

# STATES OF JERSEY



## **DRAFT DRUG TRAFFICKING OFFENCES (ENFORCEMENT OF CONFISCATION ORDERS) (JERSEY) REGULATIONS 200**

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**Lodged au Greffe on 29th May 2008  
by the Minister for Treasury and Resources**

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**STATES GREFFE**





Jersey

## DRAFT DRUG TRAFFICKING OFFENCES (ENFORCEMENT OF CONFISCATION ORDERS) (JERSEY) REGULATIONS 200

### REPORT

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1. In October and November of this year the Island's framework to counter money laundering and terrorist financing is to be the subject of a review by the International Monetary Fund. Jersey will be assessed against the international standards set by the Financial Action Task Force on Money Laundering ("FATF"). In order to implement a number of criteria set out in the 40 Recommendations and 9 Special Recommendations of the FATF, against which Jersey will be assessed, a number of amendments were proposed and passed by the States of Jersey last year in respect of the Proceeds of Crime (Jersey) Law 1999, ("POCL") the Drug Trafficking Offences (Jersey) Law 1988 ("DTOL"), the Terrorism (Jersey) Law 2002 ("TL") and the Criminal Justice (International Co-operation) (Jersey) Law 2001 ("CJICL"). These amendments are now in force.
  2. One of the amendments passed in respect of each of the laws referred to above sought to implement Recommendation 38, which requires countries to have appropriate laws and procedures in place to provide an effective and timely response to mutual legal assistance. Mutual legal assistance is the formal way in which countries request and provide assistance in obtaining evidence located in one country to assist in criminal investigations or proceedings in another country.
  3. Prior to the amendment of the POCL, DTOL, TL and CJICL the provision of assistance to another jurisdiction to enable the enforcement of an external confiscation order under the POCL and DTOL, or an external restraint or forfeiture order under the TL, or the enforcement of an overseas forfeiture order under the CJICL was dependant on that jurisdiction being listed as a designated country or territory to whom assistance could be given. There was concern that Jersey would be criticised for not providing "*effective*" mutual legal assistance because the list of designated countries had not been kept up to date in recent years. Instead of updating the list of countries and territories (contained in Regulations issued under the various Laws), the better solution was considered to be that the list of countries and territories should be abandoned and that assistance should be offered on a case by case basis. This was the approach adopted in the amendments to the various Laws, which are now in force.
  4. Article 39 of the DTOL has been amended so that external confiscation orders from any jurisdiction are capable of being registered by the Royal Court.
  5. Article 39(4) previously provided that the Royal Court could only register an external confiscation order or the application by or on behalf of the Government of a designated country if –
    - (a) it was satisfied that at the time of registration the order was in force and not subject to appeal;
    - (b) it was satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable him or her to defend them; and
    - (c) it was of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
  6. An "external confiscation order" was defined by Article 39(2) to mean an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value. Countries were designated by Regulations (in accordance with Article 39(1)).

7. Article 39(5) of the DTOL now provides that the Royal Court may, on an application by or on behalf of a country outside Jersey, register an external confiscation order made in that country if –
  - (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
  - (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable him or her to defend them; and
  - (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
8. 'External confiscation order' is now defined by Article 39(4) to mean an order made by a court in a country or territory outside Jersey for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value.
9. As explained, the enforcement in Jersey of external confiscation orders under the DTOL is no longer conditional on countries or territories being designated. However, the designated countries and territories remain listed in the Regulations made under the DTOL. Instead of amending the existing Regulations, it has been decided, in the interests of clarity, that the current Regulations should be repealed and replaced.
10. These draft Regulations would replace the current Drug Trafficking Offences (Designated Countries and Territories) (Jersey) Regulations 1997 with provisions which are substantially the same as those contained in the current Regulations except that: (i) the references to designated countries and territories are removed and (ii) references to any provisions which have been repealed as a result of the changes to the primary legislation have been altered.

#### **Financial/Manpower Implications**

These Regulations have no financial or manpower resource implications for the States.

## Explanatory Note

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These Regulations replace the Drug Trafficking Offences (Designated Countries and Territories) (Jersey) Regulations 1997. The principal change made in them is to enable the Royal Court to register confiscation orders made in any country or territory outside Jersey, rather than only those orders made in countries or territories designated in Regulations. A “confiscation order” is an order for the recovery of payments or other rewards received in connection with drug trafficking. An “external confiscation order” is one made by a country or territory outside Jersey.

### *Interpretation*

*Regulation 1* defines expressions.

### *Enforcement in Jersey of external confiscation order*

*Regulation 2* applies the Drug Trafficking Offences (Jersey) Law 1998 (the “Law”), with modifications, to external confiscation orders and to proceedings in other jurisdictions which may result in an external confiscation order. *Regulation 2* gives effect to *Schedule 1*, in which the modifications are set out, and *Schedule 2*, which reproduces the Law as modified in its application under this Regulation.

*Regulation 3* describes the nature of proof required to establish the authenticity of an order or judgment made in a country or territory outside Jersey, or a copy.

*Regulation 4* describes the information that may be admissible in evidence in proceedings in Jersey if contained in a certificate purporting to be issued by the appropriate authority of a country or territory outside Jersey. It is for the Royal Court to determine who is the appropriate authority in any case.

*Regulation 5* describes information that may be admissible in evidence in proceedings in Jersey if contained in a certificate made by the Attorney General.

*Regulation 6* provides that an application for registration of an external confiscation order is made by or on behalf of the Attorney General, representing the country or territory outside Jersey.

### *Enforcement outside Jersey of confiscation order made in Jersey*

*Regulation 7* provides that the amount due on a confiscation order made in Jersey shall be reduced by the value of any property recovered in another country or territory, following a request for assistance by the Attorney General. It also makes provision as to the admissibility of evidence regarding property recovered in another country or territory.

### *Miscellaneous and closing*

*Regulation 8* applies to confiscation orders made in Jersey and to external confiscation orders. It makes provision as to the exchange rate to be used when determining the value of recovered property which is expressed in a value other than sterling.

*Regulation 9* revokes the Drug Trafficking Offences (Designated Countries and Territories) (Jersey) Regulations 1997.

*Regulation 10* is the citation and commencement provision.

*Schedule 1* modifies the Law in its application to external confiscation orders. For ease of reference, the Law as modified is set out in *Schedule 2*.





Jersey

# DRAFT DRUG TRAFFICKING OFFENCES (ENFORCEMENT OF CONFISCATION ORDERS) (JERSEY) REGULATIONS 200

## Arrangement

### Regulation

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	<i>Interpretation</i>
<u>1</u>	<u>Interpretation</u>
	<i>Enforcement in Jersey of external confiscation order</i>
<u>2</u>	<u>Application of Law to external confiscation orders</u>
<u>3</u>	<u>Proof of orders and judgments of court of a country or territory outside Jersey</u>
<u>4</u>	<u>Evidence in relation to proceedings and orders in a country or territory outside Jersey</u>
<u>5</u>	<u>Certificate as to appropriate authority of a country or territory outside Jersey</u>
<u>6</u>	<u>Representation of government of a country or territory outside Jersey</u>
	<i>Enforcement outside Jersey of confiscation order made in Jersey</i>
<u>7</u>	<u>Satisfaction of confiscation order in a country or territory outside Jersey</u>
	<i>Miscellaneous and closing</i>
<u>8</u>	<u>Currency conversion</u>
<u>9</u>	<u>Revocation</u>
<u>10</u>	<u>Citation and commencement</u>

### SCHEDULE 1

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#### MODIFICATION OF THE DRUG TRAFFICKING OFFENCES (JERSEY) LAW 1988 IN ITS APPLICATION TO EXTERNAL CONFISCATION ORDERS

<u>1</u>	<u>Article 1 amended</u>
<u>2</u>	<u>Article 2 amended</u>
<u>3</u>	<u>Article 3 substituted</u>
<u>4</u>	<u>Articles 4 to 14 omitted</u>
<u>5</u>	<u>Article 15 amended</u>
<u>6</u>	<u>Article 16 amended</u>
<u>7</u>	<u>Article 17 substituted</u>
<u>8</u>	<u>Articles 18 and 19 omitted</u>
<u>9</u>	<u>Article 20 amended</u>
<u>10</u>	<u>Article 21 omitted</u>
<u>11</u>	<u>Article 24 amended</u>
<u>12</u>	<u>Articles 25 to 38 omitted</u>
<u>13</u>	<u>Article 39 amended</u>
<u>14</u>	<u>Articles 40 to 48, 50 and Schedules omitted</u>

### SCHEDULE 2

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#### DRUG TRAFFICKING OFFENCES (JERSEY) LAW 1988 AS MODIFIED IN ITS APPLICATION TO

## EXTERNAL CONFISCATION ORDERS

<u>1</u>	<u>Interpretation</u>
<u>2</u>	<u>Definition of principal terms used</u>
<u>[3</u>	<u>External confiscation orders</u>
<u>15</u>	<u>Cases in which <i>saisies judiciaires</i> may be made</u>
<u>16</u>	<u><i>Saisies judiciaires</i></u>
<u>[17</u>	<u>Realisation of property</u>
<u>20</u>	<u>Application of proceeds of realisation and other sums</u>
<u>22</u>	<u>Bankruptcy of defendant, etc.</u>
<u>23</u>	<u>Viscount: exclusion of liability</u>
<u>24</u>	<u>Drug Trafficking Confiscations Fund</u>
<u>39</u>	<u>Enforcement of * * * external confiscation orders</u>
<u>49</u>	<u>Rules of Court</u>







Jersey

# DRAFT DRUG TRAFFICKING OFFENCES (ENFORCEMENT OF CONFISCATION ORDERS) (JERSEY) REGULATIONS 200

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of Article 39 of the Drug Trafficking Offences (Jersey) Law 1988<sup>[1]</sup>, have made the following Regulations –

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## *Interpretation*

### **1 Interpretation**

In these Regulations unless the context otherwise requires –

“appropriate authority of a country or territory outside Jersey” means the authority appearing to the Court to be the appropriate authority of that country for the purposes of the Law;

“court of a country or territory outside Jersey” includes a court of any state of a country or territory outside Jersey;

“Law” means the Drug Trafficking Offences (Jersey) Law 1988<sup>[2]</sup> and, in Regulations 3 to 6 and 8 (2), that Law as modified by these Regulations.

## *Enforcement in Jersey of external confiscation order*

### **2 Application of Law to external confiscation orders**

- (1) In relation to a country or territory outside Jersey, the Law shall apply, subject to the modifications set out in Schedule 1, to –
  - (a) external confiscation orders; and
  - (b) proceedings which have been or are to be instituted in a country or territory outside Jersey and which may result in an external confiscation order being made there.
- (2) Schedule 2 has effect to reproduce the Law as modified by Schedule 1.

### **3 Proof of orders and judgments of court of a country or territory outside Jersey**

- (1) For the purposes of the Law –
  - (a) any order made or judgment given by a court of a country or territory outside Jersey purporting to bear the seal of the court or to be signed by any person in his or her capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or, as the case may be, to have been signed by that person; and

(b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court of a country or territory outside Jersey shall be deemed without further proof to be a true copy.

(2) A document purporting to be a copy of any order made or judgment given by a court of a country or territory outside Jersey is duly authenticated for the purpose of paragraph (1)(b) if it purports to be certified by any person in his or her capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of the country or territory outside Jersey.

#### **4 Evidence in relation to proceedings and orders in a country or territory outside Jersey**

(1) For the purposes of the Law, a certificate purporting to be issued by or on behalf of the appropriate authority of a country or territory outside Jersey stating –

(a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;

(b) in a case to which paragraph (5) of Article 1 of the Law applies, that the defendant has been notified as specified in sub-paragraph (a) of that paragraph;

(c) that an external confiscation order is in force there and is not subject to appeal;

(d) that all or a certain amount of the sum payable under an external confiscation order made there remains unpaid, or that other property recoverable under an external confiscation order made there remains unrecovered;

(e) that any person has been notified of any proceedings in accordance with the law of that country or territory; or

(f) that an order (however described) made or to be made by a court of that country or territory has the purpose, or as the case may be, will have the purpose, of recovering payments or other rewards received in connection with drug trafficking or their value,

shall, in any proceedings in the Court, be admissible as evidence of the facts so stated.

(2) In any such proceedings a statement contained in a document, duly authenticated, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarise evidence given in proceedings in a court of a country or territory outside Jersey, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of paragraph (2) if it purports to be certified–

(a) by any person in his or her capacity as a judge, magistrate or officer of the court of the country or territory outside Jersey; or

(b) by or on behalf of the appropriate authority of the country or territory outside Jersey,

to have been received in evidence or to be a copy of a document so received, or, as the case may be, to be the original document containing or summarising the evidence or a true copy of that document.

(4) Nothing in this Regulation shall prejudice the admission of any evidence, whether contained in any document or otherwise, which is admissible apart from this Regulation.

#### **5 Certificate as to appropriate authority of a country or territory outside Jersey**

A certificate made by the Attorney General to the effect that the authority specified in it is the appropriate authority of a country or territory outside Jersey shall, for the purposes of the Law, be sufficient evidence of that fact.

#### **6 Representation of government of a country or territory outside Jersey**

(1) In any proceedings in the Court under Article 39(5) of the Law or proceedings under any other provision of the Law, the government of a country or territory outside Jersey shall be represented by

the Attorney General.

- (2) In any such proceedings a request for assistance sent to the Attorney General by the appropriate authority of a country or territory outside Jersey shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country or territory for the Attorney General to act on the government's behalf.

*Enforcement outside Jersey of confiscation order made in Jersey*

**7 Satisfaction of confiscation order in a country or territory outside Jersey**

- (1) Where –
  - (a) a confiscation order has been made under Article 3 of the Law; and
  - (b) a request has been sent by the Attorney General to the appropriate authority of a country or territory outside Jersey for assistance in enforcing that order; and
  - (c) in execution of that request property is recovered in that country,the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.
- (2) For the purposes of this Regulation, and without prejudice to the admissibility of any evidence which may be admissible apart from this paragraph, a certificate purporting to be issued by or on behalf of the appropriate authority of a country or territory outside Jersey stating –
  - (a) that property has been recovered there in execution of a request by the Attorney General;
  - (b) the value of the property so recovered; and
  - (c) the date on which it was recovered,shall, in any proceedings in the Court, be admissible as evidence of the facts so stated.

*Miscellaneous and closing*

**8 Currency conversion**

- (1) Where the value of property recovered as described in Regulation 7(1) is expressed in a currency other than that of Jersey, the extent to which the amount payable under the confiscation order is to be reduced under that paragraph shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the country or territory outside Jersey concerned.
- (2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Court under Article 39(5) of the Law is expressed in a currency other than that of Jersey, for the purpose of any action taken in relation to that order under the Law, the amount shall be converted into the currency of Jersey on the basis of the exchange rate prevailing on the date of registration of the order.
- (3) For the purposes of this Regulation, a written certificate purporting to be signed by any person acting in his or her capacity as an officer of any bank in Jersey and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

**9 Revocation**

The Drug Trafficking Offences (Designated Countries and Territories) (Jersey) Regulations 1997<sup>[3]</sup> shall be revoked.

## **10 Citation and commencement**

These Regulations may be cited as the Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 200 and shall come into force 7 days after they are made.

## SCHEDULE 1

(Regulation 2(1))

### MODIFICATION OF THE DRUG TRAFFICKING OFFENCES (JERSEY) LAW 1988 IN ITS APPLICATION TO EXTERNAL CONFISCATION ORDERS

#### 1 Article 1 amended

In Article 1 of the Law–

- (a) in paragraph (1) the definitions of “British ship”, “confiscation order”, “defendant”, “drug money laundering”, “drug trafficking offence”, “exported”, “external confiscation order”, “financial services business”, “items subject to legal professional privilege”, “legal professional privilege” and “premises” shall be omitted;
- (b) in paragraph (2) for the list of expressions and relevant provisions there shall be substituted the following list –

“Expression	Relevant provision
Dealing with property	Article 1(9)
Defendant	Article 3(3)
External confiscation order	Article 3(1)
Gift caught by this Law	Article 2(7)
Making a gift	Article 2(8)
Realisable property	Article 2(1)
<i>Saisie judiciaire</i>	Article 16(1)
Value of gift, payment or reward	Article 2(5)
Value of property	Article 2(4)”;

- (c) paragraph (3) shall be omitted;
- (d) at the end of paragraph (4) there shall be added the words “and whether received before or after the commencement of the Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 200- and whether received in connection with drug trafficking carried on by the recipient or some other person”;
- (e) for paragraphs (5) and (6) there shall be substituted the following paragraphs–
- “(5) Proceedings are instituted in a country or territory outside Jersey when –
- (a) the defendant has been notified in writing in accordance with the laws of that country or territory that proceedings have begun there against the defendant in respect of alleged drug trafficking; or
- (b) an application has been made to a court of that country or territory for an external confiscation order,
- and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.
- (6) Proceedings for an offence are concluded –
- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the

proceedings;

(b) on the satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered or the payment of any amount due.”;

(f) paragraphs (7) and (8) shall be omitted;

(g) for paragraph (9) there shall be substituted the following paragraph–

“(9) An external confiscation order is satisfied when no property remains liable to be recovered under it, or no amount is due under it.”;

(h) in paragraph (10) before the word“order” there shall be inserted the words “external confiscation”.

## **2 Article 2 amended**

In Article 2 of the Law–

(a) for paragraph (1) there shall be substituted the following paragraph–

“(1) In this Law, ‘realisable property’ means subject to paragraph (2)–

(a) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and

(b) in any other case –

(i) any property held by the defendant,

(ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, and

(iii) any property to which the defendant is beneficially entitled.”;

(b) paragraph (3) shall be omitted;

(c) in paragraph (7) for the words“Article 3” there shall be substituted the words “the Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 200-”.

## **3 Article 3 substituted**

For Article 3 of the Law there shall be substituted the following Article–

### **“3 External confiscation orders**

(1) An order made by a court of a country or territory outside Jersey for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Law as an ‘external confiscation order’.

(2) In paragraph (1), the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

(3) A person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been, or are to be, instituted in a country or territory outside Jersey is referred to in this Law as ‘the defendant’.”.

## **4 Articles 4 to 14 omitted**

Articles 4 to 14 (inclusive) of the Law shall be omitted.

## 5 Article 15 amended

In Article 15 of the Law–

- (a) in paragraph (1)–
  - (i) sub-paragraph (a) shall be omitted;
  - (ii) for sub-paragraphs (b) and (c) there shall be substituted the following sub-paragraphs –
    - “(b) proceedings have been instituted, and have not been concluded, against the defendant in a country or territory outside Jersey and –
      - (i) an external confiscation order has been made in the proceedings (whether or not registered under Article 39), or
      - (ii) it appears to the Court that there are reasonable grounds for believing that such an order may be made in them; or
    - (c) it appears to the Court that proceedings are to be instituted against the defendant in a country or territory outside Jersey and that there are reasonable grounds for believing that an external confiscation order may be made in them.”;
- (b) paragraph (2) shall be omitted;
- (c) in paragraph (3) for the words “the proceedings have not been instituted” there shall be substituted the words “the proposed proceedings are not instituted”;
- (d) paragraphs (4) and (5) shall be omitted.

## 6 Article 16 amended

In Article 16 of the Law–

- (a) at the end of paragraph (1) there shall be added the words “, on behalf of the government of a country or territory outside Jersey”;
- (b) for paragraph (3) there shall be substituted the following paragraph–
  - “(3) A *saisie judiciaire* shall provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court may direct.”;
- (c) for paragraph (6)(b) there shall be substituted the following sub-paragraph –
  - “(b) shall be discharged when the proceedings in relation to which it was made are concluded.”.

## 7 Article 17 substituted

For Article 17 of the Law there shall be substituted the following Article–

### “17 Realisation of property

Where –

- (a) an external confiscation order has been registered by the Court under Article 39; and
- (b) the Court has made a *saisie judiciaire*,

the Court may, on an application by or on behalf of the Attorney General, empower the Viscount to realise any realisable property which has vested in the Viscount or come into the Viscount’s possession pursuant to Article 16 in such manner as the Court may direct.”.



**8 Articles 18 and 19 omitted**

Articles 18 and 19 of the Law shall be omitted.

**9 Article 20 amended**

In Article 20 of the Law in paragraphs (1), (2) and (3) before the word“confiscation” there shall be inserted the word “external”.

**10 Article 21 omitted**

Article 21 of the Law shall be omitted.

**11 Article 24 amended**

In Article 24(2)(a) of the Law for the words “a confiscation” there shall be substituted the words “an external confiscation”.

**12 Articles 25 to 38 omitted**

Articles 25 to 38 (inclusive) of the Law shall be omitted.

**13 Article 39 amended**

- (1) In the heading to Article 39 of the Law the word “**confiscation orders and**” shall be deleted.
- (2) In Article 39 of the Law paragraphs (1) to (4) shall be omitted.

**14 Articles 40 to 48, 50 and Schedules omitted**

Articles 40 to 48 (inclusive) and 50 of, and the Schedules 1 and 2 to, the Law shall be omitted.

## SCHEDULE 2

(Regulation 2(2))

### DRUG TRAFFICKING OFFENCES (JERSEY) LAW 1988 AS MODIFIED IN ITS APPLICATION TO EXTERNAL CONFISCATION ORDERS

#### 1 Interpretation

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

\* \* \*

“corresponding law” has the same meaning as in the Misuse of Drugs (Jersey) Law 1978;

“Court” means the Royal Court;

\* \* \*

“drug trafficking” means doing or being concerned in any of the following, whether in Jersey or elsewhere –

- (a) producing or supplying a controlled drug where the production or supply contravenes Article 5 of the Misuse of Drugs (Jersey) Law 1978 or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes Article 8(1) of that Law or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by Article 4(1) of that Law or a corresponding law;
- (d) manufacturing or supplying a scheduled substance within the meaning of Article 6 of the Misuse of Drugs (Jersey) Law 1978 where the manufacture or supply is an offence under that Article or would be such an offence if it took place in Jersey;
- (e) acquiring, having in possession or using property in circumstances which amount to the commission of an offence under Article 38 or which would be such an offence if it took place in Jersey;
- (f) conduct which is an offence under Article 30 or which would be such an offence if it took place in Jersey;
- (g) using a ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under Article 46,

and includes a person doing the following, whether in Jersey or elsewhere, that is entering into or being otherwise concerned in an arrangement whereby –

- (i) the retention or control by or on behalf of another person of the other person’s proceeds of drug trafficking is facilitated, or
- (ii) the proceeds of drug trafficking by another person are used to secure that funds are placed at the other person’s disposal or are used for the other person’s benefit to acquire property by way of investment;

“Drug Trafficking Confiscations Fund” means the Drug Trafficking Confiscations Fund established under Article 24;

\* \* \*

“Minister” means the Minister for Treasury and Resources;

“money” means cash (coins or notes in any currency) or any negotiable instrument;

“police officer” means a member of the Honorary Police, the States of Jersey Police Force or an officer within the meaning of the Customs and Excise (Jersey) Law 1999;

“property” means all property whether movable or immovable, vested or contingent and whether situated in Jersey or elsewhere;

“ship” includes any vessel used in navigation;

“Vienna Convention” means the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed at Vienna on 20th December 1988.

- (2) The expressions listed in the left hand column below are respectively defined or (as the case may be) fall to be construed in accordance with the provisions of this Law listed in the right hand column in relation to those expressions –

<b>[Expression</b>	<b>Relevant provision</b>
Dealing with property	Article 16(9)
Defendant	Article 3(3)
External confiscation order	Article 3(1)
Gift caught by this Law	Article 2(7)
Making a gift	Article 2(8)
Realisable property	Article 2(1)
<i>Saisie judiciaire</i>	Article 16(1)
Value of gift, payment or reward	Article 2(5)
Value of property	Article 2(4)]

- (3) \* \* \*

- (4) References in this Law to anything received in connection with drug trafficking include a reference to anything received both in that connection and in some other connection [and whether received before or after the commencement of the Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 200- and whether received in connection with drug trafficking carried on by the recipient or some other person].

- (5) Proceedings are instituted in a country or territory outside Jersey when –

- (a) the defendant has been notified in writing in accordance with the laws of that country or territory that proceedings have begun there against the defendant in respect of alleged drug trafficking; or
- (b) an application has been made to a court of that country or territory for an external confiscation order,

and where the application of this paragraph would result in there being more than one time for the institution of proceedings, they shall be taken to have been instituted at the earliest of those times.

- (6) Proceedings for an offence are concluded –

- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external confiscation order being made in the proceedings;
- (b) on the satisfaction of an external confiscation order made in the proceedings, whether by the recovery of all property liable to be recovered or the payment of any amount due.]

- (7) \* \* \*

- (8) \* \* \*

- (9) An external confiscation order is satisfied when no property remains liable to be recovered under it, or no amount is due under it.]

- (10) An [external confiscation] order is subject to appeal until (disregarding any power of the Court to grant leave to appeal out of time) there is no further possibility of an appeal on which the order could

be varied or set aside.

- (11) If in any proceedings under this Law any question arises whether any country or territory is a state or is a party to the Vienna Convention, a certificate issued by the Secretary of State shall be conclusive evidence on that question.

## 2 Definition of principal terms used

- [(1) In this Law, “realisable property” means subject to paragraph (2)–
- (a) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and
  - (b) in any other case –
    - (i) any property held by the defendant,
    - (ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law, and
    - (iii) any property to which the defendant is beneficially entitled.]
- (2) Property is not realisable if an order under Article 29 of the Misuse of Drugs (Jersey) Law 1978 or a forfeiture order under Article 26 of the Terrorism (Jersey) Law 2002 is in force in respect of the property.
- (3) \* \* \*
- (4) Subject to the following provisions of this Article, for the purposes of this Law the value of property (other than cash) in relation to any person holding the property shall be the market value of the property.
- (5) Subject to paragraph (8), references in this Law to the value at any time (referred to in paragraph (6) as “the material time”) of a gift caught by this Law or of any payment or reward are references to –
- (a) the value of the gift, payment or reward to the recipient when the recipient received it adjusted to take account of subsequent changes in the value of money; or
  - (b) where paragraph (6) applies, the value there mentioned,
- whichever is the greater.
- (6) Subject to paragraph (8), if at the material time the recipient holds–
- (a) the property which the recipient received (not being cash); or
  - (b) property which, in whole or in part, directly or indirectly represents in the recipient’s hands the property which the recipient received,
- the value referred to in paragraph (5)(b) is the value to the recipient at the material time of the property mentioned in sub-paragraph (b) so far as it so represents the property received.
- (7) A gift (including a gift made before the commencement of [the Drug Trafficking Offences (Enforcement of Confiscation Orders) (Jersey) Regulations 200-]) is caught by this Law if –
- (a) it was made by the defendant at any time since the beginning of the period of 6 years ending when the proceedings were instituted against the defendant; or
  - (b) it was made by the defendant at any time and was a gift of property –
    - (i) received by the defendant in connection with drug trafficking carried on by the defendant or another, or
    - (ii) which in whole or in part directly or indirectly represented in the defendant’s hands property received by the defendant in that connection.
- (8) For the purposes of this Law –
- (a) the circumstances in which the defendant is to be treated as making a gift include those where the defendant transfers property to another person directly or indirectly for a consideration the

- value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, the preceding provisions of this Article shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the difference between the values referred to in sub-paragraph (a) bears to the value of consideration provided by the defendant.

### **[3 External confiscation orders**

- (1) An order made by a court of a country or territory outside Jersey for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Law as an “external confiscation order”.
- (2) In paragraph (1), the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.
- (3) A person against whom an external confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been, or are to be, instituted in a country or territory outside Jersey is referred to in this Law as “the defendant”.]

\* \* \*

### **15 Cases in which *saisies judiciaires* may be made**

- (1) The powers conferred on the Court by Article 16 are exercisable where—
- (a) \* \* \*
- [(b) proceedings have been instituted, and have not been concluded, against the defendant in a country or territory outside Jersey and –
- (i) an external confiscation order has been made in the proceedings (whether or not registered under Article 39), or
- (ii) it appears to the Court that there are reasonable grounds for believing that such an order may be made in them; or
- (c) it appears to the Court that proceedings are to be instituted against the defendant in a country or territory outside Jersey and that there are reasonable grounds for believing that an external confiscation order may be made in them.]
- (2) \* \* \*
- (3) Where the Court has made an order under Article 16 by virtue of paragraph (1)(c), the Court shall discharge the order if [the proposed proceedings are not instituted] within such time as the Court considers reasonable.
- (4) \* \* \*
- (5) \* \* \*

### **16 *Saisies judiciaires***

- (1) The Court may, subject to such conditions and exceptions as may be specified therein, make an order (in this Law referred to as a “*saisie judiciaire*”) on an application made by or on behalf of the Attorney General[, on behalf of the government of a country or territory outside Jersey].
- (2) An application for a *saisie judiciaire* may be made on an *ex parte* application to the Bailiff in Chambers.
- [(3) A *saisie judiciaire* shall provide for service on, or the provision of notice to, persons affected by the order in such manner as the Court may direct.]
- (4) Subject to paragraph (5), on the making of a *saisie judiciaire* –

- (a) all the realisable property held by the defendant in Jersey shall vest in the Viscount;
- (b) any specified person may be prohibited from dealing with any realisable property held by that person whether the property is described in the order or not;
- (c) any specified person may be prohibited from dealing with any realisable property transferred to the person after the making of the order,

and the Viscount shall have the duty to take possession of, and, in accordance with the Court's directions, to manage or otherwise deal with, any such realisable property; and any specified person having possession of any realisable property may be required to give possession of it to the Viscount.

- (5) Any property vesting in the Viscount pursuant to paragraph (4)(a) shall so vest subject to all *hypothecs* and security interests with which such property was burdened prior to the vesting.
- (6) A *saisie judiciaire* –
  - (a) may be discharged or varied in relation to any property; and
  - [(b) shall be discharged when the proceedings in relation to which it was made are concluded.]
- (7) An application for the discharge or variation of a *saisie judiciaire* may be made to the Bailiff in Chambers by any person affected by it and the Bailiff may rule upon the application or may, at the Bailiff's discretion, refer it to the Court for adjudication.
- (8) Where it appears to the Court that any order made by it under this Article may affect immovable property situate in Jersey it shall order the registration of the order in the Public Registry.
- (9) For the purposes of this Article, dealing with property held by any person includes (without prejudice to the generality of the expression) –
  - (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
  - (b) removing the property from Jersey.
- (10) Where the Court has made a *saisie judiciaire*, a police officer may, for the purpose of preventing any realisable property being removed from Jersey, seize the property.
- (11) Property seized under paragraph (10) shall be dealt with in accordance with the Court's directions.

## [17 Realisation of property

Where –

- (a) an external confiscation order has been registered by the Court under Article 39; and
- (b) the Court has made a *saisie judiciaire*,

the Court may, on an application by or on behalf of the Attorney General, empower the Viscount to realise any realisable property which has vested in the Viscount or come into the Viscount's possession pursuant to Article 16 in such manner as the Court may direct.]

\* \* \*

## 20 Application of proceeds of realisation and other sums

- (1) Subject to paragraph (3) the following sums in the hands of the Viscount, that is–
  - (a) money which has vested in the Viscount or come into the Viscount's possession pursuant to Article 16;
  - (b) the proceeds of the realisation of any property under Article 17,

shall, after such payments (if any) as the Court may direct have been made out of those sums, be applied after payment of the Viscount's fees and expenses, on the defendant's behalf towards the satisfaction of the [external] confiscation order.

- (2) The amount applied by the Viscount towards the satisfaction of the [external] confiscation order shall be paid into the Drug Trafficking Confiscations Fund.
- (3) If, after payment of the Viscount's fees and expenses and of the amount payable under the [external] confiscation order, any such sums remain in the hands of the Viscount, the Viscount shall distribute those sums –
  - (a) among such of those who held the property which has been realised under this Law; and
  - (b) in such proportions,as the Court may direct after giving a reasonable opportunity for such persons to make representations to the Court.  
\* \* \*

## **22 Bankruptcy of defendant, etc.**

- (1) Where a person who holds realisable property becomes bankrupt –
  - (a) property for the time being subject to a *saisie judiciaire* made before the order adjudging the person bankrupt; and
  - (b) any proceeds of property realised by virtue of Article 16(4) or 17 for the time being in the hands of the Viscount,shall not form part of the person's estate for the relevant bankruptcy proceedings.
- (2) Where a person has become bankrupt, the powers conferred on the Court by Articles 16 to 20 or on the Viscount shall not be exercised in relation to –
  - (a) property which the 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*;
  - (c) property of which the bankrupt has made a general cession (*a fait cession générale*);
  - (d) property which has been adjudged renounced (*adjudé renoncé*).
- (3) Paragraph (2) does not affect the enforcement of a *saisie judiciaire* –
  - (a) made before the person becomes bankrupt; or
  - (b) on property which was subject to a *saisie judiciaire* when the person became bankrupt.

## **23 Viscount: exclusion of liability**

Where the Viscount takes any action –

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

the Viscount shall not be liable to any person in respect of any loss or damage resulting from the action except insofar as the loss or damage is caused by the Viscount's negligence.

## **24 Drug Trafficking Confiscations Fund**

- (1) There shall be established a Fund to be called the Drug Trafficking Confiscations Fund ("the Fund") which, subject to this Article, shall be managed and controlled by the Minister.
- (2) All amounts –
  - (a) recovered under, or in satisfaction of, [an external confiscation] order; or

- (b) received under an assets-sharing agreement,  
shall be included amongst the monies which are paid into the Fund.
- (3) Monies paid into the Fund shall not form part of the annual income of the States.
- (4) Subject to paragraph (5), monies in the Fund shall be applied by the Minister for the purposes of—
- (a) promoting or supporting measures which, in the opinion of the Minister, may assist in —
- (i) preventing, suppressing or otherwise dealing with drug trafficking or the misuse of controlled drugs,
- (ii) dealing with the consequences of the misuse of controlled drugs, or
- (iii) without prejudice to the generality of clauses (i) and (ii), facilitating the enforcement of any enactment dealing with drug trafficking or the misuse of controlled drugs;
- (b) discharging Jersey’s obligations under assets-sharing agreements;
- (c) meeting the expenses incurred by the Minister in administering the Fund.
- (5) Before promoting or supporting any measure under paragraph (4)(a), the Minister shall consult with the Attorney General and with such other persons or bodies (including other Ministers) as he or she considers appropriate.
- (6) Monies paid into the Fund, while not applied for any of the purposes mentioned in paragraph (4) may be —
- (a) held in the custody of the Treasurer of the States at the States Treasury; or
- (b) placed, in the name of the Minister, in a current or deposit account with one or more banks selected by the Minister,
- and any interest earned on such monies while held in such an account shall be paid by the Minister into the Fund.
- (7) Monies held in any account by virtue of paragraph (6)(b) may be withdrawn on the signature of the Treasurer of the States.
- (8) In this Article —
- “asset sharing agreement” means an agreement or arrangement made by or on behalf of Jersey with a country or territory outside Jersey for the sharing of the proceeds of drug trafficking that, as a result of mutual assistance, have been confiscated or forfeited either in Jersey or elsewhere;
- “controlled drug” has the same meaning as in the Misuse of Drugs (Jersey) Law 1978

\* \* \*

### **39 Enforcement of \* \* \* external confiscation orders**

\* \* \*

- (5) On an application made by or on behalf of the government of a country or territory outside Jersey, the Court may register an external confiscation order made there if —
- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that the person received notice of the proceedings in sufficient time to enable him or her to defend them; and
- (c) it is of the opinion that enforcing the order in Jersey would not be contrary to the interests of justice.
- (6) In paragraph (5)(a), “appeal” includes —
- (a) any proceedings by way of discharging or setting aside a judgment; and



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

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

\* \* \*

#### **49 Rules of Court**

The power to make Rules of Court under the Royal Court (Jersey) Law 1948 shall include a power to make Rules for the purposes of this Law and proceedings thereunder.

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[1]

*chapter 08.580*

[2]

*chapter 08.580*

[3]

*R&O.9148 (chapter 08.580.30)*