

STATES OF JERSEY



DRAFT FORFEITURE OF ASSETS (CIVIL PROCEEDINGS) (JERSEY) LAW 201-

**Lodged au Greffe on 27th February 2018
by the Chief Minister**

STATES GREFFE



Jersey

DRAFT FORFEITURE OF ASSETS (CIVIL PROCEEDINGS) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Chief Minister has made the following statement –

In the view of the Chief Minister, the provisions of the Draft Forfeiture of Assets (Civil Proceedings) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator I.J. Gorst**

Chief Minister

Dated: 26th February 2018

REPORT

The Draft Forfeiture of Assets (Civil Proceedings) (Jersey) Law 201- (the “draft Law”) introduces a civil forfeiture regime for Jersey by replacing and extending the current Proceeds of Crime (Cash Seizure) (Jersey) Law 2008 (the “Cash Seizure Law”) to create a civil forfeiture procedure that would apply to both cash and property held in bank accounts.

Freezing and confiscation of tainted property derived from criminal activity remains a key priority for the Government of Jersey in its general commitment to the worldwide fight against financial crime.

Following MONEYVAL’s onsite inspection of Jersey in 2015, a Report was published in May 2016, which contained a number of Recommendations. The MONEYVAL evaluation team recommended that Jersey could consider the introduction of a non-conviction based confiscation regime to apply in parallel with the conviction-based system. The Government of Jersey, advised by the Financial Crime Strategy Group, has decided to act on this recommendation, particularly as the 2012 Financial Action Task Force Recommendations and 2013 Methodology place greater emphasis on effectiveness of a financial crime regime (i.e. to what extent jurisdictions are, *inter alia*, successfully depriving criminals of illicit property).

Since the MONEYVAL report, the Chief Minister’s Department in conjunction with the Attorney General’s Chambers has been working on draft legislation to introduce non-conviction based confiscation in Jersey. The draft legislation now presented to the States Assembly proposes to replace and extend the current Proceeds of Crime (Cash Seizure) (Jersey) Law 2008 to create a civil forfeiture procedure that would apply to both cash and property held in bank accounts. The Law was subject to public consultation during 2017.

Non-conviction based confiscation regimes are common in a number of jurisdictions around the world. They provide a judicial mechanism for authorities to make an application to confiscate assets, where potentially due to an inability to obtain evidence to reach the criminal standard for prosecution (beyond reasonable doubt), it would not be possible to confiscate such assets. A common use of these regimes may be to confiscate funds that have been frozen for a significant period of time by a bank after a suspicious activity report (“SAR”) has been filed. These situations arise where an account holder may have simply abandoned the funds and has made no attempt to prove their legitimacy further to requests from the bank. It is important to note the judicial mechanisms proposed in the draft legislation incorporate important safeguards to address the rights of the individual in respect of property.

The draft Law introduces 3 procedural tracks for the operation of the Regime. These are –

- (a) preservations of the existing procedure for tainted cash under the Cash Seizure Law;
- (b) a procedure for the summary forfeiture of property in bank accounts which has been subject to a “No Consent” by the Joint Financial Crime Unit (“JFCU”) for a period of 12 months;
- (c) a procedure for the forfeiture of property in bank accounts which is otherwise suspected to be property that is the proceeds of unlawful conduct or is used/intended to be used in unlawful conduct.

The Government sees the proposed introduction of this regime as an enhancement of an already effective functioning prevention of financial crime system in Jersey – and looks to this as a reinforcement of the existing leading position Jersey holds, that has been independently endorsed by international assessors and acknowledged experts.

Collective responsibility under Standing Order 21(3A)

The Council of Ministers has a single policy position on this proposition, and as such, all Ministers, and the Assistant Ministers to the Chief Minister, are bound by the principle of collective responsibility to support the proposition, as outlined in the Code of Conduct and Practice for Ministers and Assistant Ministers ([R.11/2015](#) refers).

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of this draft Law.

Human Rights

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Notes on the Draft Forfeiture of Assets (Civil Proceedings) (Jersey) Law 201-

Article 6 ECHR

1. Article 6(1) of the ECHR provides that –

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”
2. There has been extensive jurisprudence which supports the position that forfeiture proceedings are to be regarded as civil proceedings.¹ In *Mudie*² it was observed that *“the forfeiture order was a preventative measure and cannot be compared to a criminal sanction since it was designed to take out of circulation money which was presumed to be bound up with international trade in illicit drugs. It follows that proceedings which led to the making of the [forfeiture] order did not involve the ‘determination of a criminal charge.’* The ECtHR has also consistently held that civil asset recovery procedures in Italian legislation are civil proceedings.
3. Forfeiture of property obtained by unlawful conduct is not a criminal penalty³ and the Commission (the former ECtHR Court of first instance) said in *M v Italy*⁴ that *“...it can be seen from the legislation of the Council of Europe member States that measures of great severity, but necessary and appropriate for protection of the public interest, are ordered even outside the criminal sphere.”*
4. The proceedings in the draft Law are civil in nature i.e. they are *in rem* (directed against property) and not *in personum* (against the person) and the proceedings do not result in criminal penalties (unless of course a person commits an offence e.g. obstruction or tipping off in which case they would be subject to criminal proceedings which have a different burden and standard of proof). The proceedings in the draft Law are not therefore criminal and do not require the additional protections for criminal charges afforded by Article 6 ECHR, such as the criminal standard of proof.
5. Under the draft Law, the substantive content and effect of the domestic right engaged (right to property) is of a predominantly personal, private and economic nature, and therefore it is a civil right and Article 6 is engaged.
6. However, the process for seizure and/or forfeiture of a person’s property is underpinned by access to the Royal Court, a self-evidently Article 6 compliant body, for persons affected by such applications and orders. Therefore, the right to fair trial in the determination of rights under the Law are guaranteed and the Law is compatible with Article 6 ECHR.
7. **Based on the reasoning above, the draft Law can be said to be compatible with Article 6 ECHR.**

¹ Butler v United Kingdom ECHR 41661/98

² R (Mudie and another) v Dover Magistrate’s Court [2003] QB 1238

³ Director of the Assets Recovery Agency v Jia Jin He [2004] EWHC 3012 (Admin)

⁴ Application 12386/86

Article 8 ECHR

8. Article 8 provides as follows –
 1. *Everyone has the right to respect for his private and family life, his home and his correspondence.*
 2. *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*
9. The draft Law engages Article 8 ECHR by reason of the investigative powers under Part 4. These provisions are not novel and reflect the powers available in existing legislation such as the Proceeds of Crime (Jersey) Law 1999.
10. Article 8 is a qualified right which may be interfered with subject to the interferences being in accordance with the law (which is satisfied if there is a legal basis including where prescribed by statute), there is a legitimate aim (in this case the prevention of disorder or crime and the economic well-being of the country are just two examples of the legitimate aims of the measures in the draft Law) and if the interferences are proportionate to achieving those legitimate aims.
11. Whilst Article 8 contains no explicit procedural requirements, the decision making process involved in measures of interference must be fair such as to ensure due respect of the interests safeguarded by Article 8, in order for the interferences to be proportionate. The investigative powers in Part 4 are subject to judicial oversight and as such there are sufficient procedural safeguards which mitigate the interference with Article 8 rights.
12. **Based on the reasoning above, the draft Law can be said to be compatible with Article 8 ECHR.**

Article 1, Protocol 1 ECHR (“A1,P1”)

13. Article 1, Protocol 1 of the ECHR provides that –

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”
14. A1, P1 is therefore also a qualified right. It allows for the control of use of property in accordance with the general interest, and to deprive persons of property in accordance with the public interest, the conditions provided for by law and the general principles of international law.
15. The result of A1,P1 is that, as with other qualified rights, there may be permitted interference so long as any such interference is –
 - in accordance with the law;

- justified by a legitimate aim; and
 - proportionate i.e. there is a reasonable relationship between the means employed and the aim pursued.
16. The first 2 limbs of the test are uncontroversial, i.e. the interferences shall be prescribed in statute and in shall be in the general interest. Regarding proportionality, the significant difference between a deprivation of property and a control of use of property is that for a deprivation to be proportionate, reasonable compensation will usually be required, whereas this is not generally required for a control of use. Any interference with the right to the peaceful enjoyment of possessions must in any event strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. Contracting States tend though to enjoy a wide margin of appreciation in judging the measures appropriate to achieving the aims sought.
 17. The first question to determine is whether or not civil asset forfeiture is a control of use or a deprivation.
 18. The case law from the ECtHR is firm that such procedures are not a deprivation but a control of use.
 19. In *Butler v United Kingdom*⁵ the applicant claimed that the forfeiture of his money, pursuant to the UK Drug Trafficking Act 1994, breached his A1,P1 rights. The Commission held that –

“while noting that the applicant has been permanently deprived of his money in application of the forfeiture order, [the Commission] considers nonetheless that the impugned interference falls to be considered from the standpoint of the State’s right to “enforce such laws it deems necessary to control the use of property in accordance with the general interest.””
 20. The Commission was therefore minded to categorise a forfeiture of property ancillary to the enforcement of domestic legislation as a control of use and not a deprivation. Furthermore, in *Raimondo v Italy*⁶, a seizure of assets pursuant to a criminal investigation was held to be a control of use because it was of a provisional nature. Moreover, the High Court found in the context of Part 5 of the UK’s Proceeds of Crime Act 2002 (upon which the draft Law is partially modelled) that civil asset recovery is not deprivation of property because the proceeds of crime are not the possession of the criminal i.e. he has not title to them: *“It is not a deprivation of anything. Parliament has said that such proceeds are not the entitlement of anyone. That is not to deprive anybody of anything.”*
 21. The provisional (i.e. seizure) and final (i.e. forfeiture) orders which are available in the draft Law are subject to an Article 6 compliant process whereby the owner has the opportunity to establish the *bona fide* provenance of his property to the Royal Court. This provides an adequate safeguard and is subject to further appeal to the Court of Appeal. In *AGOSI v United Kingdom*⁷, the ECtHR considered that the availability of judicial review of decisions by the Commissioners of Customs and Excise (relating to the seizure of gold coins) was adequate protection for the purposes of satisfying

⁵ Application No. 41661/98 (27th June 2002)

⁶ (1994) 18 E.H.R.R. 237

⁷ (1987) 9 E.H.R.R.

the proportionality of A1,P1. Furthermore, in *Air Canada v United Kingdom*⁸ aircraft found to be carrying prohibited drugs was seized and the ECtHR said that requiring payment in return for releasing the aircraft was proportionate. Member States were entitled to control the use of property insofar as to do so was proportionate to enforce policy in the general public interest, and again the ECtHR held (having considered AGOSI) that the availability of judicial review satisfied the fairness criteria.

22. The oversight of the courts provides an adequate safeguard for the purposes of ensuring compliance with A1,P1 (the interference caused also has a legitimate aim and is in accordance with the law). The Court also has the power to award compensation under Article 30 of the draft Law where acts are done in bad faith and a person has suffered loss, further strengthening the proportionality of the regime.
23. **Based on the reasoning above, the draft Law is compatible with A1,P1 ECHR.**

⁸ (1995) 20 E.H.R.R. 150

Explanatory Note

This draft Law would provide for the circumstances in which assets suspected of being tainted property may legally be seized by authorized officers, and placed under restraint or ultimately forfeited, by order of the court.

Part 1 provides for interpretation of the Law. *Article 1* is a general interpretation provision containing definitions of, notably, “authorized officer”, “property” and “unlawful conduct” for the purposes of the whole Law. *Article 2* defines the key concept of “tainted property” (which may be in the form of cash, itself given a wide definition by *Article 1(2)*) and *Article 3* provides for the circumstances in which property may cease to be regarded as tainted.

Part 2 replaces and updates the provisions of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008 (which would be repealed by *Article 36*, subject to a saving for existing proceedings under that Law). *Article 4* confers power on authorized officers to conduct searches for cash suspected of being tainted cash and *Article 5* confers power for the seizure of the whole or part of any such cash. *Article 6* provides that cash which has been seized may be detained for a maximum of 96 hours, and the Attorney General or an authorized officer may apply to the Bailiff under *Article 7* for a “cash detention order” authorizing detention for any longer period. The Bailiff may make such an order if satisfied that there are reasonable grounds for the suspicion that the cash is tainted, and that its continued detention is justified during further investigations or consideration being given to proceedings for unlawful conduct against any person in Jersey or elsewhere.

Notice of a cash detention order must be given to all persons affected by it, and the order may be cancelled if it appears to the Bailiff that any proposed proceedings to which it relates have not been instituted within a reasonable time. By *Article 8* the cash which is the subject of the cash detention order must be paid into and held in an interest-bearing account (and the interest if any must be added to the amount of the cash upon later forfeiture or release), unless the cash is evidence in proceedings and is required for forensic examination. The circumstances in which detained cash may be released are set out in *Article 9* and include release to a person from whom or from whose premises the cash was seized and detained. In general however cash may not be released until any proceedings are concluded as described by *Article 9(6)*.

Part 3 deals with forfeiture of tainted property, which may occur in one of 2 ways. First, as provided by *Article 10*, the Attorney General may (where there are reasonable grounds to believe that property held at a bank in Jersey is tainted property and a suspicious activity report has been made in relation to the bank account in question or any property in the account) serve a notice on the holder of the account and on the bank requiring the holder to attend court to show cause why the property specified in the notice should not be forfeited. If the respondent to the notice fails to attend the hearing, the Attorney General may apply forthwith for an order for forfeiture of the property, which may be made without further notice under *Article 11(1)*. Unless the respondent satisfies the court that the property is not tainted property (either at that hearing or at a later hearing), the Attorney General may apply to the court for an order for forfeiture of the property or any part of it.

In relation to property which is suspected of being tainted, but in respect of which no report of suspicious activity has yet been received, the Attorney General may apply to the Bailiff under *Article 12* for a “property restraint order” prohibiting withdrawal, transfer or payment out of property specified in the order. Such an application may be made *ex parte* to the Bailiff in chambers. A property restraint order may be made

where the Bailiff is satisfied that there are reasonable grounds to believe that the property is tainted property and the making of an order is justified in the circumstances for a reasonable period again pending investigation or the bringing of proceedings. Article 12(4) gives wide power for related directions as to the management of the property whilst subject to the order, and for notice of the order to be given to persons affected by it. Once a property restraint order is made, *Article 13* provides that the property vests in the Viscount subject to any security interest, or to any right of set-off enjoyed by the bank in which the property is held, and any interest accruing shall also be subject to the order and added to the property upon forfeiture or release.

Article 14 specifies that a property restraint order is discharged upon the making of a forfeiture order in respect of the same property, or by order where the Bailiff (or, if the Bailiff refers the matter to the court, the court) is satisfied that the reasons for which the order was made no longer apply. Under *Article 15* the Attorney General may apply to the court for a forfeiture order in relation to the whole or any part of property which is subject to a cash detention order or to a property restraint order. (Cash or other movable property which is forfeited pursuant to a forfeiture order under either Article 11 or Article 15 is to be paid into the Criminal Offences Confiscations Fund established under Article 24 of the Proceeds of Crime (Jersey) Law 1999.)

Article 16 confers rights of appeal against forfeiture orders. *Article 17* makes provision as to the inter-relation of property restraint orders and forfeiture orders with proceedings for bankruptcy: in particular, no part of any person's property specified in a property restraint order which was made before the person was adjudged bankrupt may form part of the person's estate for bankruptcy proceedings.

Part 4 confers additional investigative powers on the Attorney General and authorized officers in connection with civil forfeiture investigations – defined by *Article 18* as investigations into matters specified in Article 18(2) and made with a view to, or in relation to, proceedings in Jersey in connection with suspected tainted property, or proceedings of a similar nature outside Jersey, or service requested by an external jurisdiction under Article 2 of the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007.

Articles 19, 22, 23 and 24 provide for the making of, respectively, production orders (requiring production, by the person to whom the order is addressed, of material specified in the order), customer information orders (requiring provision by the bank to whom the order is addressed of specified customer information), account monitoring orders, and disclosure orders. Failure to comply with any of these orders is an offence, punishable in the case of a production order by a maximum of 2 years' imprisonment and an unlimited fine and in other cases by a maximum of 6 months' imprisonment and an unlimited fine.

Article 20 sets out the circumstances in which the Attorney General, or an authorized officer, may apply for a search warrant in relation to premises on which it is suspected there may be material of substantial value in relation to a civil forfeiture investigation, namely that it is not practicable to communicate with any person entitled to grant access to the material or entry to the premises, or that entry will not be granted without a warrant or that the civil forfeiture investigation would be seriously prejudiced unless immediate entry by an authorized officer could be secured. Under Article 20(6) an officer entering premises in the execution of a warrant may seize and retain any material (other than legally privileged material) likely to be of substantial value to the investigation. *Article 25* confers power on the Attorney General and any other person authorized for the purpose by a production order, search warrant or disclosure order to

do so, to take copies of documents and to retain original documents where necessary in connection with a civil forfeiture investigation or (in the case of the Attorney General only) for the purposes of legal proceedings.

Part 5 of the Law makes miscellaneous general provision. *Article 26* provides that proceedings (except offences) under the Law are civil proceedings to be determined on the balance of probabilities. *Article 27* enables victims of crime who have been deprived of property which is the subject of proceedings under this Law to apply to the court for that property to be released to them, prior to the making of any forfeiture order in respect of the property. *Articles 28 and 29* limit the liability of the Viscount and the Attorney General respectively, in carrying out their functions under the Law, unless any act is done in bad faith or (in the case of the Attorney General only) so as to prevent an award of damages under Article 7 of the Human Rights (Jersey) Law 2000. Under *Article 30*, provision is made for compensation to be payable where a person has suffered loss as a result of an act done in bad faith and the court considers it appropriate for an award of compensation to be made. *Article 31* creates a general offence of obstructing the Attorney General or an authorized officer in the lawful exercise of powers under the Law, punishable by imprisonment for a maximum term of 2 years and an unlimited fine; and *Article 32* creates an offence of tipping off and of interference with material relevant to a civil forfeiture investigation, which carries the penalty of imprisonment for a maximum term of 5 years and an unlimited fine. *Article 33* makes general provision as to liability of directors and similar officers of certain bodies for offences committed by those bodies. *Article 34* confers power on the court to consent to settlement of proceedings under Articles 11, 12 or 15 upon the application of the Attorney General.

Article 35 makes a consequential amendment to the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007, and *Article 36* effects the repeal of the Proceeds of Crime (Cash Seizure) (Jersey) Law 2008. *Article 37* gives the title by which this Law may be cited, and provides for its commencement one month after it is registered.



Jersey

DRAFT FORFEITURE OF ASSETS (CIVIL PROCEEDINGS) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT FORFEITURE OF ASSETS (CIVIL PROCEEDINGS) (JERSEY) LAW 201-

A LAW to provide for the seizure and forfeiture, by way of civil proceedings, of cash and other assets suspected to be property originating, or intended to be used, in unlawful conduct; to confer powers to investigate into the nature, ownership, extent and whereabouts of such property, including powers to search, to require information, and to monitor bank accounts; to create offences of obstruction of, and interference with, such investigations; to compensate owners of property wrongly seized or forfeited; and for connected purposes

<i>Adopted by the States</i>	<i>[date to be inserted]</i>
<i>Sanctioned by Order of Her Majesty in Council</i>	<i>[date to be inserted]</i>
<i>Registered by the Royal Court</i>	<i>[date to be inserted]</i>

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

PART 1

INTERPRETATION

1 Interpretation: general

- (1) In this Law, unless otherwise provided or required by the context –
- “account monitoring order” means an order under Article 23;
- “authorized officer” means any police officer, customs officer, immigration officer, and any other officer of the Financial Intelligence Unit designated under Regulation 2 of the Proceeds of Crime (Financial Intelligence) (Jersey) Regulations 2015¹;
- “bank” means any person or entity carrying on a deposit-taking business as defined in Article 3 of the Banking Business (Jersey) Law 1991², except –
- (a) the States;
 - (b) the central bank of a Member State of the European Union;

- (c) the National Savings Bank of the United Kingdom; or
- (d) subject to such conditions or restrictions as may be prescribed, any other prescribed person or entity;

“cash” has the meaning given by paragraph (2);

“cash detention order” means an order under Article 7;

“civil forfeiture investigation” has the meaning given by Article 18;

“confiscation order” has the meaning given by Article 1 of the Proceeds of Crime (Jersey) Law 1999³;

“Court” means the Royal Court;

“customs officer” means the Agent of the Impôts and any other officer appointed pursuant to Article 4 of the Customs and Excise (Jersey) Law 1999⁴;

“customer information” has the meaning given by Article 21;

“customer information order” means an order under Article 22;

“disclosure order” means an order under Article 24;

“forfeiture order” means an order for the forfeiture of tainted property made under either Article 11 or 15, as the case may be;

“immigration officer” means a person appointed as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971 of the United Kingdom, as extended to Jersey by the Immigration (Jersey) Order 1993⁵ as amended by the Immigration (Jersey) (Amendment) Order 2017⁶;

“material” includes, but is not limited to, the property which is the subject of a civil forfeiture investigation;

“Minister” means the Chief Minister;

“police officer” means a member of the States of Jersey Police Force;

“prescribed” means prescribed by Order of the Minister;

“property” means movable property situated in Jersey, whether vested or contingent, and including –

- (a) any legal document or instrument evidencing title to or interest in such property; and
- (b) any interest in or power in respect of such property, including a right to possession,

and for the avoidance of doubt, except where the context does not permit or where otherwise specified, a reference to property includes reference to cash;

“property restraint order” means an order under Article 12;

“tainted cash” means tainted property in the form of cash;

“tainted property” has the meaning given by Article 2;

“unlawful conduct” means conduct –

- (a) constituting an offence against a law of Jersey; or

-
- (b) which, if it occurs or has occurred outside Jersey, would have constituted such an offence if occurring in Jersey;
“vehicle” includes a vessel, aircraft or hovercraft.
- (2) In this Law, “cash” means –
- (a) currency (that is, banknotes and coins in circulation, whether in Jersey or elsewhere, as a medium of exchange);
 - (b) bearer-negotiable instruments including monetary instruments in bearer form (such as travellers cheques);
 - (c) negotiable instruments (including cheques, promissory notes and money orders) which are –
 - (i) in bearer form,
 - (ii) endorsed without restriction,
 - (iii) made out to a fictitious payee, or
 - (iv) otherwise in such form that title to them passes upon delivery;
 - (d) incomplete instruments (that is, signed instruments including cheques, promissory notes and money orders, with the payee’s name omitted);
 - (e) forged or counterfeit versions of any of the items listed in subparagraphs (a) to (d); and
 - (f) such other types of monetary instruments as may be prescribed for the purposes of this definition.
- (3) In the calculation of any period for the purposes of this Law, if any part of the period includes part or all of a day which is –
- (a) a Saturday or a Sunday;
 - (b) Christmas Day or Good Friday; or
 - (c) a bank holiday under the Public Holidays and Bank Holidays (Jersey) Law 1951⁷,
- the period shall be calculated without taking into account that day or part of a day.
- (4) The States may by Regulations amend any provision of this Part.

2 Meaning of “tainted property”

- (1) For the purposes of this Law, “tainted property” means property (as further defined by paragraphs (2) to (7)) which is or, by the Attorney General or any officer on whom powers are conferred by this Law, is reasonably suspected to be or have been –
- (a) used in, or intended to be used in, unlawful conduct; or
 - (b) obtained in the course of, from the proceeds of, or in connection with, unlawful conduct.
- (2) Property remains tainted property in the hands of a person to whom it is disposed, if the person disposing of it is –
- (a) a person who –

-
- (i) used the property in, or intended it to be used in, unlawful conduct, or
 - (ii) obtained the property in the course of, from the proceeds of, or in connection with, unlawful conduct; or
 - (b) a person to whom the tainted property was disposed, by a person to whom sub-paragraph (a) or this sub-paragraph applies.
- (3) If a person enters into a transaction by which the person –
- (a) disposes of tainted property; and
 - (b) obtains other property in place of the tainted property,
- the other property so obtained is tainted property, whether or not any of paragraphs (4) to (6) of Article 3 apply in respect of the transaction or the property disposed of.
- (4) If a person's tainted property is mixed with other property (whether his or her property or another's), the portion of the mixed property which is attributable to the tainted property is tainted property.
- (5) Without limiting the generality of the expression "mixed with other property", for the purposes of paragraph (4), tainted property is mixed with other property if it is used –
- (a) to increase funds held in a bank account;
 - (b) in part payment for the acquisition of an asset;
 - (c) for the restoration or improvement of land; or
 - (d) for the purpose of merging or extinguishing interests in land.
- (6) If a person who has tainted property obtains further property consisting of profits accruing in respect of the tainted property, the further property is tainted property.
- (7) If a person grants an interest in his or her tainted property, the question of whether the interest is also tainted property is to be determined in the same manner as any other disposal of tainted property and accordingly upon the grant of the interest –
- (a) if the property in which the interest is granted is tainted property, the interest is also to be treated as tainted property;
 - (b) if the property in which the interest is granted is tainted property if held by the person granting it, the interest is also to be treated as tainted property if held by him or her.

3 Property ceasing to be tainted property

- (1) Property ceases to be tainted property in any of the ways described in paragraphs (2) to (6).
- (2) Property forfeited under this or any other Law shall cease to be tainted property.
- (3) Property disposed of pursuant to an enactment shall cease to be tainted property if –
 - (a) the enactment is one which is prescribed for the purposes of this paragraph; and

-
- (b) the property is of a class which is so prescribed.
- (4) If –
- (a) a person disposes of tainted property; and
- (b) another person, who obtains the property on the disposal, does so –
- (i) in good faith,
- (ii) for value, and
- (iii) without notice that it is tainted property,
- the property shall cease to be tainted property.
- (5) If –
- (a) pursuant to a judgment in civil proceedings (whether in Jersey or elsewhere) –
- (i) the respondent or defendant makes a payment to the claimant or plaintiff, or
- (ii) the claimant or plaintiff otherwise obtains property from the respondent or defendant;
- (b) the claim in the proceedings arose from the respondent or defendant's unlawful conduct; and
- (c) apart from this paragraph, the property received by the claimant or plaintiff would be tainted property,
- the property shall cease to be tainted property.
- (6) If –
- (a) a payment is made to a person pursuant to a compensation order under Article 2 of the Criminal Justice (Compensation Orders) (Jersey) Law 1994⁸ or any like order made under another enactment; and
- (b) apart from this paragraph, the property received by way of such payment would be tainted property,
- the property shall cease to be tainted property.

PART 2

CASH SEIZURE

4 Searches for cash

- (1) An authorized officer –
- (a) who is lawfully on any premises; and
- (b) who has reasonable grounds for suspecting that there is, on the premises, cash that is tainted cash,
- may search the premises for cash and may, for the purposes of such a search, break open and search any item of furniture, safe or other container found on the premises.

- (2) An authorized officer who has reasonable grounds for suspecting that a person is carrying tainted cash (including carrying it in any vehicle) may require the person, or a person who is in the company of the person, to do all or any of the following –
- (a) bring to a stop a vehicle that the person is driving and permit the officer to search the vehicle and any article in the vehicle;
 - (b) permit the officer to search a vehicle in which the person is or has been situated and to search any article in the vehicle;
 - (c) permit a search by the officer of any article of which the person has possession;
 - (d) permit the officer to break open any container;
 - (e) remove his or her clothing or headgear so as to enable a search of the person to be conducted;
 - (f) permit an authorized officer of the same sex as the person to search the person,
- and to remain in the officer's detention for as long as is necessary to complete any search under this paragraph.
- (3) The powers conferred by this Article –
- (a) are in addition to any similar power otherwise conferred by this Law or any other enactment; and
 - (b) are exercisable only so far as is reasonably required for the purpose of finding tainted cash.

5 Seizure of cash

- (1) An authorized officer may seize any cash if he or she has reasonable grounds for suspecting that it is tainted cash.
- (2) An authorized officer may also seize cash, part of which he or she has reasonable grounds for suspecting to be tainted cash, if it is not reasonable to seize only that part.
- (3) If an authorized officer seizes cash under this Article, he or she must provide to any person –
- (a) who appears to have had possession of the cash immediately before it was seized; or
 - (b) on whose premises the seized cash was found,
- a receipt specifying the amount, currency and denomination of the cash.

6 Initial detention of seized cash for 96 hours

Cash seized under this Law may be detained for an initial period of up to 96 hours, if the authorized officer continues during that period to have reasonable grounds for his or her suspicion that part or all of the cash is tainted cash.

7 Orders authorizing detention of cash for longer than 96 hours

- (1) An application may be made to the Bailiff by –
 - (a) the Attorney General; or
 - (b) an authorized officer, with the consent of the Attorney General,for an order (a “cash detention order”) to be made under this Article, authorizing the detention of cash seized under this Part.
- (2) An application under paragraph (1) must be made before the expiry of the existing authority for detention of the cash to which the application relates, whether such authority is given by Article 6 or by a previous cash detention order.
- (3) More than one application may be made under paragraph (1) in relation to cash seized under this Law.
- (4) The Bailiff may not make a cash detention order unless he or she is satisfied –
 - (a) that there are reasonable grounds for suspecting that the cash to which the application relates is tainted cash; and
 - (b) that the continued detention of the cash is justified while –
 - (i) its origin or derivation is further investigated, or
 - (ii) consideration is given to bringing (in Jersey or elsewhere) proceedings against any person for unlawful conduct by reason of which the cash is alleged to be tainted cash.
- (5) A cash detention order shall provide for notice to be given to all persons affected by it.
- (6) The Bailiff may cancel a cash detention order if it appears to the Bailiff (whether of the Bailiff’s own motion, or on an application made by a person to whom notice was given under paragraph (5)) that any proposed proceedings to which the order relates have not been instituted within the time which the Bailiff considers reasonable.

8 Treatment of detained cash

- (1) Subject to paragraph (3), cash detained under the authority of a cash detention order for more than 96 hours shall be paid into and held in an interest-bearing bank account.
- (2) Any interest accruing to the bank account in respect of detained cash shall be added to the amount of the cash on its forfeiture under Article 15 or its release under Article 9.
- (3) Paragraph (1) does not apply if and for so long as the cash –
 - (a) is required as evidence of an offence or evidence in proceedings under this Law, the Proceeds of Crime (Jersey) Law 1999⁹, or the Terrorism (Jersey) Law 2002¹⁰; or
 - (b) is being dealt with for the purposes of being forensically examined.

- (4) On paying in to the account any cash which was seized under Article 5(2), the authorized officer must release so much of the cash as is not subject to the cash detention order.

9 Release of detained cash

- (1) This Article applies while any cash is detained under Article 6 or 7.
- (2) Subject to paragraph (6), the cash may be released –
- (a) by order of the Bailiff –
 - (i) pursuant to cancellation of a cash detention order under Article 7(6), or
 - (ii) under paragraph (4);
 - (b) by an authorized officer, under Article 8(4); or
 - (c) under the authority of the Attorney General, pursuant to paragraph (5).
- (3) A person from whom, or from whose premises, cash has been seized and detained under this Law may apply to the Bailiff for an order to release all or any part of the cash.
- (4) If, on an application under paragraph (3), the Bailiff is satisfied that the conditions in Article 7(4) are not, or are no longer, met in relation to the cash to which the application relates, the Bailiff may order the release to the applicant of the whole or any part of the cash, and such an order shall provide for notice to be given to persons affected by it.
- (5) The Attorney General may authorize the release of the whole or any part of the cash if satisfied that the detention of the cash is no longer justified.
- (6) Cash shall not be released –
- (a) where an application for a forfeiture order has been made in relation to the cash, until any proceedings pursuant to the application (including any proceedings on appeal) are concluded; or
 - (b) where proceedings are started, in Jersey or elsewhere, against any person for unlawful conduct by reason of which the cash is alleged to be tainted cash, until those proceedings are concluded.
- (7) For the purposes of paragraph (6)(b), proceedings against any person for an offence are concluded when –
- (a) the prosecution is discontinued;
 - (b) the jury, if any, is discharged without a finding and no further jury is empanelled;
 - (c) the person is acquitted of the offence;
 - (d) following the person's conviction, the time within which an application for leave to appeal, or an appeal, against the conviction expires (disregarding any power to grant an application after that time has expired); or
 - (e) following the person's conviction, his or her application for leave to appeal, or appeal, against the conviction is either withdrawn or

determined by a court from which there lies no further right of appeal.

PART 3

FORFEITURE OF TAINTED PROPERTY

10 Notice to be given of summary procedure

- (1) Where the conditions in paragraph (2) are fulfilled, a notice may be served in accordance with paragraph (4) by the Attorney General upon the holder of an account held at a bank in Jersey.
- (2) The conditions mentioned in paragraph (1) are that –
 - (a) the Attorney General has reasonable grounds to believe that property held in the bank account is tainted property;
 - (b) in relation to the bank account or any property in the bank account, a consent request has been made to an authorized officer;
 - (c) an authorized officer refused the consent requested; and
 - (d) notification of the refusal was given to the person making the request at least 12 months before the date on which the notice is to be served.
- (3) For the purposes of paragraph (2)(b), a “consent request” means a request –
 - (a) under Article 32 of the Proceeds of Crime (Jersey) Law 1999, for consent to do any act or to deal with property held in the bank account in any way which would, apart from paragraph (3) of that Article, amount to the commission of an offence under Article 30 or 31 of that Law; or
 - (b) under Article 18 of the Terrorism (Jersey) Law 2002, for consent to do anything which would, apart from paragraph (1) of that Article, amount to the commission of an offence under Article 15 or 16 of that Law,made by a person making a disclosure in accordance with either of those Articles.
- (4) A notice under this Article shall be a notice by way of representation and shall –
 - (a) state the name of the holder of the bank account to whom it is addressed;
 - (b) specify the details of the bank account and of the property or part of the property in the bank account which in the opinion of the Attorney General is tainted property;
 - (c) state a date on which, and a place and time at which, the holder of the bank account is required to attend a hearing of the Court to show cause why the property so specified is not tainted property and should not be forfeited; and
 - (d) be served on –

-
- (i) the holder of the bank account, and
 - (ii) the bank at which the account in question is held,

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

11 Forfeiture of tainted property: summary procedure

- (1) If the person on whom a notice under Article 10(4)(d)(i) is served (the “respondent”) fails to attend the hearing as required by the notice, the Attorney General may apply forthwith for a forfeiture order, and the Court may make such an order, without further notice to the respondent.
- (2) If the respondent appears (whether in person or by a legal representative) at the hearing, the respondent may –
 - (a) at the hearing, satisfy the Court that the property is not tainted property; or
 - (b) request that the question of whether or not the property is tainted property be determined at such later date as the Court may order.
- (3) If the respondent makes a request under paragraph (2)(b), the respondent must provide an affidavit in answer to the notice within the period of 21 days beginning with the date on which the matter is placed on the list, satisfying the Court that the property is not tainted property.
- (4) Unless the respondent satisfies the Court that the property is not tainted property, the Court shall, upon the application of the Attorney General, make a forfeiture order in relation to the property specified in the notice or any part of it.
- (5) Property which is forfeited pursuant to a forfeiture order under this Article shall be paid into the Criminal Offences Confiscations Fund established under Article 24 of the Proceeds of Crime (Jersey) Law 1999.

12 Property restraint orders

- (1) Where, in any case other than one to which Article 10 applies, the Attorney General has reasonable grounds to believe that property held in any bank account is tainted property, the Attorney General may apply for an order under this Article (a “property restraint order”) prohibiting the withdrawal, transfer or payment out of the bank account of the property, or part of the property, as specified in the application.
- (2) An application under paragraph (1) shall be made *ex parte* to the Bailiff in Chambers.
- (3) Pursuant to an application under paragraph (1), and subject to Article 17, the Bailiff may make a property restraint order in relation to any property specified in the order if the Bailiff is satisfied that there are reasonable grounds to believe that the property in question is tainted property, and that either –
 - (a) the making of such an order is justified in all the circumstances and for a reasonable period whilst –

-
- (i) the origin or derivation of the property is further investigated, or
 - (ii) consideration is given to bringing proceedings in Jersey in respect of the property; or
 - (b) such proceedings have been commenced but not concluded.
- (4) In making a property restraint order the Bailiff may make such further provision and give all such directions as the Bailiff considers reasonable, including (but not limited to) –
- (a) directions relating to the management of or dealing with the property;
 - (b) provision as to the duration of the prohibition to be placed on the property by the order;
 - (c) directions as to service on, or the provision of notice to, persons affected by it; and
 - (d) directions prohibiting any specified person from dealing with any property –
 - (i) held by that person, whether such property is specified in the order or not, or
 - (ii) transferred to that person after the making of the order.
- (5) A property restraint order shall –
- (a) state the name of the holder of the bank account in relation to which it is made;
 - (b) specify the details of the bank account and of the property or part of the property in respect of which it is made;
 - (c) specify the date on which that property shall vest in the Viscount under Article 13; and
 - (d) specify any conditions upon which it is made and any directions given under paragraph (4).

13 Effect of property restraint order

- (1) Property which is specified in a property restraint order shall vest in the Viscount –
 - (a) from the date specified in the order; and
 - (b) in accordance with paragraph (3),and the Viscount shall take possession of and, in accordance with any directions given by the Court, manage or otherwise deal with that property.
- (2) The bank holding the account in question, or any other person specified in a property restraint order as having possession of the specified property, may be required by the order to give possession of the specified property to the Viscount.
- (3) Property vesting in the Viscount under this Article shall, to the extent that it is subject to any security interest, or to any right of set-off enjoyed by

the bank, continue to be so subject unless the Bailiff, being satisfied that –

- (a) such an interest or right was not obtained, given or created in good faith; or
- (b) for any other reason, it is appropriate in the interests of justice so to order,

orders otherwise.

- (4) Any interest accruing to a bank account in respect of property which is specified in a property restraint order shall also be subject to the order, and shall be added to the property upon forfeiture or release.
- (5) The Viscount shall be entitled to be remunerated, out of property vesting in him or her, for such fees and expenses as he or she may reasonably incur in the management of, or in otherwise dealing with, such property.

14 Discharge of property restraint order

- (1) A property restraint order in respect of any property shall be discharged upon the making of a forfeiture order in respect of the same property.
- (2) An application for the discharge or variation of a property restraint order may be made to the Bailiff in Chambers by any person affected by the order and the Bailiff may rule upon the application in accordance with paragraph (3) or, at the Bailiff's discretion, refer it to the Court for adjudication.
- (3) The Bailiff may not order the discharge of a property restraint order unless the Bailiff or, following a reference under paragraph (2), the Court is satisfied that the reasons for which the property restraint order was made under Article 12(3) no longer apply.
- (4) The Bailiff or, as the case may be, the Court may order the release of so much of the property in question as it considers appropriate to enable the applicant to meet legal expenses in connection with the application for variation or discharge.
- (5) An order for discharge or variation of a property restraint order may be made subject to such terms or upon such conditions as the Bailiff or, as the case may be, the Court may think fit.
- (6) Notice of an application under this Article shall be given to the Attorney General and to all other persons affected by the property restraint order.

15 Forfeiture of tainted property: general procedure

- (1) The Attorney General may apply to the Court for a forfeiture order to be made under paragraph (3) in relation to the whole or any part of property which is subject to a cash detention order or a property restraint order.
- (2) Upon making an application under paragraph (1), the Attorney General shall give notice of the application to all persons to whom notice of the cash detention order or the property restraint order, as the case may be, was given.

- (3) Unless the Court is satisfied, by the person against whom such an order is proposed to be made, that the property in question is not tainted property, the Court shall make an order for the forfeiture of the property.
- (4) The Court may order the release of so much of the property in question as it considers appropriate to enable the person against whom such an order is proposed to be made to meet legal expenses in connection with the application under paragraph (1).
- (5) A forfeiture order may be made subject to any security interest or to any right of set-off enjoyed by the bank in the property, unless the Court is satisfied that such an interest or right was not obtained, given or created in good faith.
- (6) A forfeiture order may be made whether or not proceedings are or are to be brought against any person for an offence with which the property in question is connected.
- (7) Cash or other movable property which is forfeited pursuant to a forfeiture order under this Article shall be paid into the Criminal Offences Confiscations Fund established under Article 24 of the Proceeds of Crime (Jersey) Law 1999.

16 Appeals against forfeiture orders

- (1) Any party (other than the Attorney General) to proceedings in which a forfeiture order is made (whether under Article 11 or Article 15) may appeal to the Court of Appeal against the making of the order.
- (2) On an appeal under paragraph (1) the Court of Appeal may order the release of so much of the property in question as it considers appropriate to enable the appellant to meet legal expenses in connection with the appeal.
- (3) Any person who is not a party to proceedings described in paragraph (1), but is affected by such proceedings, may appeal with the leave of the Court of Appeal against the making of a forfeiture order.
- (4) On hearing an appeal under this Article the Court of Appeal may make such order and give such directions as it considers appropriate.

17 Bankruptcy

- (1) Where a property restraint order specifies property of a person who is adjudged bankrupt by an order made after the property restraint order, no property of that person specified in the property restraint order or vested in the Viscount under Article 13 shall form part of that person's estate for the relevant bankruptcy proceedings.
- (2) The powers conferred on the Bailiff under Article 12 shall not be exercised in relation to –
 - (a) property which a person who has become bankrupt has placed under the control of the Court (*a remis entre les mains de la Justice*);
 - (b) property which has been declared *en désastre*;

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- (c) property of which a person who has become bankrupt has made a general cession (*a fait cession générale*); or
 - (d) property which has been adjudged renounced (*adjudgé renoncé*).
- (3) Paragraph (2) does not affect the application of Articles 13 or 15 in relation to property which was specified in a property restraint order made before the person mentioned in paragraph (2)(a) or (c) became bankrupt.

PART 4

INVESTIGATIVE ETC. POWERS

18 Civil forfeiture investigations

- (1) For the purposes of this Law, a “civil forfeiture investigation” is an investigation being conducted, in Jersey or elsewhere, into all or any of the matters listed in paragraph (2), with a view or in relation to –
- (a) proceedings being brought under this Law in connection with any property which is or is reasonably suspected of being tainted property;
 - (b) non-conviction based proceedings being brought –
 - (i) under legislation in force in any country or territory other than Jersey,
 - (ii) relating to the forfeiture of property in Jersey,
 - (iii) by a court of that other country or territory; or
 - (c) service of a process or document under Article 2 of the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007¹¹, where a request for such service has been received by the Attorney General as described in that Article.
- (2) The matters mentioned in paragraph (1) are –
- (a) the question of whether any property is tainted property;
 - (b) the identity, or suspected unlawful conduct, of any person who holds property which is suspected of being tainted property, or to whom such property belongs;
 - (c) the extent or whereabouts of such property.

19 Production orders

- (1) The Attorney General, or an authorized officer acting with the Attorney General’s consent, may, for the purposes of a civil forfeiture investigation, apply to the Bailiff for an order under this Article in relation to material specified in the application.
- (2) An application under paragraph (1) must –
- (a) be made in writing;
 - (b) state the grounds for believing that the material specified in the application is relevant to a civil forfeiture investigation; and

-
- (c) give details of that investigation, having regard to Article 18, including details of the property to which it relates.
- (3) If, on such an application, the Bailiff is satisfied that the conditions in paragraph (5) are fulfilled, the Bailiff may make an order (a “production order”) that the person who appears to be in possession of the material specified in the application shall –
- (a) produce the material to an authorized officer for the officer to take away; or
- (b) give an authorized officer access to the material and, if so required by the officer, permit him or her to make copies of it,
- within such period as the order may specify.
- (4) The period to be specified in a production order shall be 7 days, unless it appears to the Bailiff that a longer or shorter period would be appropriate in the particular circumstances of the application.
- (5) The conditions to which paragraph (3) refers are –
- (a) that there are reasonable grounds for suspecting that the material specified in the application is, forms part of, or relates to, tainted property;
- (b) that there are reasonable grounds for suspecting that the material so specified –
- (i) is likely to be of substantial value (whether by itself or together with other material) to the civil forfeiture investigation in relation to which the application is made, and
- (ii) does not consist of or include items subject to legal privilege or other excluded material; and
- (c) that there are reasonable grounds for believing that it is in the public interest that the material should be produced or that access to it should be given, having regard –
- (i) to the benefit likely to accrue to the investigation if the material is produced, and
- (ii) to the circumstances in which the person in possession of the material holds it.
- (6) Where by a production order an authorized officer is to be given access to material held in any premises, the Bailiff may further, on the application of the Attorney General or an authorized officer order any person who appears to the Bailiff to be entitled to grant entry to those premises, to allow such an officer to enter the premises and obtain access to the material.
- (7) An application under paragraph (1) or (6) may be made *ex parte* to the Bailiff in chambers.
- (8) A person who, without reasonable excuse, fails to comply with a production order is guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

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- (9) An application for the discharge or variation of a production order may be made to the Bailiff in chambers, and the Bailiff may rule upon the application or may, at the Bailiff's discretion, refer it to the Court for adjudication.
- (10) Where the material to which an application under paragraph (1) or (6) relates consists of information contained in a computer –
- (a) an order under paragraph (3)(a) to produce material to an authorized officer for the officer to take away shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order under paragraph (3)(b) giving an authorized officer access to material shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (11) A production order –
- (a) shall not confer any right to production of, or access to, items subject to legal privilege or other excluded material;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any enactment or contract or otherwise; and
 - (c) may be made in relation to property in the possession of a department of the States of Jersey.
- (12) In paragraphs (5)(b)(ii) and (11)(a), "excluded material" has the meaning given by Article 6 of the Police Procedures and Criminal Evidence (Jersey) Law 2003¹².

20 Authority for search

- (1) The Attorney General or an authorized officer may, for the purposes of a civil forfeiture investigation, apply to the Bailiff for a warrant under this Article in relation to premises specified in the application.
- (2) An application under this Article must –
- (a) be made in writing;
 - (b) state the grounds for believing that material specified in the application is relevant to a civil forfeiture investigation; and
 - (c) give details of that investigation, having regard to Article 18, including details of the property to which it relates.
- (3) An application by an authorized officer for a warrant under this Article may only be made with the consent of the Attorney General.
- (4) On such an application, the Bailiff may issue a warrant authorizing the officer together with any other person named in the warrant to enter (if necessary by force) and search the premises, if the Bailiff is satisfied that –
- (a) an order under Article 19 in relation to the specified material has not been complied with; or
 - (b) the conditions in either –
 - (i) paragraph (4), or

-
- (ii) paragraph (5),
are fulfilled.
 - (4) The conditions to which paragraph (3)(b)(i) refers are –
 - (a) that the conditions in Article 19(5) are fulfilled in relation to material on the specified premises; and
 - (b) that it would not be appropriate to make an order under Article 19 in relation to the material, because –
 - (i) it is not practicable to communicate with any person entitled to produce the material,
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entry to the specified premises on which the material is to be found, or
 - (iii) the civil forfeiture investigation might be seriously prejudiced unless an authorized officer could secure immediate access to the property.
 - (5) The conditions to which paragraph (3)(b)(ii) refers are –
 - (a) that there are reasonable grounds for suspecting that there is, on the specified premises, such material relating to the tainted property, or to the question as to whether or not the specified property is tainted property, as –
 - (i) is (whether by itself or together with other material) likely to be of substantial value to the civil forfeiture investigation, but
 - (ii) cannot at the time of the application be further particularized; and
 - (b) that –
 - (i) it is not practicable to communicate with any person entitled to grant access to the material or entry to the specified premises,
 - (ii) entry to the premises will not be granted unless a warrant is produced, or
 - (iii) the civil forfeiture investigation might be seriously prejudiced unless an authorized officer arriving at the premises could secure immediate entry to them.
 - (6) Where an authorized officer has entered premises in the execution of a warrant issued under this Article, the officer may seize and retain any material (other than items subject to legal privilege) which is likely to be of substantial value (whether by itself or together with other material) to the civil forfeiture investigation.

21 Customer information

- (1) For the purposes of this Law “customer information” means (subject to Regulations made under paragraph (3)) –

-
- (a) information as to whether a business relationship exists or has existed between a bank and a particular person (and where such a relationship exists or has existed, such a person is a “customer” of the bank);
 - (b) a customer’s –
 - (i) account number,
 - (ii) full name,
 - (iii) date of birth,
 - (iv) address or former address;
 - (c) the date on which a business relationship between a bank and a customer begins or ends;
 - (d) any evidence of a customer’s identity obtained by a bank in pursuance of or for the purposes of any legislation relating to money laundering;
 - (e) any evidence otherwise within the knowledge of a bank as to the source of any of a customer’s funds held by that bank;
 - (f) the identity of any person sharing an account with a customer.
- (2) In paragraph (1) –
- “business relationship” means a business, professional or commercial relationship between a bank and a customer where that relationship is expected by the bank, at the time when contact is established, to have an element of duration; and
- “money laundering” has the same meaning as given by Article 1(1) of the Proceeds of Crime (Jersey) Law 1999.
- (3) The States may by Regulations –
- (a) provide for a class of information to be customer information, or to cease to be customer information; and
 - (b) extend the meaning of the expression “business relationship”,
- for the purposes of this Law.

22 Orders to provide customer information

- (1) The Attorney General or an authorized officer may, for the purposes of a civil forfeiture investigation, apply to the Bailiff for an order under this Article requiring a bank to provide customer information.
- (2) An application under this Article must –
 - (a) be made in writing;
 - (b) state that property specified in the application is subject to a civil forfeiture investigation, and give details of that investigation, having regard to Article 18;
 - (c) state that –
 - (i) a person specified in the application appears to hold all or a part of the property, or

-
- (ii) all or a part of the property appears to belong to such a person;
 - (d) specify the bank against which the order is sought (and an application may specify all banks, a particular description or descriptions of bank, or a particular bank or banks); and
 - (e) specify the customer information sought.
 - (3) An application by an authorized officer for an order under this Article may only be made with the consent of the Attorney General.
 - (4) On an application under this Article, the Bailiff may make an order (a “customer information order”) requiring the bank to provide the customer information in accordance with paragraph (5), if the Bailiff is satisfied that –
 - (a) there are reasonable grounds for suspecting that the specified property is tainted property;
 - (b) there are reasonable grounds for suspecting that the customer information sought by the application is (whether by itself or together with other material) likely to be of substantial value to the civil forfeiture investigation; and
 - (c) it is in the public interest for such customer information to be provided, having regard to the benefit likely to accrue to the investigation and to the circumstances in which the bank in possession of the information holds it.
 - (5) The bank against which a customer information order is made shall provide the customer information –
 - (a) in such manner and within such time as the order may specify; and
 - (b) notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any enactment or contract or otherwise.
 - (6) A person failing to comply with a requirement imposed by a customer information order shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine, but it shall be a defence for a person charged with an offence under this Article to prove that –
 - (a) the customer information was not in the person’s possession; or
 - (b) it was not reasonably practicable for the person to comply with the order.
 - (7) An application for the discharge or variation of a customer information order may be made to the Bailiff in chambers, and the Bailiff may rule upon the application or may, at the Bailiff’s discretion, refer it to the Court for adjudication.
 - (8) Customer information provided by a bank pursuant to a customer information order shall not be admissible as evidence in criminal proceedings against the bank or any of its employees, except –
 - (a) in proceedings for an offence under paragraph (6) or for contempt of court;
 - (b) in proceedings for or in respect of a confiscation order; or

- (c) subject to paragraph (9), where in any prosecution, in evidence given on the part of the bank a statement is made which is inconsistent with a statement made pursuant to an account monitoring order.
- (9) A statement may not be used as evidence against a bank by virtue of paragraph (8)(c) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of the bank in the proceedings arising out of the prosecution.

23 Account monitoring orders

- (1) The Attorney General or an authorized officer may, for the purposes of a civil forfeiture investigation, apply to the Bailiff for an account monitoring order under this Article.
- (2) An application under this Article must –
 - (a) be made in writing;
 - (b) state that property specified in the application is subject to a civil forfeiture investigation and give details of the investigation, having regard to Article 18;
 - (c) state that a person specified in the application appears to hold all or a part of the property, or all or a part of the property appears to belong to such a person;
 - (d) specify the bank against which the order is sought (and an application may specify all banks, a particular description or descriptions of bank, or a particular bank or banks); and
 - (e) state that the order is sought against the specified bank in relation to information which –
 - (i) relates to an account or accounts held with the bank by the person specified in the application (whether solely or jointly with another), and
 - (ii) is of a description specified in the order.
- (3) The application must further specify that the information sought is information relating to –
 - (a) all accounts that the specified person holds with the specified bank;
 - (b) a particular description or descriptions of accounts so held; or
 - (c) a particular account or accounts so held.
- (4) An application by an authorized officer for an order under this Article may only be made with the consent of the Attorney General.
- (5) On an application under this Article, the Bailiff may make an order requiring the bank to provide the information sought by the application in accordance with paragraph (6) (an “account monitoring order”), if the Bailiff is satisfied that –
 - (a) there are reasonable grounds for suspecting that the specified property is tainted property;
 - (b) there are reasonable grounds for suspecting that the information sought by the application is (whether by itself or together with

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- other material) likely to be of substantial value to the civil forfeiture investigation; and
- (c) it is in the public interest for such information to be provided, having regard to the benefit likely to accrue to the investigation and to the circumstances in which the bank in possession of the information holds it.
- (6) An account monitoring order is an order that the specified bank must –
- (a) for the period specified in the order;
- (b) in the manner so specified; and
- (c) at or by a time so specified and at a place so specified,
- provide information of the specified description to a police officer named in the order.
- (7) A person failing to comply with a requirement imposed by an account monitoring order shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine, but it shall be a defence for a person charged with an offence under this Article to prove that –
- (a) the information sought was not in the person’s possession; or
- (b) it was not reasonably practicable for the person to comply with the order.
- (8) An application for the discharge or variation of an account monitoring order may be made to the Bailiff in chambers, and the Bailiff may rule upon the application or may, at the Bailiff’s discretion, refer it to the Court for adjudication.
- (9) An account monitoring order –
- (a) shall not confer any right to production of, or access to, items subject to legal privilege or other excluded material;
- (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any enactment or contract or otherwise; and
- (c) may be made in relation to property in the possession of a department of the States of Jersey,
- and in paragraph (a), “excluded material” has the meaning given by Article 6 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.
- (10) A statement made by a bank pursuant to an account monitoring order shall not be admissible as evidence in criminal proceedings against the bank or any of its employees, except –
- (a) in proceedings for an offence under paragraph (7) or for contempt of court;
- (b) in proceedings for or in respect of a confiscation order; or
- (c) subject to paragraph (11), where in any prosecution, in evidence given on the part of the bank a statement is made which is inconsistent with the statement made pursuant to the account monitoring order.

- (11) A statement may not be used as evidence against a bank by virtue of paragraph (10)(c) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of the bank in the proceedings arising out of the prosecution.

24 Disclosure orders

- (1) The Attorney General or an authorized officer may, for the purposes of a civil forfeiture investigation, apply to the Bailiff for a disclosure order under this Article.
- (2) An application under this Article must –
- (a) be made in writing;
 - (b) state that property specified in the application is subject to a civil forfeiture investigation and give details of the nature of the investigation, having regard to Article 18; and
 - (c) state that a person specified in the application appears to hold information (whether or not contained in a document) which the Attorney General or authorized officer considers to be relevant to the investigation (“relevant information”).
- (3) An application under this Article –
- (a) may not be made by an authorized officer except with the consent of the Attorney General; and
 - (b) may be made *ex parte* to the Bailiff in chambers.
- (4) On an application under this Article, the Bailiff may make a disclosure order in accordance with paragraph (5), if the Bailiff is satisfied that –
- (a) there are reasonable grounds for suspecting that the specified property is tainted property;
 - (b) there are reasonable grounds for suspecting that the relevant information sought by the application is (whether by itself or together with other information) likely to be of substantial value to the civil forfeiture investigation; and
 - (c) it is in the public interest for the relevant information to be provided, having regard to the benefit likely to accrue to the investigation and to the circumstances in which the person in possession of the relevant information holds it.
- (5) A disclosure order is an order authorizing the Attorney General or an authorized officer to give notice in writing –
- (a) to any person considered to hold relevant information;
 - (b) requiring that person, in respect of any matter relevant to the civil forfeiture investigation, to do all or any of the following –
 - (i) to answer questions, at or by a time specified in the notice or at once, and at a place so specified,
 - (ii) to provide information, or information of a class or description, specified (so far as possible) in the notice, at or by a time and in a manner specified in the notice,

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- (iii) 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.
- (6) A disclosure order may be made –
- (a) whether or not notice of the application has been given to any person other than the person required to comply with the notice under paragraph (5); and
 - (b) subject to such further terms and conditions as the Bailiff thinks fit.
- (7) A person failing without reasonable excuse to comply with a requirement imposed by or under a disclosure order shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine, but it shall be a defence for a person charged with an offence under this Article to prove that –
- (a) the relevant information sought was not in the person’s possession; or
 - (b) it was not reasonably practicable for the person to comply with the order.
- (8) An application for the discharge or variation of a disclosure order may be made to the Bailiff in chambers, and the Bailiff may rule upon the application or may, at the Bailiff’s discretion, refer it to the Court for adjudication.
- (9) A disclosure order –
- (a) shall not confer any right to production of, or access to, items subject to legal privilege or other excluded material;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any enactment or contract or otherwise; and
 - (c) may be made in relation to property in the possession of a department of the States of Jersey,
- and in paragraph (a), “excluded material” has the meaning given by Article 6 of the Police Procedures and Criminal Evidence (Jersey) Law 2003.
- (10) A statement made by a person pursuant to a disclosure order shall not be admissible as evidence in criminal proceedings against a bank or any of its employees, except –
- (a) in proceedings for an offence under paragraph (7) or for contempt of court;
 - (b) in proceedings for or in respect of a confiscation order; or
 - (c) subject to paragraph (11), where in any prosecution, in evidence given on the part of the person a statement is made which is inconsistent with the relevant information given pursuant to the disclosure order.
- (11) A statement may not be used as evidence against a person by virtue of paragraph (10)(c) unless evidence relating to it is adduced, or a question

relating to it is asked, by or on behalf of the person in the proceedings arising out of the prosecution.

25 Copying and retention of documents

- (1) The Attorney General and any other person authorized for the purpose by a production order under Article 19, a search warrant under Article 20 or a disclosure order may take copies of any documents which are produced, or to which access is given, in compliance with a requirement in the order or warrant (as the case may be).
- (2) Original documents so produced may be retained for so long as it is necessary to retain them in connection with the civil forfeiture investigation for the purposes of which the order was made or the warrant was given.
- (3) Notwithstanding paragraph (2), if the Attorney General has reasonable grounds for believing that a document –
 - (a) may need to be produced for the purposes of any legal proceedings; and
 - (b) might otherwise be unavailable for those purposes,the document may be retained until the proceedings are concluded.

PART 5

GENERAL PROVISIONS

26 Nature of proceedings, and rules of court

- (1) Proceedings under –
 - (a) Parts 2 to 4 of this Law (except under Article 19(8), 22(6), 23(7) or 24(7)); and
 - (b) Article 27,are civil proceedings and any issue in such proceedings shall be determined on the balance of probabilities.
- (2) The power to make Rules of Court under the Royal Court (Jersey) Law 1948¹³ shall include a power to make Rules for the purposes of this Law and proceedings under this Law.

27 Release of restrained etc. property

- (1) A person who claims that any property (other than cash) detained, seized or otherwise restrained under this Law (including, for the purposes of this Article, any part of such property) lawfully belongs to him or her may apply for that property to be released to him or her.
- (2) The application may be made in the course of proceedings under Part 3 or 4 or at any other time before the property in question is forfeited pursuant to a forfeiture order.

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- (3) An application in the course of proceedings under Article 11 or 12 may be made to the Bailiff or to the Court, and where such an application is made to the Bailiff the Bailiff may rule upon the application or may, at the Bailiff's discretion, refer it to the Court for adjudication.
 - (4) An application made otherwise than in the course of proceedings under Article 11 or 12 shall be made to the Court.
 - (5) If it appears to the Bailiff or Court that –
 - (a) the property lawfully belongs to the applicant;
 - (b) the applicant was deprived of the property by unlawful conduct; and
 - (c) immediately before the applicant was deprived of it, the property –
 - (i) was not property obtained by or in return for unlawful conduct, and
 - (ii) did not represent cash or property so obtained,

the Bailiff or Court may order the property to be released to the applicant (and, where the application is made in the course of proceedings under Article 11 or 15, shall do so instead of making a forfeiture order).

28 Limitation of liability of Viscount

- (1) Where the Viscount, or any officer of the Viscount's department –
 - (a) takes any action in relation to property that is not tainted property, being action that the Viscount would be entitled to take if it were such property; and
 - (b) believes and has reasonable grounds for believing that such action may lawfully be taken,

the Viscount shall not be liable to any person in respect of any loss or damage sustained resulting from the action taken.

- (2) Paragraph (1) does not apply –
 - (a) if it is shown that the action was done in bad faith; or
 - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000¹⁴.

29 Limitation of liability of Attorney General

- (1) Paragraph (2) applies to –
 - (a) the Attorney General; and
 - (b) a person who is or is acting as an officer, employee or agent of the Attorney General.
- (2) A person to whom this paragraph applies is not liable in damages for any act done in the discharge, or purported discharge, of the functions of the Attorney General under this Law.
- (3) Paragraph (2) does not apply –

- (a) if it is shown that the act was done in bad faith; or
 - (b) so as to prevent an award of damages made in respect of an act on the ground that the act was unlawful as a result of Article 7(1) of the Human Rights (Jersey) Law 2000.
- (4) The Attorney General shall not be liable in costs for any proceedings under this Law, except where it is shown that the proceedings were commenced, or (having been lawfully commenced) were continued, in bad faith.

30 Compensation where bad faith proven

- (1) Where it is shown that any act done –
- (a) in the discharge, or purported discharge, of the functions of the Viscount or the Attorney General under this Law; or
 - (b) in respect of any property restrained, seized or otherwise detained under this Law,
- was done in bad faith, the person to whom the property belongs may make an application to the Court for compensation.
- (2) The Court may, after receiving an application under paragraph (1), order compensation to be paid to the applicant if –
- (a) the Court is satisfied that the person has suffered loss as a result of the detention of the property under this Law; and
 - (b) having regard to all the circumstances the Court considers it appropriate to make such an order.
- (3) The amount of compensation which the Court may order to be paid under this Article shall be the amount the Court thinks reasonable having regard to –
- (a) the loss suffered;
 - (b) the amount of any interest already paid under this Law; and
 - (c) any other relevant circumstances.
- (4) Compensation ordered to be paid under this Article shall be paid by the States.
- (5) If a forfeiture order is made in respect only of a part of property detained under this Law, this Article has effect in relation to the other part of that property.
- (6) A person to whom cash detained under Article 6 or 7 belongs may not make an application under this Article if an order for the release of all or part of the cash has been made under Article 9.

31 Offence of obstruction

A person who, without reasonable excuse, obstructs the Attorney General, the Viscount or an authorized officer in the lawful exercise of powers conferred by this Law shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.

32 Offence of tipping off or interference with documents etc.

- (1) Where a person knows or suspects that the Attorney General or an authorized officer is acting or proposing to act in connection with a civil forfeiture investigation that is being or is about to be conducted, it is an offence for the person –
 - (a) to disclose to another person any information relating to the investigation; or
 - (b) to interfere with material which is likely to be relevant to the investigation.
- (2) For the purposes of this Article, interference with material includes falsifying, concealing, destroying or disposing of the material or part of it.
- (3) Paragraph (1)(a) does not apply to a disclosure which –
 - (a) is made by a professional legal adviser –
 - (i) to a client, or to the client's representative, in connection with the provision of legal advice to the client, or
 - (ii) to any person for the purpose of actual or contemplated legal proceedings;
 - (b) is made by a person who is the client of a professional legal adviser to that adviser, for either of the purposes mentioned in subparagraph (a)(i) or (ii); or
 - (c) is made by a person who is the client of an accountant for the purpose of enabling him or her to provide any of the services listed in paragraph 2(1) of Part B of Schedule 2 to the Proceeds of Crime (Jersey) Law 1999.
- (4) The States may by Regulations specify further cases in which a disclosure or interference to which paragraph (1) would otherwise apply shall not amount to the commission of an offence.
- (5) A person shall not be guilty of an offence under this Article in respect of anything done by the person in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of criminal conduct.
- (6) A person guilty of an offence under this Article is liable to imprisonment for a term of 5 years and to a fine.
- (7) A prosecution for an offence under this Article may only be initiated with the consent of the Attorney General.

33 Liability of directors etc.

- (1) Where an offence under this Law, committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate, is proved to have been committed with the consent or connivance of –

- (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,
- the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for the offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

34 Consent to settlement

- (1) On an application made by the Attorney General for the purpose, and if the condition in paragraph (2) is fulfilled, the Court may make an order in any proceedings under Article 11, 12 or 15, on terms agreed between the Attorney General and other parties to the proceedings, for the disposal of the proceedings.
- (2) The condition mentioned in paragraph (1) is that each person to whose property the proceedings and the agreement relate is a party both to the proceedings and to the agreement.
- (3) An order under paragraph (1) may –
- (a) in particular, and without derogation from the Court's discretion, make provision for any property –
 - (i) which may be liable to forfeiture under this Law, to cease to be so liable, or
 - (ii) to be returned to a person to whom it belongs; and
 - (b) make such further provision as the Court may think fit.

35 Civil Asset Recovery (International Co-operation) (Jersey) Law amended

In Article 1(1) of the Civil Asset Recovery (International Co-operation) (Jersey) Law 2007¹⁵, for the definition "property" there shall be substituted the following definition –

“ ‘property’ means all property, whether vested or contingent, and whether in Jersey or elsewhere, including –

- (a) any legal document or instrument evidencing title to or interest in immovable property;
- (b) any interest in or power in respect of immovable property;
- (c) in relation to movable property, any right, including a right to possession;”.

36 Repeal

The Proceeds of Crime (Cash Seizure) (Jersey) Law 2008¹⁶ (the “Cash Seizure Law”) is repealed.

37 Citation and commencement

This Law may be cited as the Forfeiture of Assets (Civil Proceedings) (Jersey) Law 201- and shall come into force one month after the day on which it is registered.

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- 1 *chapter 08.780.65*
 - 2 *chapter 13.075*
 - 3 *chapter 08.780*
 - 4 *chapter 24.660*
 - 5 *chapter 21.700*
 - 6 *L.23/2017*
 - 7 *chapter 15.560*
 - 8 *chapter 08.200*
 - 9 *chapter 08.780*
 - 10 *chapter 17.860*
 - 11 *chapter 17.145*
 - 12 *chapter 23.750*
 - 13 *chapter 07.770*
 - 14 *chapter 15.350*
 - 15 *chapter 17.145*
 - 16 *L.11/2008 (chapter 08.770)*