

Consolidated text

**ORDINANCE
OF THE STATES OF DELIBERATION**

ENTITLED

**The Drug Trafficking (Bailiwick of Guernsey) Law
(Enforcement of External Forfeiture Orders)
Ordinance, 2000**

[CONSOLIDATED TEXT]

NOTE

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ARRANGEMENT OF SECTIONS

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(Made on the 14th December, 2000.)

**The Drug Trafficking (Bailiwick of Guernsey) Law
(Enforcement of External Forfeiture Orders)
Ordinance, 2000**

THE STATES, in exercise of the powers conferred upon them by section 49 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^a, and of all other powers enabling them in that behalf, hereby order: –

External forfeiture orders.

1. (1) An order made by a court in a designated country for the forfeiture and destruction, or forfeiture and other disposal, of anything in respect of which an offence involving drug trafficking has been committed or which was used or intended for use in connection with the commission of such an offence is referred to in this Ordinance as an "**external forfeiture order**".

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

(3) A person against whom an external forfeiture order has been made, or a person against whom proceedings which may result in an external forfeiture order being made have been, or are to be, instituted in a court in a designated country, [or a person who is the subject of a criminal investigation with regard to drug trafficking in a designated country,] is referred to as the "**defendant**".

^a Order in Council No. VII of 2000.

Restraint orders.

2. (1) The Royal Court may in accordance with this subsection by an order (referred to in this Ordinance as a "**restraint order**") prohibit any person, subject to such conditions and exceptions as may be specified in the order, from dealing with any property liable to forfeiture, that is to say, any property in respect of which an external forfeiture order has been made or in respect of which such an order could be made in the proceedings referred to in subsections (2) or (3) [or in proceedings following the investigation referred to in subsection (3A)].

(2) A restraint order may be made where –

- (a) proceedings have been instituted against the defendant in a designated country,
- (b) the proceedings have not been concluded, and
- (c) it appears to the Royal Court that there are reasonable grounds for believing that such an order may be made in them.

(3) A restraint order may also be made where it appears to the Royal Court that –

- (a) proceedings are to be instituted against the defendant in a designated country, and
- (b) there are reasonable grounds for believing that an external forfeiture order may be made in them.

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[(3A) A restraint order may also be made where it appears to the Royal Court that –

- (a) a criminal investigation has been started in a designated country with regard to drug trafficking, and
- (b) there is reasonable cause to believe that the alleged offender has benefited from drug trafficking.]

(4) Where the Royal Court has made a restraint order under subsection (1) by virtue of subsection (3), the Royal Court shall discharge the order if the proposed proceedings are not instituted within such time as the Royal Court considers reasonable.

(5) A restraint order –

- (a) may be made only on an application by Her Majesty's Procureur,
- (b) may be made on an ex parte application to the Bailiff, and
- (c) may provide for service on, or provision of notice to, persons affected by the order in such manner as the Royal Court may direct.

(6) A restraint order may be discharged or varied in relation to any property.

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(7) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(8) Where the Royal Court has made a restraint order, the Royal Court may at any time appoint Her Majesty's Sheriff,

(a) to take possession of any property specified in the restraint order, and

(b) in accordance with the Royal Court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Royal Court, and may require any person having possession of property in respect of which Her Majesty's Sheriff is appointed under this section to give possession of it to Her Majesty's Sheriff.

(9) For the purposes of this section, dealing with property held by any person includes (without prejudice to the generality of the expression) removing the property from the Bailiwick or any part thereof.

(10) Where a restraint order has been made, a police officer or customs officer, or Her Majesty's Sheriff, may for the purpose of preventing any property specified in the restraint order being removed from the Bailiwick or any part thereof seize the property.

(11) Property seized under subsection (10) shall be dealt with in accordance with the directions of the Royal Court.

Applications for restraint orders.

3. An application under section 2(5) shall be supported by an affidavit which shall –

- (a) state, where applicable, the grounds for believing that an external forfeiture order may be made in the proceedings instituted or to be instituted in the designated country concerned [or in proceedings that may follow a criminal investigation with regard to drug trafficking in the designated country concerned],
- (b) to the best of the deponent's ability, give particulars of the property in respect of which the order is sought and specify the person or persons holding such property,
- (c) in a case to which section 2(3) applies, indicate when it is intended that proceedings should be instituted in the designated country,

and the affidavit may, unless the Court otherwise directs, contain statements of information or belief with the sources and grounds thereof.

Disposal of forfeited property.

4. (1) Where an external forfeiture order has been registered in the Royal Court sitting as an Ordinary Court under section 7, the Royal Court may on the application of Her Majesty's Procureur order the forfeiture of the property specified in the external forfeiture order.

(2) Property forfeited under subsection (1) shall be disposed of in accordance with the Royal Court's directions.

(3) The Royal Court shall not in respect of any property exercise the powers conferred by subsections (1) and (2) unless a reasonable opportunity has been given for persons holding any interest in the property to make representations to the Royal Court.

Exercise of powers by Royal Court or Her Majesty's Sheriff.

5. (1) This section applies to the powers conferred on the Royal Court by sections 2 and 4 or on Her Majesty's Sheriff appointed under section 2.

(2) The powers shall be exercised with a view to forfeiting property which is liable to be forfeited under an external forfeiture order registered in the Royal Court sitting as an Ordinary Court under section 7 or, as the case may be, with a view to recovering property which may become liable to be forfeited under any external forfeiture order which may be made in the defendant's case.

Her Majesty's Sheriff: supplementary provisions.

6. Where Her Majesty's Sheriff appointed under section 2 takes any action –

- (a) in relation to property which is not liable to forfeiture under an external forfeiture order, 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 in so far as the loss or damage is caused by his negligence.

Registration of external forfeiture orders.

7. (1) On an application made by Her Majesty's Procureur on behalf of the government of a designated country, the Royal Court sitting as an Ordinary Court may register an external forfeiture order made there if –

- (a) it is satisfied that at the time of the 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 Bailiwick would not be contrary to the interests of justice.

(2) In subsection (1) "**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.

(3) The Royal Court sitting as an Ordinary Court shall cancel the registration of an external forfeiture order if it appears to that Court that the order

has been satisfied by the forfeiture of the property liable to be forfeited under the external forfeiture order or by any other means.

Proof of orders and judgment of court in a designated country.

8. (1) For the purposes of this Ordinance –

- (a) any order made or judgment given by a court in a designated country purporting to bear the seal of that court, or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or as the case may be, to have been signed by that person, and
- (b) a document, duly authenticated, which purports to be a copy of any order made or judgment given by a court in a designated country shall be deemed without further proof to be a true copy.

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

(3) In this section "**order**" shall be construed in accordance with section 1(2).

Evidence in relation to proceedings and orders in a designated country.

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9. (1) For the purposes of this Ordinance, a certificate purporting to be issued by or on behalf of the appropriate authority of a designated country stating –

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted there [or that there is a criminal investigation with regard to drug trafficking there],
- (b) that an external forfeiture order is in force and is not subject to appeal,
- (c) that property liable to forfeiture in the designated country under an external forfeiture order remains unrecovered there,
- (d) that any person has been notified of any proceedings in accordance with the law of the designated country, or
- (e) that an order (however described) made or to be made by a court of the designated country is for the forfeiture and destruction or the forfeiture and other disposal of anything in respect of which an offence involving drug trafficking has been committed or which was used or intended for use in connection with the commission of such an offence,

shall, in any proceedings in the Royal Court (including the Royal Court sitting as an Ordinary Court), be admissible as evidence of the facts stated.

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

(3) A document is duly authenticated for the purposes of subsection (2) if it purports –

- (a) to be certified by any person in his capacity as judge, magistrate or officer of the court in a designated country or by or on behalf of the appropriate authority of the designated country,
- (b) to have been received in evidence or to be a copy of a document so received; or, as the case may be,
- (c) to be the original document containing or summarising the evidence or a true copy of that document.

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

Certificate of appropriate authority.

10. Where in relation to any designated country no authority is specified in Schedule 2 to the Criminal Justice (International Co-operation) Act 1990

(Enforcement of Overseas Forfeiture Orders) Order 1991^b ("**the Order of 1991**"), a certificate made by Her Majesty's Procureur to the effect that the authority specified therein is the appropriate authority for the purposes of this Ordinance shall be sufficient evidence of that fact.

Interpretation.

11. (1) In this Ordinance –

"appropriate authority of a designated country" means –

- (a) the authority specified in relation to that country in Schedule 2 to the Order of 1991, or
- (b) where no authority is so specified, the authority certified by Her Majesty's Procureur to be the appropriate authority for the purposes of this Ordinance.

"court of a designated country" includes a court of any state or territory of a designated country,

"customs officer" means an officer within the meaning of section 1(1) of the Law of 1972,

"defendant" shall be construed in accordance with section 1(3),

^b United Kingdom S.I.s 1991/1463; 1992/1721; 1993/1791; 1993/3148; 1994/1640 and 1996/2878.

"designated country" means a Convention state which is for the time being designated by an Order in Council made by Her Majesty under section 9 of the Criminal Justice (International Co-operation) Act 1990^c for the purposes of that section,

"external forfeiture order" has the meaning given by section 1(1),

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"Her Majesty's Sheriff" includes in Alderney, the Clerk of the Court of Alderney and in Sark, the Prevôt,

"the Law" means the Drug Trafficking (Bailiwick of Guernsey) Law, 2000^d,

"the Law of 1972" means the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^e,

"the Law of 1974" means the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974^f,

"offence involving drug trafficking" means any offence under the Law of a designated country corresponding to or similar to –

^c An Act of Parliament (1990 c.5).

^d Order in Council No. VII of 2000.

^e Ordres en Conseil Vol. XXII, p. 573; Vol. XXIV, p. 87; and No. XIII of 1991.

^f Ordres en Conseil, Vol. XXIV p. 273; Vol. XXVIII; p. 307; Vol. XXXI, p. 47; No. VII of 1991; No. V of 1992; Recueil d'Ordonnances, Tome XX, p. 271; Tome XXII, p. 483; Tome XXIV, p. 477; and Tome XXV, pp. 38 and 325.

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- (a) an offence under section 3(2) or (3) or 4(3) of the Law of 1974 (production, supply and possession for supply of controlled drugs),
- (b) an offence under section 19 of the Law of 1974 (assisting in or inducing commission outside the Bailiwick of an offence punishable under a corresponding Law),
- (c) an offence under –
 - (i) section 23(1) of the Law of 1972 (improper importation),
 - (ii) section 30(2) of the Law of 1972 (exportation),
or
 - (iii) section 77 of the Law of 1972 (fraudulent evasion),
- (d) an offence under –
 - (i) section 38 of the Law (manufacture and supply of scheduled substances),
 - (ii) section 41 of the Law (ships used for illicit traffic),

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- (iii) section 57 of the Law (concealing or transferring proceeds of drug trafficking),
 - (iv) section 58 of the Law (assisting another person to retain the benefit of drug trafficking), or
 - (v) section 59 of the Law (acquisition, possession or use of proceeds of drug trafficking),
- (e) an offence of conspiracy to commit any of the offences in paragraphs (a) to (d) of this definition,
 - (f) an offence of attempting to commit any of those offences,
 - (g) an offence of inciting another to commit any of those offences (whether under section 18 of the Law of 1974 or otherwise), and
 - (h) aiding, abetting, counselling or procuring the commission of any of those offences,

"the Order of 1991" has the meaning given by section 10,

"police officer" means –

- (a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

- (b) in relation to Alderney, a member of the said salaried police force or a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed [or deemed to be appointed pursuant to the provisions of an Ordinance made under section 46A] of the Government of Alderney Law, 1987^g,
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of the Island of Guernsey,

"**property**" includes money and all other property, real or personal, immovable or moveable, including things in action and other intangible or incorporeal property,

"**restraint order**" means an order of the Royal Court under section 2(1).

(2) This Ordinance applies to property whether it is situated within the Bailiwick or elsewhere.

(3) The following provisions shall have effect for the interpretation of this Ordinance.

(4) Property is held by any person if he holds an interest in it.

^g Ordres en Conseil Vol. XXX, p. 37; Vol. XXXI, pp. 83 and 306; No. XI of 1993; No. IX of 1995; No. IV of 1996; No. IV of 1998 and No. I of 2000; section 15 has been prospectively repealed by No. I of 2000.

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- (5) Proceedings are instituted in a designated country when –
- (a) under the law of the designated country concerned one of the steps specified in relation to that country in the right-hand column of Schedule 1 to the Order of 1991 has been taken there in respect of an alleged offence, or
 - (b) where no steps have been specified in relation thereto as mentioned in subparagraph (a), the defendant has been notified in writing in accordance with the laws of the designated country that the competent authorities of that country have begun proceedings against him in respect of an offence, or
 - (c) an application has been made to a court in a designated country for an external forfeiture order,

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

- (6) Proceedings are concluded –
- (a) when (disregarding any power of a court to grant leave to appeal out of time) there is no further possibility of an external forfeiture order being made in the proceedings,

(b) on the satisfaction of an external forfeiture order made in the proceedings (whether by the recovery of all property liable to be forfeited, or otherwise).

(7) An order is subject to an appeal until (disregarding any power of a 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) The provisions of the Interpretation (Guernsey) Law, 1948^h shall apply to the interpretation of this Ordinance throughout the Bailiwick.

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

Extent.

12. This Ordinance shall apply throughout the Bailiwick.

Citation and Commencement.

13. This Ordinance may be cited as the Drug Trafficking (Bailiwick of Guernsey) Law (Enforcement of External Forfeiture Orders) Ordinance, 2000 and shall come into force on 1st January 2001.

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