as to subordinate legislation.

- 64.** (1) An Ordinance, order, regulation or rule under this Law –
- (a) may be amended or repealed by a subsequent Ordinance, order, regulation or rule, as the case may be, hereunder, and
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient including, without limitation –
 - (i) in the case of an Ordinance, and
 - (ii) in the case of an order under the Schedule and a

regulation,

provisions repealing, amending or modifying any enactment (whether passed before or after the commencement of this Law).

(2) Any power conferred by this Law to make any Ordinance, order, regulation or rule may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the

States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Savings for powers of search under other enactments.

65. The provisions of this Law conferring powers of search and seizure on police officers are in addition to and not in derogation from any such powers conferred on them by or under any other enactment.

Repeal of Part III of Drug Trafficking Law.

66. Part III of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^w is repealed.

Citation.

67. This Law may be cited as the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007.

Commencement.

68. This Law shall come into force on the day appointed by Ordinance; and different days may be appointed for different provisions and different purposes.

NOTE

The Law was brought into force on 24th September, 2008 by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (Commencement) Ordinance, 2008, section 1.

^w Order in Council No. VII of 2000.

SCHEDULE

Section 54

LEGAL EXPENSES OF RESPONDENTS, ETC

1. A party to proceedings under section 9 or 11 (release of detained cash or frozen bank accounts) or Part III (forfeiture and release of money) [or Part V (enforcement of orders made outside the Bailiwick)] may apply to the Royal Court for the expenses of his legal representation to be met out of monies –

[(a) which are detained or frozen under section 7 or 10, or which may not be released by virtue of section 13(3) or 49(2A), and]

(b) which belong to him or which he would otherwise be entitled to use for that purpose (were the monies not detained or frozen).

2. The Royal Court, if satisfied that the party is unable to pay for legal representation, may, subject to the provisions of and under this Schedule, and subject to such terms and conditions as it thinks fit, direct that an order made under section 7 or 10 [or (as the case may be) the prohibition on the release of the monies imposed by section 13(3) or 49(2A)] be varied to allow for the payment of reasonable legal expenses which have been or may be reasonably incurred by him for the purposes of the proceedings.

3. The Royal Court may (without prejudice to the generality of its power to impose terms and conditions under paragraph 2) –

(a) specify the total amount that may be released for the payment of legal expenses for the purposes of the proceedings or any particular stage in the proceedings,

- (b) restrict who may receive sums so released (for example, by requiring released sums to be paid to Advocates),
- (c) restrict the amount of any sum released in respect of any particular item of expenditure or any particular stage in the proceedings,
- (d) provide for a sum to be released in respect of any particular item of expenditure or any particular stage in the proceedings only if the Court (or a person nominated by it) has assessed the item or the stage and approved the amount,
- (e) limit the amounts that may be released by reference to the amounts that would be payable in respect of the services of an Advocate under the provisions of the Legal Aid (Bailiwick of Guernsey) Law, 2003^x or any Ordinance or Scheme thereunder.

4. The Royal Court, in deciding whether to release any amount for the payment of legal expenses under this Schedule –

- (a) must have regard (in particular) to the desirability of the party being legally represented in the proceedings in question, and
- (b) must, where the party is the respondent, disregard the possibility that his legal representation might, were the amount not so released, be funded under the provisions

^x No. VI of 2004.

of the Legal Aid (Bailiwick of Guernsey) Law, 2003 or any Ordinance or Scheme thereunder.

5. The Royal Court may by Order –
- (a) make provision for the purpose of carrying this Schedule into effect, and
 - (b) amend this Schedule.

NOTES

In the Schedule, first, the words in the first pair of square brackets in paragraph 1 were inserted, second, subparagraph (a) of paragraph 1 was substituted and, third, the words in square brackets in paragraph 2 were inserted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, respectively section 22(a), section 22(b) and section 23, with effect from 30th October, 2015.

The following cases have referred to the Schedule:

In the matter of Forfeiture of Money in Civil Proceedings, Heykers v. Her Majesty's Comptroller (2018) (Unreported, Royal Court, 28th November) (Guernsey Judgment No. 41/2018);

Her Majesty's Procureur v. Hugo Heykers and ABM Amro Channel Islands Ltd (2018) (Unreported, Royal Court, 19th July) (Guernsey Judgment No. 44/2018).

¹ These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

² The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them from, respectively, the Sark General Purposes and

Advisory Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.

3 The entry corresponding to section 12 in the Arrangement of Sections was repealed by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, section 2(a), with effect from 30th October, 2015.

4 These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

5 The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them from, respectively, the Sark General Purposes and Advisory Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.

6 These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

7 The entry corresponding to section 55A in the Arrangement of Sections was inserted by the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Law, 2012, section 2(b), with effect from 30th October, 2015.

8 These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

9 The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them from, respectively, the Sark General Purposes and Advisory Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.

10 These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

11 The functions, rights and liabilities of the Sark Policy and Performance

Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them from, respectively, the Sark General Purposes and Advisory Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.