

Jersey Law 36/1996

**DRUG TRAFFICKING (MISCELLANEOUS PROVISIONS)
(JERSEY) LAW 1996**

A LAW to amend the law relating to dangerous or otherwise harmful drugs to facilitate the implementation by the Island of the Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; to amend the law on drug trafficking offences; and for connected and ancillary purposes; sanctioned by Order of Her Majesty in Council of the

15th day of OCTOBER 1996

(Registered on the 13th day of December 1996)

STATES OF JERSEY

The 21st day of May 1996

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

PART I

AMENDMENT OF MISUSE OF DRUGS (JERSEY) LAW 1978

ARTICLE 1

In paragraph (1) of Article 1 of the Misuse of Drugs (Jersey) Law 1978,¹ as amended (hereinafter referred to as “the 1978 Law”), the

¹ Volume 1975–1978, page 449.

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following definitions shall be inserted in the appropriate alphabetical order –

“ ‘corresponding law’ has the meaning assigned thereto by paragraph (6) of Article 19 of this Law;”;

“ ‘police officer’ means a member of the Honorary Police or the States of Jersey Police Force;” and

“ ‘scheduled substance’ has the meaning assigned thereto by paragraph (3) of Article 5A of this Law.”.

ARTICLE 2

After Article 5 of the 1978 Law there shall be inserted the following Articles –

“ARTICLE 5A

Manufacture and supply of scheduled substances

- (1) It is an offence for a person –
 - (a) to manufacture a scheduled substance; or
 - (b) to supply such a substance to another person,

knowing or suspecting that the substance is to be used in or for the unlawful production of a controlled drug.

(2) In this Article “unlawful production of a controlled drug” means the production of such a drug which is unlawful by virtue of sub-paragraph (a) of Article 5 of this Law.

(3) In this Law “a scheduled substance” means a substance for the time being specified in the Fifth Schedule to this Law.

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(4) The States may by Regulations amend the Fifth Schedule to this Law (whether by addition, deletion or transfer from one Table to the other) but no such Regulations shall add any substance to the Schedule unless –

- (a) it appears to the States to be frequently used in or for the unlawful production of a controlled drug; or
- (b) it has been added to the annex to the Vienna Convention under Article 12 of that Convention.

(5) In this Article “the Vienna Convention” means the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which was signed in Vienna on 20th December 1988.

ARTICLE 5B

Orders about scheduled substances

- (1) The Committee may by Order make provision –
- (a) imposing requirements as to the documentation of transactions involving scheduled substances;
 - (b) requiring the keeping of records and the furnishing of information with respect to such substances;
 - (c) for the inspection of records kept pursuant to the Order;
 - (d) for the labelling of consignments of scheduled substances.
- (2) Orders made under sub-paragraph (b) of paragraph (1) of this Article may, in particular, require –

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- (a) the notification of the proposed exportation of substances specified in Table 1 of the Fifth Schedule to this Law to such countries as may be specified in the Order; and
- (b) the production, in such circumstances as may be so specified, of evidence that the required notification has been given,

and for the purposes of Article 30 of the Customs and Excise Law (offences in relation to exportation of prohibited or restricted goods) any such substance shall be deemed to be exported contrary to a restriction for the time being in force with respect to it under this Law if it is exported without the requisite notification having been given.

(3) Orders under this Article may make different provision in relation to the substances specified in Table I and Table II in the Fifth Schedule to this Law respectively and in relation to different cases or circumstances.

(4) Any person who fails to comply with any requirement imposed by an Order under this Article, or in purported compliance with any such requirement, furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular is guilty of an offence.

(5) No information obtained pursuant to an Order shall be disclosed except for the purposes of criminal proceedings or of proceedings under the provisions of the Drug Trafficking Offences (Jersey) Law 1988² relating to the confiscation of the proceeds of drug trafficking.”.

² Volume 1988–1989, page 259, and R & Os 8202, 8345, 8454, 8615, 8660 and 8786.

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ARTICLE 3

Article 17 of the 1978 Law³ shall be amended –

- (a) in paragraph (2), by substituting for the words from “any police officer” to “by force” the following words –

“any police officer or officer of the Impôts, together with any other person named in the warrant, at any time or times within one month from the date of the warrant, to enter if necessary by force”; and

- (b) by substituting for paragraph (3) the following paragraphs –

“(3) Subject to the following provisions of this Article, if a police officer has reasonable grounds to suspect that any person is in possession of a controlled drug in contravention of this Law, or of any Order made thereunder the officer may –

- (a) search that person and detain him for the purpose of searching him;
- (b) search any vehicle or vessel in which he suspects that the drug may be found, and for that purpose may require the person in control of the vehicle or vessel to stop it; and
- (c) seize and detain, for the purposes of proceedings under this Law, anything found in the course of the search which appears to him to be evidence of an offence under this Law.

(3A) An officer of the Impôts or (within the area of his jurisdiction) a port control officer may assist a police

³ Volume 1975–1978, page 462, and Volume 1982–1983, page 157.

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officer in the exercise of his powers under paragraph (3) of this Article, but only under that police officer's direction.

(3B) The police officer carrying out a search under sub-paragraph (a) of paragraph (3) of this Article and any officer of the Impôts or port control officer who assists him shall be of the same sex as the person searched.”.

ARTICLE 4

(1) In Article 20 of the 1978 Law⁴ after the words “under this Law” there shall be inserted the words “or Article 21B of, or the Schedule to, the Drug Trafficking Offences (Jersey) Law 1988⁵”.

(2) For paragraph (1) of Article 22 of the 1978 Law⁶ there shall be substituted the following paragraph –

“(1) This Article applies to offences under Article 5, paragraphs (1) and (2) of Article 6 and Article 7 of this Law.”

ARTICLE 5

For Article 27 of the 1978 Law⁷ there shall be substituted the following Article –

“ARTICLE 27

Increase of penalties for certain offences under the Customs and Excise Law⁸

Sub-paragraph (b) of paragraph (1) of Article 23 of the Customs and Excise Law and Article 30 and Article 77 of that Law shall, in relation to an offence in connexion with a

⁴ Volume 1975–1978, page 464.

⁵ Volume 1988–1989, page 259, and R & Os 8202, 8345, 8454, 8615, 8660 and 8786.

⁶ Volume 1975–1978, page 465.

⁷ Volume 1975–1978, page 467.

⁸ Volume 1970–1972, pages 469, 475 and 503.

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prohibition or restriction on importation or exportation by virtue of Article 4 of this Law, have effect as if, in each case, for the words from “shall be liable” onwards there were substituted the following words –

“shall be liable –

- (a) where the goods were a Class A drug, to a fine or to imprisonment for life, or to both;
- (b) where the goods were a Class B drug, to a fine or to imprisonment for a term not exceeding fourteen years, or to both;
- (c) where the goods were a Class C drug, to a fine or to imprisonment for a term not exceeding five years, or to both.”.

ARTICLE 6

In the Fourth Schedule to the 1978 Law⁹ after the item in the First column in respect of Article 5 and the entries opposite thereto in the remaining columns, there shall be inserted the following items and entries

Article 5A(1)	Manufacture or supply of scheduled substances	–	–	–	14 years or a fine, or both
Article 5B(4)	Failure to comply with Orders as to scheduled substances	–	–	–	2 years or a fine, or both

⁹ Volume 1975–1978, page 478, and Volume 1988–1989, page 292.

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ARTICLE 7

(1) In Article 32 of the 1978 Law¹⁰ for the words “Fifth Schedule” there shall be substituted the words “Sixth Schedule”.

(2) The Fifth Schedule to the 1978 Law shall be renumbered as the Sixth Schedule and after the Fourth Schedule to the 1978 Law there shall be inserted the Schedule set out in the First Schedule to this Law.

*PART II*AMENDMENTS OF DRUG TRAFFICKING OFFENCES (JERSEY)
LAW 1988

ARTICLE 8

(1) In paragraph (1) of Article 1 of the Drug Trafficking Offences (Jersey) Law 1988¹¹ (hereinafter referred to as “the 1988 Law”) there shall be inserted in the appropriate alphabetical order the following definitions –

“British ship” means a ship registered in the United Kingdom, Guernsey or the Isle of Man or a colony;

“Committee” means the Finance and Economics Committee;

“Drug Trafficking Confiscations Fund” means the Drug Trafficking Confiscations Fund established under Article 14A;

“exported”, in relation to any money, includes its being brought to any place in the Island for the purpose of being exported;

¹⁰ Volume 1975–1978, page 469.

¹¹ Volume 1988–1989, page 259, Volume 1990–1991, page 1091, and R & O 8202.

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

“ship” includes any vessel used in navigation;

“the 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) Paragraph (1) of Article 1 of the 1988 Law shall be further amended –

(a) by substituting for the definition of “confiscation order” the following definition –

“ ‘confiscation order’ means an order under Article 3 and includes, in particular, an order under that Article which is made by virtue of Article 6A, 7A or 7B;”;

(b) by inserting after sub-paragraph (c) of the definition of “drug trafficking” the following sub-paragraphs –

“(d) manufacturing or supplying a scheduled substance within the meaning of Article 5A of that Law where the manufacture or supply is an offence under that Article or would be such an offence if it took place in the Island;

(e) acquiring, having in possession or using property in circumstances which amount to the commission of an offence under Article 17A or which would be such an offence if it took place in the Island;

(f) conduct which is an offence under Article 16A or which would be such an offence if it took place in the Island;

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(g) using a ship for illicit traffic in controlled drugs in circumstances which amount to the commission of an offence under Article 21B;”;

(c) in the definition of “drug trafficking offence” –

(i) by inserting after sub-paragraph (a) the following sub-paragraph –

“(aa) an offence under Article 5A of that Law (manufacture and supply of scheduled substances);”, and

(ii) in sub-paragraph (d), by substituting for the words “Article 17” the words “Article 16A, 17, 17A or 21B”; and

(d) by substituting for the definition of “police officer” the following definition –

“ ‘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 (General Provisions) (Jersey) Law 1972¹².”.

(3) In the list of expressions and provisions in paragraph (2) of Article 1 of the 1988 Law there shall be inserted, in the appropriate alphabetical order, the following expressions and provisions –

<i>Expression</i>	<i>Relevant provision</i>
“Convention State	Article 21B(1)
Jersey ship	Article 21A”.

¹² Volume 1970–1972, page 451, volume 1979–1981, page 18, Volume 1986–1987, page 313, and Volume 1990–1991, page 469.

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(4) For paragraph (6) of Article 1 of the 1988 Law there shall be substituted the following paragraphs –

“(6) Proceedings in the Island for a drug trafficking offence are concluded –

- (a) when the defendant is acquitted on all counts;
- (b) if he is convicted on one or more counts but the Court decides not to make a confiscation order against him, when it makes that decision; or
- (c) if a confiscation order is made against him in those proceedings, when the order is satisfied.

(6A) An application under Article 6A, 7A or 7B is concluded –

- (a) if the Court decides not to make a confiscation order against the defendant, when it makes that decision; or
- (b) if a confiscation order is made against him as a result of that application, when the order is satisfied.

(6B) An application under Article 7C or 10B is concluded –

- (a) if the Court decides not to vary the confiscation order in question, when it makes that decision; or
- (b) if it varies the confiscation order as a result of the application, when the order is satisfied.

(6C) For the purposes of this Law a confiscation order is satisfied when no amount is due under it.”.

(5) After paragraph (7) of Article 1 of the 1988 Law there shall be inserted the following paragraph –

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“(7A) 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.”.

ARTICLE 9

In paragraph (3) of Article 2 of the 1988 Law for the words “Articles 5 and 6” there shall be substituted the words “this Law”.

ARTICLE 10

(1) For paragraph (1) of Article 3 of the 1988 Law there shall be substituted the following paragraph –

“(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), then –

- (a) if the Attorney General asks the Court to proceed under this Article; or
- (b) if the Court considers that, even though the Attorney General has not asked it to do so, it is appropriate for it to proceed under this Article,

it may act as follows”.

(2) After paragraph (6) of Article 3 of the 1988 Law there shall be inserted the following paragraph –

“(7) The standard of proof required to determine any question arising under this Law as to –

- (a) whether a person has benefited from drug trafficking;
or

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- (b) the amount to be recovered in his case by virtue of this Article,

shall be that applicable in civil proceedings.”.

ARTICLE 11

After Article 3 of the 1988 Law there shall be inserted the following Article –

“ARTICLE 3A

Postponed determinations

(1) Where the Court is acting under Article 3 but considers that it requires further information before –

- (a) determining whether the defendant has benefited from drug trafficking; or
- (b) determining the amount to be recovered in his case by virtue of Article 3,

it may, for the purposes of enabling that information to be obtained, postpone making the determination for such period as it may specify.

(2) More than one postponement may be made under paragraph (1) in relation to the same case.

(3) Unless it is satisfied that there are exceptional circumstances, the Court shall not specify a period which –

- (a) by itself; or
- (b) where there have been one or more previous postponements under paragraph (1) or (4), when

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taken together with the earlier specified period or periods,

exceeds six months beginning with the date of conviction.

(4) Where the defendant appeals against his conviction, the Court may, on that account –

- (a) postpone making either or both of the determinations mentioned in paragraph (1) for such period as it may specify; or
- (b) where it has already exercised its powers under this Article to postpone, extend the specified period.

(5) A postponement or extension under paragraph (1) or (4) may be made –

- (a) on application by the defendant or the Attorney General; or
- (b) by the Court of its own motion.

(6) Unless the Court is satisfied that there are exceptional circumstances, any postponement or extension under paragraph (1) or (4) shall not exceed the period ending three months after the date on which the appeal is determined or disposed of.

(7) Where the Court exercises its power under paragraph (1) or (4), it may nevertheless proceed to sentence, or otherwise deal with the defendant in respect of the relevant offences.

(8) Where the Court has so proceeded, Article 3 of this Law shall have effect as if –

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- (a) in paragraph (4), the words from and including “before sentencing” to “offences concerned” were omitted; and
- (b) in sub-paragraph (c) of paragraph (5), after the word “determining” there were inserted the words “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.

(9) In sentencing, or otherwise dealing with, the defendant in respect of the relevant offence or any of the relevant offences at any time during the specified period, the Court shall not –

- (a) impose any fine on him; or
- (b) make any such order as is mentioned in clause (ii) of sub-paragraph (b) of paragraph (5) of Article 3.

(10) Where the Court has sentenced the defendant under paragraph (7) during the specified period it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in clause (ii) of sub-paragraph (b) of paragraph (5) of Article 3, so long as it does so within 28 days beginning with the end of the specified period.

(11) In this Article –

- (a) ‘the relevant offence’ means the drug trafficking offence in respect of which the defendant appears (as mentioned in paragraph (1) of Article 3) before the Court; and
- (b) ‘the date of conviction’ means –
 - (i) the date on which the defendant was convicted;
or

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- (ii) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.”.

ARTICLE 12

In paragraph (4) of Article 4 of the 1988 Law for the words “Article 17” there shall be substituted the words “Article 16A, 17 or 17A”.

ARTICLE 13

(1) For paragraphs (1) and (2) of Article 5 of the 1988 Law there shall be substituted the following paragraphs –

“(1) Subject to the provisions of paragraphs (1B) and (1C), the Attorney General may at any time give to the Court a statement of matters which he considers relevant in connexion with –

- (a) determining whether the defendant has benefited from drug trafficking; or
- (b) assessing the value of his proceeds of drug trafficking.

(1A) In this Article, such a statement is referred to as ‘an Attorney General’s statement’.

(1B) Where the Court proceeds under Article 3 without the Attorney General having asked it to do so, it may require him to give an Attorney General’s statement within such period as it may determine.

(1C) Where the Attorney General applies to the Court under Article 6A, 7A, 7B or 7C, he shall give to the Court

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within such time as it may direct, an Attorney General's statement.

(1D) Where the Attorney General has given such a statement –

- (a) he may at any time give the Court a further such statement; and
- (b) the Court may, at any time, require him to give it a further such statement, within such further period as it may direct.

(1E) Where any Attorney General's statement has been given and the Court is satisfied that a copy of the statement has been served on the defendant, it may require the defendant –

- (a) to indicate to it, within such period as it may direct, the extent to which he accepts each allegation in the statement; and
- (b) so far as he does not accept any such allegation, to give particulars of any matters on which he proposes to rely.

(1F) Where the Court has given a direction under this Article it may at any time vary it by a further direction.

(2) Where the defendant accepts to any extent any allegation in any Attorney General's statement, the Court may, for the purposes of –

- (a) determining whether the defendant has benefited from drug trafficking; or
- (b) assessing the value of his proceeds of drug trafficking,

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treat his acceptance as conclusive of the matters to which it relates.”.

- (2) In paragraph (3) of Article 5 of the 1988 Law –
- (a) for the words “paragraph (2)” there shall be substituted the words “paragraph (1E)”; and
- (b) for the word “statement” there shall be substituted the words “Attorney General’s statement in question”.

(3) After paragraph (4) of Article 5 of the 1988 Law there shall be inserted the following paragraph –

“(4A) An allegation may be accepted, or particulars of any matter may be given, for the purposes of this Article in such manner as may be prescribed by Rules of Court or as the Court may direct.”.

ARTICLE 14

After Article 5 of the 1988 Law there shall be inserted the following Article –

“ARTICLE 5A

Provision of information by defendant

- (1) This Article applies where –
- (a) the Attorney General has asked the Court to proceed under Article 3 or has applied to the Court under Article 7A, 7B or 7C; or
- (b) no such request or application has been made but the Court is nevertheless proceeding, or considering whether to proceed under Article 3.

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(2) For the purpose of obtaining information to assist it in carrying out its functions, the Court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under paragraph (2) may require all, or any specified part, of the required information to be given to the Court in such manner, and before such date, as may be specified in the order.

(4) Rules of Court may make provision as to the maximum or minimum period that may be allowed under paragraph (3).

(5) If the defendant fails, without reasonable excuse, to comply with any order under this Article, the Court may draw such inference from that failure as it considers appropriate.

(6) Where the Attorney General accepts to any extent any allegation made by the defendant in giving to the Court information required by an order under this Article, the Court may treat that acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this Article, an allegation may be accepted in such manner as may be prescribed by Rules of Court or as the Court may direct.”.

ARTICLE 15

(1) In paragraph (3) of Article 6 of the 1988 Law, for the words from and including “the amount appearing” to the end of the paragraph, there shall be substituted the following words –

“ _

- (a) the amount appearing to the Court to be the amount that might be so realised; or

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- (b) a nominal amount, where it appears to the Court (on the information available at the time) that the amount that might be so realised is nil.”.

ARTICLE 16

After Article 6 of the 1988 Law there shall be inserted the following Articles –

“ARTICLE 6A

Powers of the Court where defendant has died or absconded

(1) Paragraph (2) applies where a person has been convicted of one or more drug trafficking offences.

(2) If the Attorney General asks it to proceed under this Article, the Court may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that the defendant has died or absconded.

(3) Paragraph (4) applies where proceedings for one or more drug trafficking offences have been instituted against a person but have not been concluded.

(4) If the Attorney General asks it to proceed under this Article the Court may exercise its powers under this Law to make a confiscation order against the defendant if satisfied that the defendant has absconded.

(5) The power conferred by paragraph (4) may not be exercised at any time before the end of the period of two years beginning with the date which is, in the opinion of the Court, the date on which the defendant absconded.

(6) In any proceedings on an application under this Article –

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- (a) paragraph (2) of Article 4 and paragraphs (1E), (2) and (3) of Article 5 shall not apply;
- (b) the Court shall not make a confiscation order against a person who has absconded unless it is satisfied that the Attorney General has taken reasonable steps to contact him; and
- (c) any person appearing to the Court to be likely to be affected by the making of a confiscation order by the Court shall be entitled to appear before the Court and make representations.

ARTICLE 6B

Effect of conviction where Court has acted under Article 6A

(1) Where in the case of any defendant the Court has made a confiscation order by virtue of Article 6A, it shall, in respect of the offence or, as the case may be, any of the offences concerned –

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

(2) Where the Court has made an order under Article 6A and the defendant subsequently appears before the Court to

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be sentenced in respect of one or more of the offences concerned, paragraph (1) of Article 3 shall not apply so far as his appearance is in respect of that offence or those offences.”.

ARTICLE 17

(1) After paragraph (6) of Article 7 of the 1988 Law there shall be inserted the following paragraph –

“(7) Where the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.”.

ARTICLE 18

After Article 7 of the 1988 Law there shall be inserted the following Articles –

“ARTICLE 7A

**Reconsideration of case where Court has not proceeded
under Article 3**

(1) This Article applies where the defendant has appeared before the Court to be sentenced in respect of one or more drug trafficking offences but the Court has not proceeded under Article 3.

(2) If the Attorney General has evidence –

(a) which was not available to him when the defendant appeared to be sentenced (and accordingly was not considered by the Court), but

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- (b) which the Attorney General believes would have led the Court to determine that the defendant had benefited from drug trafficking if –
 - (i) the Attorney General had asked the Court to proceed under Article 3, and
 - (ii) the evidence had been considered by the Court,

he may apply to the Court for it to consider the evidence.

(3) The Court shall proceed under Article 3 if, having considered the evidence, it is satisfied that it is appropriate to do so.

(4) In considering whether it is appropriate to proceed under Article 3, the Court shall have regard to all the circumstances of the case.

(5) Where, having decided to proceed under Article 3, the Court proposes to make a confiscation order against the defendant, it shall order the payment of such amount as it thinks just in all the circumstances of the case.

(6) In considering the circumstances of any case the Court shall have regard, in particular, to the amount of any fine imposed on the defendant in respect of the offence or offences in question.

(7) Where the Court is proceeding under Article 3, by virtue of this Article, paragraph (4) of that Article shall have effect as if the words ‘before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned’ were omitted.

(8) The Court may take into account any payment or other reward received by the defendant on or after the date of conviction, but only if the Attorney General shows that it was

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received by the defendant in connexion with drug trafficking carried on by the defendant or another on or before that date.

(9) In considering any evidence under this Article which relates to any payment or reward to which paragraph (8) applies, the Court shall not make any of the assumptions which it would otherwise be entitled to make under Article 4.

(10) No application shall be entertained by the Court under this Article if it is made after the end of the period of six years beginning with the date of conviction.

(11) In this Article ‘the date of conviction’ means –

- (a) the date on which the defendant was convicted, or
- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

ARTICLE 7B

Re-assessment of whether defendant has benefited from drug trafficking

(1) This Article applies where the Court has made a determination (‘the Article 3(2) determination’) under paragraph (2) of Article 3 that the defendant has not benefited from drug trafficking.

(2) If the Attorney General has evidence –

- (a) which was not considered by the Court in making the Article 3(2) determination, but
- (b) which the Attorney General believes would have led the Court to determine that the defendant had

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benefited from drug trafficking if it had been considered by the Court,

he may apply to the Court for it to consider that evidence.

(3) If, having considered the evidence, the Court is satisfied that it would have determined that the defendant had benefited from drug trafficking if that evidence had been available to it, the Court –

- (a) shall –
 - (i) make a fresh determination under paragraph (2) of Article 3; and
 - (ii) make a determination under paragraph (4) of that Article of the amount to be recovered by virtue of that Article; and
- (b) may make an order under that Article.

(4) Where the Court is proceeding under Article 3, by virtue of this Article, paragraph (4) of that Article shall have effect as if the words ‘before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned’ were omitted.

(5) The Court may take into account any payment or other reward received by the defendant on or after the date of the Article 3(2) determination, but only if the Attorney General shows that it was received by the defendant in connexion with drug trafficking carried on by the defendant or another on or before that date.

(6) In considering any evidence under this Article which relates to any payment or reward to which paragraph (5) applies, the Court shall not make any of the assumptions which it would otherwise be entitled to make under Article 4.

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- (7) Where the Court –
- (a) has been asked to proceed under Article 6A in relation to a defendant who has absconded, but
 - (b) has decided not to make a confiscation order against him,

this Article shall not apply at any time while he remains an absconder.

(8) No application shall be entertained by the Court under this Article if it is made after the end of the period of six years beginning with –

- (a) the date on which the defendant was convicted; or
- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.

ARTICLE 7C

Revised assessment of proceeds of drug trafficking

(1) This Article applies where the Court has made a determination under paragraph (4) of Article 3 of the amount to be recovered in a particular case by virtue of that paragraph ('the current Article 3(4) determination').

(2) Where the Attorney General is of the opinion that the real value of the defendant's proceeds of drug trafficking was greater than their assessed value, the Attorney General may apply to the Court for the evidence on which he has formed his opinion to be considered by the Court.

- (3) In paragraph (2) above –

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‘assessed value’ means the value of the defendant’s proceeds of drug trafficking as assessed by the Court under paragraph (1) of Article 6; and

‘real value’ means the value of the defendant’s proceeds of drug trafficking which took place –

- (a) in the period by reference to which the current Article 3(4) determination was made; or
- (b) in any earlier period.

(4) If, having considered the evidence, the Court is satisfied that the real value of the defendant’s proceeds of drug trafficking is greater than their assessed value (whether because the real value was higher at the time of the current Article 3(4) determination than was thought or because the value of the proceeds in question has subsequently increased), the Court shall make a fresh determination under paragraph (4) of Article 3 of the amount to be recovered by virtue of that Article.

(5) Where the Court is proceeding under Article 3, by virtue of this Article, paragraph (4) of that Article shall have effect as if the words ‘before sentencing or otherwise dealing with him in respect of the offence or, as the case may be, any of the offences concerned’ were omitted.

(6) Any determination under paragraph (4) of Article 3 by virtue of this Article shall be by reference to the amount that might be realised at the time when the determination is made.

(7) For any determination under paragraph (4) of Article 3 by virtue of this Article, paragraph (5) of Article 4 shall not apply in relation to any of the defendant’s proceeds of drug trafficking taken into account in respect of the current Article 3(4) determination.

- (8) In relation to any such determination –

- (a) paragraph (3) of Article 2 shall have effect as if –
 - (i) for the words ‘a confiscation order is made against the defendant’ there were substituted the words ‘of the determination’, and
 - (ii) in clauses (i), (ii) and (iii) of that paragraph, for the words ‘confiscation order’ in each case where they occur, there were substituted the words ‘determination’;
- (b) sub-paragraph (a) of paragraph (4) of Article 5 and paragraph (2) of Article 6 shall have effect as if for the words ‘confiscation order’ there were substituted the word ‘determination’; and
- (c) paragraph (3) of Article 6 shall have effect as if for the words ‘confiscation order is made’ there were substituted the words ‘determination is made’.

(9) The Court may take into account any payment or other reward received by the defendant on or after the current Article 3(4) determination, but only if the Attorney General shows that it was received by the defendant in connexion with drug trafficking carried on by the defendant or another on or before that date.

(10) In considering any evidence under this Article which relates to any payment or reward to which paragraph (9) applies, the Court shall not make any of the assumptions which it would otherwise be entitled to make under Article 4.

(11) If, as a result of making the fresh determination required by paragraph (4), the amount to be recovered exceeds the amount set by the current Article 3(4) determination, the Court may substitute for the amount to be recovered under the confiscation order which was made by reference to the current

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Article 3(4) determination such greater amount as it thinks just in all the circumstances of the case.

(12) Where the Court varies a confiscation order under paragraph (11), it shall substitute for the term of imprisonment or of detention fixed in respect of the amount to be recovered under the order a longer term in respect of the greater amount substituted under paragraph (11).

(13) Where a confiscation order has been made in relation to any defendant by virtue of Article 6A, this Article shall not apply at any time while he is an absconder.

(14) No application shall be entertained by the Court under this Article if it is made after the end of the period of six years beginning with –

- (a) the date on which the defendant was convicted; or
- (b) where he appeared to be sentenced in respect of more than one conviction, and those convictions were not all on the same date, the date of the latest of those convictions.”.

ARTICLE 19

(1) For paragraph (1) of Article 8 of the 1988 Law there shall be substituted the following paragraph –

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

- (a) the Court has made a confiscation order; or
- (b) proceedings have been instituted in the Island against the defendant for a drug trafficking offence or an application has been made by the Attorney General in

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respect of the defendant under Article 6A, 7A, 7B, 7C or 10B and –

(i) the proceedings have not, or the application has not, been concluded, and

(ii) the Court is satisfied that there is reasonable cause to believe –

(A) in the case of an application under Article 7C or 10B, that the Court will be satisfied as mentioned in paragraph (4) of Article 7C or, as the case may be, paragraph (2) of Article 10B, or

(B) in any other case, 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, or that an application of a kind mentioned in sub-paragraph (b) is to be made against the defendant, and

(ii) is also satisfied as mentioned in clause (ii) of that sub-paragraph.”.

(2) After paragraph (3) of Article 8 of the 1988 Law there shall be inserted the following paragraphs –

“(4) Where the Court has made an order under Article 9 in relation to a proposed application by virtue of sub-paragraph (c) of paragraph (1), the Court shall discharge the order if the application is not made within such time as the Court considers reasonable.

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(5) The Court shall not exercise powers under Article 9, by virtue of sub-paragraph (a) or (b) of paragraph (1), if it is satisfied that –

- (a) there has been undue delay in continuing the proceedings or application in question; or
- (b) the Attorney General does not intend to proceed.”.

ARTICLE 20

For paragraph (7) of Article 9 of the 1988 Law there shall be substituted the following paragraph –

“(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 his discretion, refer it to the Court for adjudication.”.

ARTICLE 21

After Article 10 of the 1988 Law there shall be inserted the following Articles –

“ARTICLE 10A

Interest on sums unpaid under confiscation orders

(1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid, that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

(2) The Court may, on the application of the Attorney General, increase the term of imprisonment fixed in respect of

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the confiscation order under paragraph (1) of Article 7 when paragraph (1) applies and interest has accrued.

(3) The rate of interest under paragraph (1) shall be such rate as the Royal Court shall from time to time by Rules of Court prescribe.

ARTICLE 10B

Increase in realisable property

(1) This Article has effect where by virtue of paragraph (3) of Article 6, the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of drug trafficking.

(2) If, on an application made in accordance with paragraph (3), the Court is satisfied that the amount that might be realised in the case of the person in question is greater than the amount taken into account in making the confiscation order (whether it was greater than was thought when the order was made or has subsequently increased) the Court shall issue a certificate to that effect, giving the Court's reasons.

(3) An application under paragraph (2) may be made by the Attorney General or by the Viscount in relation to the realisable property of the person in question.

(4) Where a certificate has been issued under paragraph (2) the Attorney General may apply to the Court for an increase in the amount to be recovered under the confiscation order; and on that application the Court may –

- (a) substitute for that amount such amount (not exceeding the amount assessed as the value referred to in paragraph (1)) as appears to the Court to be appropriate having regard to the amount now shown to be realisable; and

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- (b) increase the term of imprisonment fixed in respect of the confiscation order under paragraph (1) of Article 7.”.

ARTICLE 22

After paragraph (1) of Article 11 of the 1988 Law there shall be inserted the following paragraph –

“(1A) The amount applied by the Viscount towards the satisfaction of the confiscation order shall be paid into the Drug Trafficking Confiscations Fund.”.

ARTICLE 23

In Article 12 of the 1988 Law –

- (a) in paragraph (1), after the word “defendant” there shall be inserted the words “or the Viscount”;
- (b) in paragraph (3) for the word “defendant” there shall be inserted the words “person who applied for it”; and
- (c) after paragraph (4) there shall be inserted the following paragraph –

“(5) Rules of Court may make provision –

- (a) for the giving of notice of any application under this Article; and
- (b) for any person appearing to the Court to be affected by the exercise of its powers under this Article to be given the opportunity to make representation to the Court.”.

ARTICLE 24

After Article 14 of the 1988 Law there shall be inserted the following Article –

“ARTICLE 14A

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 Committee.

(2) All amounts –

- (a) recovered under, or in satisfaction of, a 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 Committee for the purposes of –

- (a) promoting or supporting measures which, in the opinion of the Committee, may assist in –
 - (i) preventing, suppressing or otherwise dealing with drug trafficking or the misuse of controlled drugs,

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- (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 the Island's obligations under assets-sharing agreements;
- (c) meeting the expenses incurred by the Committee in administering the Fund.

(5) Before promoting or supporting any measure under sub-paragraph (a) of paragraph (4), the Committee shall consult with the Attorney General and with such other persons or bodies (including other Committees of the States) as it 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 Committee, in a current or deposit account with one or more banks selected by the Committee, and any interest earned on such monies while held in such an account shall be paid by the Committee into the Fund.

(7) Monies held in any account by virtue of sub-paragraph (b) of paragraph (6) may be withdrawn on the signature of the Treasurer of the States.

- (8) In this Article –

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‘assets-sharing agreement’ means an agreement entered into between the Attorney General and the appropriate authority of a country or territory outside the Island whereby arrangements are made for the sharing of the proceeds of drug-trafficking which, as a result of mutual assistance, have been confiscated either in the Island or elsewhere;

‘controlled drug’ has the same meaning as in the Misuse of Drugs (Jersey) Law 1978.”.

ARTICLE 25

After Article 15 of the 1988 Law there shall be inserted the following Articles –

“ARTICLE 15A

Compensation etc. where absconder acquitted

- (1) Where –
 - (a) the Court has made a confiscation order in the exercise of its powers under paragraph (4) of Article 6A; and
 - (b) the defendant is subsequently tried for the offence or offences concerned and acquitted on all counts, the Court shall cancel the confiscation order.

(2) The Court may, on the application of a person who held property which was realisable property order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

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

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- (4) Provision may be made by Rules of Court for –
 - (a) giving notice of any application under this Article; and
 - (b) any person appearing to the Court to be affected by any exercise of its powers under this Article to be given an opportunity to make representations to the Court.
- (5) Any compensation payable under this Article shall be paid out of the annual income of the States.
- (6) Where the Court cancels a compensation order it may make such consequential or incidental order as is considers appropriate in connexion with the cancellation.

ARTICLE 15B

**Power to discharge confiscation order and order
compensation where absconder returns**

- (1) This Article applies where –
 - (a) the Court has made a confiscation order by virtue of paragraph (4) of Article 6A in relation to an absconder,
 - (b) the defendant has ceased to be an absconder, and
 - (c) Article 15A does not apply.
- (2) The Court may, on the application of the defendant, cancel the confiscation order if it is satisfied that –
 - (a) there has been undue delay in continuing the proceedings in respect of which the power under paragraph (4) of Article 6A was exercised; or

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(b) the Attorney General does not intend to proceed with the prosecution.

(3) Where the Court cancels a confiscation order under this Article it may, on the application of a person who held property which was realisable property, order compensation to be paid to the applicant if it is satisfied that the applicant has suffered loss as a result of the making of the confiscation order.

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

(5) Provision may be made by Rules of Court for –

(a) the giving of notice of any application under this Article; and

(b) any person appearing to the Court to be likely to be affected by any exercise of its powers under this Article to be given an opportunity to make representations to the Court.

(6) Any compensation payable under this Article shall be paid out of the annual income of the States.

(7) Where the Court cancels a confiscation order under this Article it may make such consequential or incidental order as it considers appropriate in connexion with the cancellation.

ARTICLE 15C

Variation of confiscation orders made by virtue of Article 6A

(1) This Article applies where –

(a) the Court has made a confiscation order by virtue of paragraph (4) of Article 6A, and

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- (b) the defendant has ceased to be an absconder.
- (2) If the defendant alleges that –
 - (a) the value of his proceeds of drug trafficking in the period by reference to which the determination in question was made (the “original value”), or
 - (b) the amount that might have been realised at the time the confiscation order was made,

was less than the amount ordered to be paid under the confiscation order, he may apply to the Court for it to consider his evidence.

(3) If, having considered that evidence, the Court is satisfied that the defendant’s allegation is correct it –

- (a) shall make a fresh determination under paragraph (4) of Article 3, and
- (b) may, if it considers it just in all the circumstances, vary the amount to be recovered under the confiscation order.

(4) For any determination under Article 3 by virtue of this Article, paragraph (5) of Article 4 shall not apply in relation to any of the defendant’s proceeds of drug trafficking taken into account in determining the original value.

(5) Where the Court varies a confiscation order under this Article –

- (a) it shall substitute for the term of imprisonment or of detention fixed under Article 7 in respect of the amount to be recovered under the order a shorter term in respect of the lesser amount; and

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- (b) on the application of a person who held property which was realisable property, it may order compensation to be paid to the applicant if –
 - (i) It is satisfied that the applicant has suffered loss as a result of the making of the confiscation order, and
 - (ii) having regard to all the circumstances of the case, the Court considers it to be appropriate.

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

- (7) Provision may be made by Rules of Court for –
 - (a) the giving of notice of any application under this Article; and
 - (b) any person appearing to the Court to be likely to be affected by any exercise of its powers under this section to be given an opportunity to make representations to the Court.

- (8) Any compensation payable under this Article shall be paid out of the annual income of the States.

- (9) No application shall be entertained by the Court under this Article if it is made after the end of the period of six years beginning with the date on which the confiscation order was made.”

ARTICLE 26

- (1) Article 16 of the 1988 Law shall be amended by inserting after the word “exportation” the words “of goods intended by any person for use in drug trafficking or”.

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(2) After Article 16 of the 1988 Law there shall be inserted the following Articles –

“ARTICLE 16A

Concealing or transferring proceeds of drug trafficking

- (1) A person is guilty of an offence if he –
- (a) conceals or disguises any property which is, or in whole or in part directly or indirectly represents, his proceeds of drug trafficking; or
 - (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for a drug trafficking offence or the making or enforcement in his case of a confiscation order.

(2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents, another person's proceeds of drug trafficking, he –

- (a) conceals or disguises that property; or
- (b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a drug trafficking offence or the making or enforcement of a confiscation order.

(3) In sub-paragraph (a) of paragraphs (1) and (2) the references to concealing or disguising any property include references to concealing or disguising its nature, source,

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location, disposition, movement or ownership or any rights with respect to it.

(4) A person guilty of an offence under this Article is liable to a fine or to imprisonment for a term not exceeding fourteen years, or to both.

ARTICLE 16B

Seizure and detention of drug trafficking money

(1) A police officer may seize and, in accordance with this Article, detain any money which is imported into or exported from the Island if he has reasonable grounds for suspecting that it directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.

(2) Money seized by virtue of this Article shall not be detained for more than 48 hours unless its continued detention is authorized by an order made by the Bailiff and no such order shall be made unless the Bailiff is satisfied that –

- (a) there are reasonable grounds for the suspicion mentioned in paragraph (1); and
- (b) the continued detention of the money is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the Island or elsewhere) of criminal proceedings against any person for an offence with which the money is connected.

(3) Any order under paragraph (2) shall authorize the continued detention of the money to which it relates for such period, not exceeding three months beginning with the date of the order, as may be specified in the order; and the Bailiff, if satisfied as to the matters mentioned in that paragraph, may

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thereafter from time to time authorize the further detention of the money but so that –

- (a) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and
 - (b) the total period of detention shall not exceed two years from the date of the first order made in respect of the money under paragraph (2).
- (4) An application for an order under paragraph (2) or (3) may only be made by or with the consent of the Attorney General.
- (5) At any time while money is detained by virtue of the foregoing provisions of this Article –
- (a) the Bailiff may direct its release if satisfied –
 - (i) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in paragraph (2); or
 - (ii) on an application made by any other person, that detention of the money is not for that or any other reason justified; and
 - (b) a police officer may release the money if satisfied that its detention is no longer justified but shall first obtain the consent of the Attorney General.
- (6) If at any time when money is being detained by virtue of the foregoing provisions of this Article –

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- (a) an application for its forfeiture under Article 16C is made; or
- (b) proceedings are instituted (whether in the Island or elsewhere) against any person for an offence with which the money is connected,

the money shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence, have been concluded.

ARTICLE 16C

Forfeiture

(1) The Royal Court may order the forfeiture of any money which has been seized under Article 16B if satisfied, on an application made while the money is detained under that Article, that the money directly or indirectly represents any person's proceeds of, or is intended by any person for use in, drug trafficking.

(2) Any application under this Article shall be made by or on behalf of the Attorney General.

(3) The standard of proof in proceedings on any application under this Article shall be that applicable to civil proceedings; and an order may be made under this Article whether or not proceedings are brought against any person for an offence with which the money in question is connected.

ARTICLE 16D

Appeal against forfeiture under Article 16C

(1) Where an order for forfeiture of money ("the forfeiture order") has been made under Article 16C, any party to the proceedings in which the order was made (other than the

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Attorney General) may, before the end of the period of thirty days beginning on which it is made, appeal to the Court of Appeal.

(2) The Court may, on an application made by the appellant, order the release of so much of the money to which the forfeiture order relates as it considers appropriate to enable him to meet his legal expenses in connexion with the appeal.

(3) The Court of Appeal on hearing an appeal under this Article may make such order as it considers appropriate.

(4) If it upholds the appeal, the Court of Appeal may release the money, or (as the case may be) the remaining money, together with any accrued interest.

(5) Paragraph (3) of Article 16C applies in relation to a rehearing on an appeal under this Article as it applies to proceedings under that Article.

ARTICLE 16E

Interest

Money seized under this Law and detained for more than forty-eight hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such money shall be added to that money on its forfeiture or release.

ARTICLE 16F

Procedure

(1) An order under paragraph (2) of Article 16B shall provide for notice to be given to persons affected by the order.

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(2) Provision may be made by Rules of Court with respect to applications to the Court under Article 16C or appeals under Article 16D, for the giving of notice of such applications or appeals to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under Articles 16B, 16C and 16D.

ARTICLE 16G

Receipts

(1) Money forfeited under Article 16C, together with any interest thereon, shall be disposed of in such manner as the Committee may direct.

(2) Where an appeal against forfeiture is made under Article 16D, paragraph (1) shall not apply until the appeal is determined or otherwise disposed of.”.

ARTICLE 27

(1) In sub-paragraph (a) of paragraph (3) of Article 17 of the 1988 Law for the word “contract” there shall be substituted the words “statute, contract or otherwise”.

(2) After paragraph (4) of Article 17 of the 1988 Law there shall be inserted the following paragraph –

“(4A) In the case of a person who was in employment at the relevant time, paragraphs (3) and (4) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a police officer.”.

ARTICLE 28

After Article 17 of the 1988 Law there shall be inserted the following Article –

“ARTICLE 17A

**Acquisition, possession or use of property representing
proceeds of drug trafficking**

(1) A person who, knowing that any property is, or in whole or in part directly or indirectly represents, another’s proceeds of drug trafficking, acquires that property or has possession or use of it, is guilty of an offence.

(2) It is a defence to a charge of committing an offence under this Article that the person charged acquired or used the property or had possession of it for adequate consideration.

(3) For the purposes of paragraph (2) –

(a) a person acquires property for inadequate consideration if the value of the consideration is significantly less than the value of the property; and

(b) a person uses or has possession of property for inadequate consideration if the value of the consideration is significantly less than the value of his use or possession of the property.

(4) The provision for any person of services or goods which are of assistance to him in drug trafficking shall not be treated as consideration for the purposes of paragraph (2).

(5) Where a person discloses to a police officer a suspicion or belief that any property is, or in whole or in part directly or indirectly represents, another person’s proceeds of

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drug trafficking, or discloses to a police officer 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 statute, contract or otherwise; and
- (b) if he does any act in relation to the property in contravention of paragraph (1), he does not commit an offence under this Article if –
 - (i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer; or
 - (ii) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.

(6) For the purposes of this Article, having possession of any property shall be taken to be doing an act in relation to it.

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

- (a) he intended to disclose to a police officer such a suspicion, belief or matter as is mentioned in paragraph (5); but
- (b) there is reasonable excuse for his failure to make the disclosure in accordance with sub-paragraph (b) of that paragraph.

(8) In the case of a person who was in employment at the relevant time, paragraphs (5) and (7) shall have effect in relation to disclosures, and intended disclosures, to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have

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effect in relation to disclosures, and intended disclosures, to a police officer.

(9) 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.

(10) No police officer shall be guilty of an offence under this Article in respect of anything done by him in the course of acting in connexion with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to drug trafficking or the proceeds of drug trafficking.”.

ARTICLE 29

After Article 18 of the 1988 Law there shall be inserted the following Articles –

“ARTICLE 18A

Failure to disclose knowledge or suspicion of drug money laundering

- (1) A person shall be guilty of an offence if –
- (a) he knows, or suspects, that another person is engaged in drug money laundering;
 - (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
 - (c) he does not disclose the information or other matter to a police officer as soon as is reasonably practicable after it comes to his attention.

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(2) Paragraph (1) does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.

(3) It is a defence to a charge of committing an offence under this Article that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

- (4) Where a person discloses to a police officer –
- (a) his suspicion or belief that another person is engaged in drug money laundering; or
 - (b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.

(5) Without prejudice to paragraph (3) or (4), in the case of a person who was in employment at the relevant time, it is a defence to a charge of committing an offence under this Article that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.

(6) A disclosure to which paragraph (5) applies shall not be treated as a breach of any restriction imposed by statute, contract or otherwise.

(7) In this Article “drug money laundering” means doing any act which constitutes an offence under Article 16A, 17 or 17A or in the case of an act done outside the Island would constitute such an offence if done in the Island.

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(8) For the purposes of paragraph (7), having possession of any property shall be taken to be doing an act in relation to it.

(9) For the purposes of this Article, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him –

- (a) by, or by a representative of, a client of his in connexion with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person –
 - (i) in contemplation of, or in connexion with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(10) No information or other matter shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(11) This Article shall not apply –

- (a) to any person designated by Regulations made by the States for the purposes of this sub-paragraph; or
- (b) in such circumstances as may be specified, to any person who falls within such category of person as may be specified in Regulations made by the States for the purposes of this sub-paragraph.

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(12) Regulations made for the purposes of sub-paragraph (a) of paragraph (11) may designate any person appearing to the States to be performing regulatory, supervisory, investigative or registration functions.

(13) The categories of person specified in Regulations made for the purposes of sub-paragraph (b) of paragraph (11) shall be such categories of person connected with the performance by any designated person of regulatory, supervisory, investigative or registration functions.

(14) 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.

ARTICLE 18B

Tipping-off

- (1) A person is guilty of an offence if –
- (a) he knows, or suspects that a police officer is acting, or is proposing to act, in connexion with an investigation which is being, or is about to be, conducted into drug money laundering; and
 - (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.
- (2) A person is guilty of an offence if –
- (a) he knows or suspects that a disclosure (“the disclosure”) has been made to a police officer under Article 17, 17A or 18A; and
 - (b) he discloses to any other person information or any other matter which is likely to prejudice any

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investigation which might be conducted following the disclosure.

- (3) A person is guilty of an offence if –
- (a) he knows or suspects that a disclosure of a kind mentioned in paragraph (4A) of Article 17, paragraph (8) of Article 17A or paragraph (5) of Article 18A (“the disclosure”) has been made; and
 - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.

(4) Nothing in paragraphs (1) to (3) makes it an offence for a professional legal adviser to disclose any information or other matter –

- (a) to, or to a representative of, a client of his in connexion with the giving by the adviser of legal advice to the client; or
- (b) to any person –
 - (i) in contemplation of, or in connexion with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(5) Paragraph (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(6) In proceedings against a person for an offence under paragraph (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that paragraph.

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(7) In this Article “drug money laundering” has the same meaning as in Article 18A.

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

(9) No police officer or other person shall be guilty of an offence under this Article in respect of anything done by him in the course of acting in connexion with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to drug trafficking or the proceeds of such trafficking.”.

ARTICLE 30

In Article 19 of the 1988 Law –

- (a) in paragraph (6) for the words “this Article” there shall be substituted the words “paragraph (1)”; and
- (b) after paragraph (7) there shall be inserted the following paragraph –

“(8) An application under paragraph (1) or (4) may be made *ex parte* to the Bailiff in Chambers.”.

ARTICLE 31

In paragraph (2) of Article 20 of the 1988 Law for the words “a police officer to enter” there shall be substituted the words “any police officer together with any other person named in the warrant to enter, if necessary by force,”.

ARTICLE 32

After paragraph (2) of Article 21 of the 1988 Law there shall be inserted the following paragraphs –

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“(2A) Nothing in paragraph (1) makes it an offence for a professional legal adviser to disclose any information or other matter –

- (a) to, or to a representative of, a client of his in connexion with the giving by an adviser of legal advice to the client; or
- (b) to any person –
 - (i) in contemplation of, or in connexion with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(2B) Paragraph (2A) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.”.

ARTICLE 33

After Article 21 of the 1988 Law there shall be inserted the following Articles –

“ARTICLE 21A

Offences on Jersey vessels

Anything which would constitute a drug trafficking offence if done on land in the Island shall constitute that offence if done on a ship registered in the Island (“a Jersey ship”).

ARTICLE 21B

Ships used for illicit traffic

(1) This Article applies to a Jersey ship, a British ship, a ship registered in a state other than the United Kingdom which

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is a party to the Vienna Convention (“a Convention state”) and a ship not registered in any country or territory.

(2) A person is guilty of an offence if on a ship to which this Article applies, wherever it may be, he –

- (a) has a controlled drug in his possession; or
- (b) is in any way knowingly concerned in the carrying or concealing of a controlled drug on that ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to Article 4 of the Misuse of Drugs (Jersey) Law 1978 or the law of any other state or territory.

(3) A certificate purporting to be issued by or on behalf of the government of any state to the effect that the importation or export of a controlled drug is prohibited by the law of that state shall be evidence of the matters stated.

(4) A person guilty of an offence under this Article is liable –

- (a) in a case where the controlled drug is a Class A drug, to a fine or to imprisonment for life, or to both;
- (b) in a case where the controlled drug is a Class B drug, to a fine or to imprisonment for a term not exceeding fourteen years, or to both;
- (c) in a case where the controlled drug is a Class C drug, to a fine or to imprisonment for a term not exceeding five years, or to both.

(5) In this Article “a controlled drug” and the references to controlled drugs of a specified class have the same

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meaning as in the Misuse of Drugs (Jersey) Law 1978¹³ ; and an offence under this Article shall be included in the offences to which Article 22 of that Law (defences) applies.

ARTICLE 21C

Enforcement powers

(1) The powers conferred on an enforcement officer by the Schedule to this Law (“the powers”) shall be exercisable in relation to any ship to which Article 21A or 21B applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in those Articles.

(2) The powers shall not be exercised outside the territorial sea of the Island in relation to a ship registered in a Convention state except with the authority of the Attorney General and he shall not give his authority unless that state has in relation to that ship –

- (a) requested the assistance of the Island for the purpose mentioned in paragraph (1); or
- (b) authorized the Island to act for that purpose.

(3) In giving his authority pursuant to a request or authorization from a Convention state, the Attorney General shall impose such conditions or limitations on the exercise of the powers as may be necessary to give effect to any conditions or limitations imposed by that State.

(4) The Attorney General may, either of his own motion or in response to a request from a Convention state, authorize a Convention state to exercise, in relation to a Jersey ship, powers corresponding to the powers, but subject to such conditions or limitations, if any, as he may impose.

¹³ Volume 1975–1978, page 449, Volume 1982–1983, page 157, and R & O’s 6779, 7458, 7866, 8067 and 8245.

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(5) The powers shall not be exercised in the territorial sea of any other country or territory without the authority of the Attorney General and he shall not give his authority unless that country or territory has consented to the exercise of those powers.

(6) The Attorney General may, by instrument in writing, delegate to the Agent of the Impôts all or any of his functions under this Article, subject to such conditions, exceptions or qualifications as may be specified in the instrument.

ARTICLE 21D

Jurisdiction and prosecutions

(1) Proceedings under this Law in respect of an offence on a ship may be taken, and the offence may be treated as having been committed, within the Island.

(2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (consent of Secretary of State for certain prosecutions) shall not apply to any proceedings under this Law.”.

ARTICLE 34

After Article 24 of the 1988 Law there shall be inserted the Schedule set out in the Second Schedule to this Law.

PART III

SUPPLEMENTAL

ARTICLE 35

(1) This Law may be cited as the Drug Trafficking (Miscellaneous Provisions) (Jersey) Law 1996 and, subject to paragraph

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(2), shall come into force on such day as the States may by Act appoint (“the appointed day”).

(2) Articles 10, 11, 13, 14, 16, 17, 18, 19 and 21 shall not apply where the drug trafficking offence, or any of the drug trafficking offences, in respect of which the confiscation order was made was committed before the appointed day, and proceedings for any such offence or offences shall be conducted as if this Law had not been passed.

C.M. NEWCOMBE

Deputy Greffier of the States.

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FIRST SCHEDULE

(Article 7)

“FIFTH SCHEDULE

(Articles 5A and 5B)

Substances useful for manufacturing controlled drugs

TABLE I

N-Acetylanthranilic acid
Ephedrine
Ergometrine
Ergotamine
Isosafrole
Lysergic acid
3, 4-Methylenedioxyphenyl-2-propanone
1-phenyl-2-propanone
Piperonal
Pseudoephedrine
Safrole

The salts of the substances listed in this Table whenever the existence of such salts is possible.

TABLE II

Acetic anhydride
Acetone
Anthranilic acid
Ethyl ether
Hydrochloric acid
Methyl ethyl ketone (also referred to as 2-

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Butanone or M.E.K.)
Phenylacetic acid
Piperidine
Potassium permanganate
Sulphuric acid
Toluene

The salts of the substances listed in this Table except hydrochloric acid and sulphuric acid whenever the existence of such salts is possible.”.

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SECOND SCHEDULE

(Article 34)

“SCHEDULE

(Article 21C)

ENFORCEMENT POWERS IN RESPECT OF SHIPS

Preliminary

1.-(1) In this Schedule “an enforcement officer” means –

- (a) a police officer; and
- (b) such other person of a description specified in an Order made for the purposes of this Schedule by the Committee.

(2) The Subordinate Legislation (Jersey) Law 1960¹⁴ shall apply to Orders made under this paragraph.

(3) In this Schedule “the ship” means the ship in relation to which the powers conferred by this Schedule are exercised.

Power to stop, board, divert and detain

2.-(1) An enforcement officer may stop the ship, board it and, if he thinks it necessary for the exercise of his functions, require it to be taken to a port in the Island and detain it there.

(2) Where an enforcement officer is exercising his powers with the authority of the Attorney General given under paragraph (2) of Article 21C, the officer may require the ship to be taken to a port in the Convention state in question or, if that state has so requested, in any other country or territory willing to accept it.

¹⁴ Tome VIII, page 849.

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(3) For any of those purposes he may require the master or any member of the crew to take such action as may be necessary.

(4) If an enforcement officer detains a vessel he shall serve on the master a notice in writing stating that it is to be detained until the notice is withdrawn by the service on him of a further notice in writing signed by an enforcement officer.

Power to search and obtain information

3.-(1) An enforcement officer may search the ship, anyone on it and anything on it including its cargo.

(2) An enforcement officer may require any person on the ship to give information concerning himself or anything on the ship.

(3) Without prejudice to the generality of those powers an enforcement officer may –

- (a) open any containers;
- (b) make tests and take samples of anything on the ship;
- (c) require the production of documents, books or records relating to the ship or anything on it;
- (d) make photographs or copies of anything whose production he has power to require.

Powers in respect of suspected offences

4.-(1) If an enforcement officer has reasonable grounds to suspect that an offence mentioned in Article 21A or 21B has been committed on a ship to which that Article applies he may –

- (a) arrest anyone whom he has reasonable grounds for suspecting to be guilty of the offence; and

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- (b) seize and detain anything found on the ship which appears to him to be evidence of the offence.

(2) The powers conferred by this paragraph shall be in addition to and not in derogation of any other powers conferred on a police officer apart from this paragraph.

Assistants

5.-(1) An enforcement officer may take with him, to assist him in exercising his powers –

- (a) any other persons; and
(b) any equipment or materials.

(2) A person whom an enforcement officer takes with him to assist him may perform any of the officer's functions but only under the officer's supervision.

Use of reasonable force

6. An enforcement officer may use reasonable force, if necessary, in the performance of his functions.

Evidence of authority

7. An enforcement officer shall, if required, produce evidence of his authority.

Protection of officers

8. An enforcement officer shall not be liable in any civil or criminal proceedings for anything done in the purported performance of his functions under this Schedule if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

Offences

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9.-(1) A person is guilty of an offence if he –

- (a) intentionally obstructs an enforcement officer in the performance of any of his functions under this Schedule;
- (b) fails without reasonable excuse to comply with a requirement made by an enforcement officer in the performance of those functions; or
- (c) in purporting to give information required by an enforcement officer for the performance of those functions –
 - (i) makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
 - (ii) intentionally fails to disclose any material particular.

(2) A person guilty of an offence under this paragraph is liable to a fine not exceeding level 4 on the standard scale¹⁵ or to imprisonment for a term not exceeding three months, or to both.”

¹⁵ Volume 1992–1993, page 427.