

Jersey Law 1/1989

DRUG TRAFFICKING OFFENCES (JERSEY) LAW, 1988.

A LAW to make provision for the recovery of the proceeds of drug trafficking and other provision in connexion with drug trafficking, sanctioned by Order of Her Majesty in Council of the

21st day of DECEMBER, 1988.

(Registered on the 27th day of January, 1989.)

STATES OF JERSEY.

The 23rd day of August, 1988.

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

ARTICLE 1

Interpretation

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

“company” means a company registered under the Companies (Jersey) Laws, 1861 to 1968;¹

“confiscation order” means an order made by the Court under Article 3;

“corresponding law” has the same meaning as in the Misuse of Drugs (Jersey) Law, 1978;²

¹ Tomes I–III, page 232, Volume 1966–1967, page 727 and Volume 1968–1969, page 103.

“the Court” means the Royal Court;

“the defendant” means a person against whom proceedings have been instituted for a drug trafficking offence (whether or not he has been convicted);

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

- (a) producing or supplying a controlled drug where the production or supply contravenes Article 5 of the Misuse of Drugs (Jersey) Law, 1978³ or a corresponding law;
- (b) transporting or storing a controlled drug where possession of the drug contravenes Article 6(1) of that Law³ or a corresponding law;
- (c) importing or exporting a controlled drug where the importation or exportation is prohibited by Article 4(1) of that Law⁴ or a corresponding law;

and includes a person doing the following, whether in the Island 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 offence” means any of the following –

² Volume 1975–1978, page 449.

³ Volume 1975–1978, page 453.

⁴ Volume 1975–1978, page 452.

- (a) an offence under Article 5 or 6(2) of the Misuse of Drugs (Jersey) Law, 1978⁵ (production, supply and possession for supply of controlled drugs);
- (b) an offence under Article 19(5) of that Law⁶ (assisting in or inducing commission outside the Island of offence punishable under a corresponding law);
- (c) an offence under –
 - (i) Article 23(1) or (2) of the Customs and Excise (General Provisions) (Jersey) Law, 1972⁷ (improper importation);
 - (ii) Article 30(2) of that Law⁸ (exportation); or
 - (iii) Article 77 of that Law⁹ (fraudulent evasion);

in connexion with a prohibition or restriction on importation or exportation having effect by virtue of Article 4 of the Misuse of Drugs (Jersey) Law, 1978¹⁰ or of Article 16 of this Law;
- (d) an offence under Article 17;
- (e) an offence of conspiracy to commit any of the offences in sub-paragraphs (a) to (d);
- (f) an offence of attempting to commit any of those offences;
- (g) an offence of inciting another to commit any of those offences; and

⁵ Volume 1975–1978, page 453.

⁶ Volume 1975–1978, page 463.

⁷ Volume 1970–1972, page 468.

⁸ Volume 1970–1972, page 475.

⁹ Volume 1970–1972, page 502.

¹⁰ Volume 1975–1978, page 452.

- (h) aiding, abetting or participating in the commission of any of those offences;

“items subject to legal professional privilege” means –

- (a) communications between a professional legal adviser and his client;
- (b) communications made in connexion with, or in contemplation of, legal proceedings and for the purpose of those proceedings;

being communications which would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communications but, for the avoidance of doubt, does not include communications held with the intention of furthering a criminal offence;

“police officer” includes an officer within the meaning of the Customs and Excise (General Provisions) (Jersey) Law, 1972;¹¹

“premises” includes any place, and, in particular includes –

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

“property” means all property whether movable or immovable, vested or contingent and whether situated in the Island or elsewhere.

(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 –

¹¹ Volume 1970–1972, page 468.

Expression	Relevant provision
Benefited from drug trafficking	Article 3(3)
Dealing with property	Article 9(8)
Gift caught by this Law	Article 2(7)
Making a gift	Article 2(8)
Proceeds of drug trafficking	Article 4(1)(a)
Realisable property	Article 2(1)
Saisie judiciaire	Article 9(1)
Value of gift, payment or reward	Article 2
Value of proceeds of drug trafficking	Article 4(1)(b)
Value of property	Article 2(4)

(3) References in this Law to offences include a reference to offences committed before the commencement of Article 3; but nothing in this Law imposes any duty or confers any power on the Court in or in connexion with proceedings against a person for a drug trafficking offence instituted before the commencement of that Article.

(4) References in this Law to anything received in connexion with drug trafficking include a reference to anything received both in that connexion and in some other connexion.

- (5) Proceedings for an offence are instituted in the Island –
- (a) when the Bailiff issues a warrant in respect of the offence for the arrest of a person who is out of the island;
 - (b) when a person is arrested and charged with the offence;
 - (c) when a summons in respect of the offence is served on person at the instance of the Attorney General;
 - (d) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the

Police Court (Miscellaneous Provisions) (Jersey) Law, 1949;¹²

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 of the earliest of those times.

(6) Proceedings in the Island for an offence are concluded on the occurrence of one of the following events –

- (a) the discontinuance of the proceedings;
- (b) the acquittal or discharge of the defendant;
- (c) the quashing of his conviction for the offence;
- (d) the grant of Her Majesty's pardon in respect of his conviction for the offence;
- (e) the Court sentencing or otherwise dealing with him in respect of his conviction for the offence without having made a confiscation order; and
- (f) the satisfaction of a confiscation order made in the proceedings (whether by payment of the amount due under the order or by the defendant serving imprisonment in default).

(7) An 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.

(8) Where in this Law there is a reference to an Article by number only and without further identification, such reference shall be construed as a reference to the Article of that number contained in this Law.

¹² Tome VII, page 548.

(9) Where in any Article of this Law there is a reference to a paragraph, sub-paragraph or clause by number or letter only and without further identification, such reference shall be construed as a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article of this Law in which such reference occurs.

(10) Unless the context otherwise requires, where this Law refers to any enactment, the reference is a reference to that enactment as amended, and includes a reference to that enactment as extended or applied by or under any other enactment, including any other provision of that enactment.

ARTICLE 2

Definition of principal terms used

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

- (a) any property held by the defendant;
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law; and
- (c) 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, 1978¹³ is in force in respect of the property.

(3) For the purposes of Articles 5 and 6 the amount that might be realised at the time a confiscation order is made against the defendant is the total of the values at that time of all the realisable property including the total value of any property to which the defendant is beneficially entitled, less –

¹³ Volume 1975–1978, page 449.

- (i) any amount due in respect of a fine or other order of the Royal Court, the Police Court of the Juvenile Court, imposed or made on conviction of an offence, where the fine was imposed or made before the making of the confiscation order;
- (ii) any sum in respect of which the person to whom it is due would, if the defendant had become bankrupt before the making of the confiscation order; be entitled to claim either preference “(préférence)” or privilege “(privilège)” as the case may be;
- (iii) any sum the payment of which is secured on all or any of the realisable property by a simple conventional hypothec or a judicial hypothec created in accordance with the provisions of the “Loi (1880) sur la Propriété Foncière”¹⁴ before the making of the confiscation order;
- (iv) any sum the payment of which is secured on all or any of the realisable property by a security interest created in accordance with the provisions of the Security Interests (Jersey) Law, 1983,¹⁵ before the making of the confiscation order;

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

(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 –

¹⁴ Tomes I–III, page 386.

¹⁵ Volume 1982–1983, page 103.

- (a) the value of the gift, payment or reward to the recipient when he 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 he received (not being cash) or;
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received;

the value referred to in sub-paragraph (b) of paragraph (5) is the value to him at the material time of the property mentioned in sub-paragraph (b) so far as it so represents the property which he received.

(7) A gift (including a gift made before the commencement of Article 3) is caught by this Law if –

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

(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 he transfers property to another person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration provided by the defendant; and
- (b) in those circumstances, the 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.

ARTICLE 3

Confiscation orders

(1) Where a person appears before the Court to be sentenced in respect of one or more drug trafficking offences (and has not previously been sentenced or otherwise dealt with in respect of his conviction for the offence or, as the case may be, any of the offences concerned) the Court may act in accordance with the following provisions of this Article.

(2) The Court may first determine whether he has benefited from drug trafficking.

(3) For the purposes of this Law, a person who has at any time (whether before or after the commencement of this Article) received any payment or other reward in connexion with drug trafficking carried on by him or another has benefited from drug trafficking.

(4) If the Court determines that he has so benefited, the Court may, before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned, determine in accordance with Article 6 the amount to be recovered in his case by virtue of this Article.

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(5) The Court may then, in respect of the offence or offences concerned –

- (a) order him to pay that amount;
- (b) take account of the order before –
 - (i) imposing any fine on him; or
 - (ii) making any order involving any payment by him; or
 - (iii) making any order under Article 29 of the Misuse of Drugs (Jersey) Law, 1978;¹⁶ and
- (c) subject to sub-paragraph (b), leave the order out of account in determining the appropriate sentence or other manner of dealing with the defendant.

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

ARTICLE 4

Assessing the proceeds of drug trafficking

- (1) For the purposes of this Law –
 - (a) any payments or other rewards received by a person at any time (whether before or after the commencement of Article 3) in connexion with drug trafficking carried on by him or another are his proceeds of drug trafficking; and
 - (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

¹⁶ Volume 1975–1978, page 468.

(2) The Court may, for the purpose of determining whether the defendant has benefited from drug trafficking and, if he has, of assessing the value of his proceeds of drug trafficking, make the following assumptions, except to the extent that any of the assumptions are shown to be incorrect in the defendant's case.

(3) Those assumptions are –

(a) that any property appearing to the Court –

(i) to have been held by him at any time since his conviction; or

(ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him;

was received by him, at the earliest time at which he appears to the Court to have held it, as a payment or reward in connexion with drug trafficking carried on by him;

(b) that any expenditure of his since the beginning of that period was met out of payments received by him in connexion with drug trafficking carried on by him; and

(c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.

(4) Paragraph (2) does not apply if the only drug trafficking offence in respect of which the defendant appears before the Court to be sentenced is an offence under Article 17.

(5) For the purpose of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him the Court shall leave out of account any of his proceeds of drug trafficking that are shown to the

Court to have been taken into account in determining the amount to be recovered under that order.

ARTICLE 5

Statements relating to drug trafficking

- (1) Where –
 - (a) there is tendered to the Court by the Attorney General a statement as to any matters relevant to the determination whether the defendant has benefited from drug trafficking or to the assessment of the value of his proceeds of drug trafficking; and
 - (b) the defendant accepts to any extent any allegation in the statement;

the Court may, for the purposes of that determination and assessment, treat his acceptance as conclusive of the matters to which it relates.

(2) Where a statement is tendered under sub-paragraph (a) of paragraph (1) and the Court is satisfied that a copy of that statement has been served on the defendant, the Court may require the defendant to indicate to what extent he accepts each allegation in the statement and, so far as he does not accept any such allegation, to indicate any matters on which he proposes to rely.

(3) If the defendant fails in any respect to comply with a requirement under paragraph (2) he may be treated for the purposes of this Article as accepting every allegation in the statement apart from –

- (a) any allegation in respect of which he has complied with the requirement; and
- (b) any allegation that he has benefited from drug trafficking or that any payment or other reward was received by him in connexion with drug trafficking carried on by him or another.

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- (4) Where –
- (a) there is tendered to the Court by the defendant a statement as to any matters relevant to determining the amount that might be realised at the time the confiscation order is made; and
 - (b) the Attorney General accepts to any extent any allegation in the statement;

the Court may, for the purposes of that determination, treat the acceptance by the Attorney General as conclusive of the matters to which it relates.

(5) No acceptance by the defendant under this Article that any payment or other reward was received by him in connexion with drug trafficking carried on by him or another shall be admissible in evidence in any proceedings for an offence.

ARTICLE 6

Amount to be recovered under confiscation order

(1) Subject to paragraph (3), the amount to be recovered in the defendant's case under the confiscation order shall be the amount the Court assesses to be the value of the defendant's proceeds of drug trafficking.

(2) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made (whether by an acceptance under Article 5 or otherwise) the Court may issue a certificate giving the Court's opinion as to the matters concerned and shall do so if satisfied as mentioned in paragraph (3).

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

order shall be the amount appearing to the Court to be the amount that might be so realised.

ARTICLE 7

Enforcement, etc. of confiscation orders

(1) Subject to paragraphs (2) and (3), where the Court orders the defendant to pay any amount under Article 3 the Court may, if it thinks fit, order the defendant to be imprisoned until such amount is paid.

(2) The Court may, in its discretion, limit the period of such imprisonment.

(3) The defendant shall not be imprisoned for more than ten years for the non-payment of any amount under paragraph (1).

(4) The term of imprisonment in default of payment imposed under paragraph (1) shall not, in the case of a defendant who is liable to serve a term of imprisonment in respect of the offence or offences, begin to run until after he has served the said term of imprisonment.

(5) The reference in paragraph (4) to the term of imprisonment which the defendant is liable to serve in respect of the offence or offences is a reference to the term of imprisonment, detention in a Young Offenders' Centre or borstal training (as the case may be) which he is liable to serve in respect of the offence or offences; and for the purposes of this paragraph consecutive terms and terms which are wholly or partly concurrent shall be treated as a single term.

(6) This Article applies to confiscation orders made by the Court of Appeal as it applies to confiscation orders made by the Royal Court and references in this Article to the Court shall be construed accordingly.

ARTICLE 8

Cases in which “saisies judiciaires” may be made

(1) The powers conferred on the Court by Article 9 are exercisable where –

- (a) the Court has made a confiscation order; or
- (b) (i) proceedings have been instituted in the Island against the defendant for a drug trafficking offence;
 - (ii) the proceedings have not been concluded; and
 - (iii) the Court is satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking; or
- (c) the Court is satisfied –
 - (i) that proceedings are to be instituted in the Island against a person for a drug trafficking offence; and
 - (ii) that there is reasonable cause to believe that that person has benefited from drug trafficking.

(2) For the purposes of Article 9, at any time when those powers are exercisable before proceedings have been instituted –

- (a) references in this Law to the defendant shall be construed as references to the person referred to in paragraph 1(c);
- (b) references in this Law to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in paragraph 1(c) for a drug trafficking offence.

(3) Where the Court has made an order under Article 9 by virtue of sub-paragraph (c) of paragraph (1), the Court shall discharge the

order if the proceedings have not been instituted within such time as the Court considers reasonable.

ARTICLE 9

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.

(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 notice to be given to any person affected by the order.

(4) Subject to paragraph (5), on the making of a “saisie judiciaire” –

- (a) all the realisable property held by the defendant in the Island 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 him 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 subparagraph (a) of paragraph (4) 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 on satisfaction of the confiscation order.

(7) An application for the discharge or variation of a “saisie judiciaire” may be made by any person affected by it.

(8) Where it appears to the Court that any order made by it under this Article may affect immovable property situate in the Island 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 the Island.

(10) Where the Court has made a “saisie judiciaire”, a police officer may, for the purpose of preventing any realisable property being removed from the Island, seize the property.

(11) Property seized under paragraph (10) shall be dealt with in accordance with the Court’s directions.

ARTICLE 10

Realisation of property

Where –

- (a) in proceedings instituted for a drug trafficking offence, a confiscation order is made;
- (b) the order is not subject to appeal;
- (c) the proceedings have not been concluded; and
- (d) the Court has made a “saisie judiciaire”;

the Court may empower the Viscount to realise any realisable property which has vested in him or come into his possession pursuant to Article 9 in such manner as the Court may direct.

ARTICLE 11

Application of proceeds of realisation and other sums

(1) Subject to paragraph (2) the following sums in the hands of the Viscount, that is –

- (a) money which has vested in him or come into his possession pursuant to Article 9;
- (b) the proceeds of the realisation of any property under Article 10;

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 confiscation order.

(2) If, after payment of his fees and expenses and of the amount payable under the 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.

ARTICLE 12

Variation of confiscation orders

(1) If, on an application by the defendant in respect of a confiscation order, the Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order, the Court shall issue a certificate to that effect, giving the Court's reasons.

- (2) For the purposes of paragraph (1) –
 - (a) in the case of realisable property held by a person who has become bankrupt the Court shall take into account the extent to which he has been deprived of his property for the benefit of his creditors; and
 - (b) the Court may disregard any inadequacy in the realisable property which appears to the Court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Law from any risk of realisation under this Law.

(3) Where a certificate has been issued under paragraph (1) the defendant may apply to the Court for the amount to be recovered under the order to be reduced.

(4) The Court may, on an application under paragraph (3) –

- (a) substitute for the amount to be recovered under the order such lesser amount as the Court thinks just in all the circumstances of the case; and
- (b) substitute for the term of imprisonment fixed under Article 7 in respect of the amount to be recovered under the order a shorter term in respect of the lesser amount.

ARTICLE 13

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 him bankrupt; and
- (b) any proceeds of property realised by virtue of Article 9(4) or 10 for the time being in the hands of the Viscount;

shall not form part of his estate for the relevant bankruptcy proceedings.

(2) Where a person has become bankrupt, the powers conferred on the Court by Articles 9 to 11 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”;

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- (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 he became bankrupt.

ARTICLE 14

Viscount: exclusion of liability

Where the Viscount takes any action –

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

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

ARTICLE 15

Compensation

(1) If proceedings are instituted against a person for a drug trafficking offence or offences and either –

- (a) the proceedings do not result in his conviction for any drug trafficking offence; or
- (b) where he is convicted of one or more drug trafficking offences –
 - (i) the conviction or convictions concerned are quashed; or
 - (ii) he is pardoned by Her Majesty in respect of the conviction or convictions concerned;

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

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

- (a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence or offences concerned; and
- (b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of a “saisie judiciaire”.

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

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

(5) Compensation payable under this Article shall be payable out of the annual income of the States.

ARTICLE 16

Prohibition on importation or exportation of drug trafficking proceeds

The importation or exportation of the proceeds of drug trafficking is hereby prohibited.

ARTICLE 17

Assisting another to retain the benefit of drug trafficking

(1) Subject to paragraph (3), if a person enters into or is otherwise concerned in an arrangement whereby –

- (a) the retention or control by or on behalf of another (in this Article referred to as “A”) of A’s proceeds of drug trafficking is facilitated (whether by concealment, removal from the jurisdiction, transfer to nominees or otherwise); or
- (b) A’s proceeds of drug trafficking –
 - (i) are used to secure that funds are placed at A’s disposal; or
 - (ii) are used for A’s benefit to acquire property by way of investment;

knowing or suspecting that A is a person who carried on or has carried on drug trafficking or has benefited from drug trafficking, he is guilty of an offence.

(2) In this Article, references to any person’s proceeds of drug trafficking include a reference to any property which in whole or in part directly or indirectly represented in his hands his proceeds of drug trafficking.

(3) Where a person discloses to a police officer a suspicion or belief that any funds or investments are derived from or used in

connexion with drug trafficking or any matter on which such a suspicion or belief is based –

- (a) the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract; and
- (b) if he does any action in contravention of paragraph (1) and the disclosure related to the arrangement concerned, he does not commit an offence under this Article if the disclosure is made in accordance with this paragraph, that is –
 - (i) it is made before he does the act concerned, being an act done with the consent of the police officer; or
 - (ii) it is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it.

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

- (a) that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking; or
- (b) that he did not know or suspect that by the arrangement the retention or control by or on behalf of A of any property was facilitated or, as the case may be, that by the arrangement any property was used as mentioned in paragraph (1); or
- (c) that –
 - (i) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in paragraph (3) in relation to the arrangement; but

- (ii) there is a reasonable excuse for his failure to make disclosure in accordance with paragraph (3)(b).

(5) A person guilty of an offence under this Article shall be liable on conviction to imprisonment for a term not exceeding fourteen years or to a fine or to both.

ARTICLE 18

Enforcement of external confiscation orders

- (1) The States may by Regulations –
 - (a) direct in relation to a country or territory outside the Island designated by the Regulations (“a designated country”) that, subject to such modifications as may be specified, this Law shall apply to external confiscation orders and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
 - (b) make –
 - (i) such provision in connexion with the taking of action in the designated country with a view to satisfying a confiscation order; and
 - (ii) such provision as to evidence or proof of any matter for the purposes of this Article; and
 - (iii) such incidental, consequential and transitional provision;

as appears to the States to be expedient; and
 - (c) without prejudice to the generality of this paragraph direct that, in such circumstances as may be specified, proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order and which

are retained there shall nevertheless be treated as reducing the amount payable under the order to such extent as may be specified.

(2) In this Law –

“external confiscation order” means an order made by a court in a designated country for the purpose of recovering payments or other rewards received in connexion with drug trafficking or their value; and

“modifications” includes additions, alterations and omissions.

(3) Regulations under this Article may make different provision for different cases or classes of case.

(4) On an application made by or on behalf of the Government of a designated country, 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 he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in the Island would not be contrary to the interests of justice.

(5) In paragraph (4), “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.

(6) 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 or payment or by any other means.

ARTICLE 19

Investigations into drug trafficking

(1) A police officer may, for the purpose of an investigation into drug trafficking, apply to the Bailiff for an order under paragraph (2) in relation to particular material or material of a particular description.

(2) If on such an application the Bailiff is satisfied that the conditions in paragraph (3) are fulfilled, he may make an order that the person who appears to him to be in possession of the material to which the application related shall –

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

within seven days or such longer or shorter period as appears to the Bailiff to be appropriate.

- (3) The conditions referred to in paragraph (2) are –
- (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking;
 - (b) that there are reasonable grounds for suspecting that the material to which the application relates –
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and

- (ii) does not consist of or include items subject to legal professional privilege; and
- (c) that there are reasonable grounds for believing that it is in the public interest, having regard to –
 - (i) the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) the circumstances under which the person in possession of the material holds it;

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

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

- (5) Provision may be made by Rules of Court as to –
 - (a) the discharge and variation of orders under this Article; and
 - (b) proceedings relating to such order.

(6) Where the material to which an application under this Article relates consists of information contained in a computer –

- (a) an order under sub-paragraph (a) of paragraph (2) 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 sub-paragraph (b) of paragraph (2) shall have effect as an order to give access to the material in a form in which it is visible and legible.

- (7) An order under paragraph (2) –
 - (a) shall not confer any right to production of, or access to, items subject to legal professional privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
 - (c) may be made in relation to material in the possession of a States' Department.

ARTICLE 20

Authority for search

- (1) A police officer may, for the purpose of an investigation into drug trafficking, apply to the Bailiff for a warrant under this Article in relation to specified premises.
- (2) On such application the Bailiff may issue a warrant authorising a police officer to enter and search the premises if he is satisfied –
 - (a) that an order made under Article 19 in relation to material on the premises has not been complied with; or
 - (b) that the conditions in paragraph (3) are fulfilled; or
 - (c) that the conditions in paragraph (4) are fulfilled.
- (3) The conditions referred to in sub-paragraph (2)(b) are –
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking; and
 - (b) that the conditions in Article 19(3)(b) and (c) are fulfilled in relation to any material on the premises; and

- (c) that it would not be appropriate to make an order under that Article in relation to the material because –
 - (i) it is not practicable to communicate with any person entitled to produce the material; or
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a police officer could secure immediate access to the material.
- (4) The conditions referred to in sub-paragraph (2)(c) are –
 - (a) that there are reasonable grounds for suspecting that a specified person has carried on or has benefited from drug trafficking; and
 - (b) that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and
 - (c) that –
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises; or
 - (ii) entry to the premises will not be granted unless a warrant is produced; or

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

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

ARTICLE 21

Offence of prejudicing investigation

(1) Where, in relation to an investigation into drug trafficking, an order under Article 19 has been made or has been applied for and has not been refused or a warrant under Article 20 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation, is guilty of an offence.

(2) In proceedings against a person for an offence under this Article, it is a defence to prove –

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(3) A person guilty of an offence under this Article shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine or to both.

Jersey Law 1/1989

Drug Trafficking Offences (Jersey) Law, 1988

ARTICLE 22

Amendments of Misuse of Drugs Law

In the entries in the Third Column of the Fourth Schedule to the Misuse of Drugs (Jersey) Law, 1978,¹⁷ opposite to the entries in the first column relating to Article 5 and Article 6(2), for the words “14 years” there shall be substituted the word “Life”.

ARTICLE 23

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.

ARTICLE 24

Short title

This Law may be cited as the Drug Trafficking Offences (Jersey) Law, 1988.

R.S. GRAY

Deputy Greffier of the States.

¹⁷ Volume 1975–1978, page 478.