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Guernsey

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### **The Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) (Bailiwick of Guernsey) Ordinance, 2007**

**The Criminal Justice (International Co-operation)  
(Enforcement of Overseas Forfeiture Orders)  
(Bailiwick of Guernsey) Ordinance, 2007**

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**The Criminal Justice (International Co-operation)  
(Enforcement of Overseas Forfeiture Orders)  
(Bailiwick of Guernsey) Ordinance, 2007**

THE STATES LEGISLATION SELECT COMMITTEE, in pursuance of the Resolution of the States of the 26<sup>th</sup> July 2000<sup>a</sup>, and in exercise of the powers conferred on the States by section 8 of the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001<sup>b</sup> and all other powers enabling the States in that behalf, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>c</sup>, hereby orders:-

PART I

REQUESTS FOR RESTRAINT OF PROPERTY

**Action on receipt of request for restraint of property.**

1. (1) Where Her Majesty's Procureur receives a request for the restraint of property made -

- (a) by or on behalf of an overseas authority in a designated country, and
- (b) for the purpose of facilitating the enforcement of any external forfeiture order which has yet to be made,

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<sup>a</sup> Article III of Billet d'État No. XVIII of 2000.

<sup>b</sup> Order in Council No. VII of 2001.

<sup>c</sup> Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Ordinance.

he may ask the overseas authority which made the request for such further information as may be necessary to determine whether the request is likely to satisfy the conditions in section 2.

(2) A request under subsection (1) may include a request for statements which may be used as evidence.

**Conditions for Royal Court to give effect to request.**

2. (1) On an application by Her Majesty's Procureur, the Royal Court may exercise the powers conferred by section 3 if the following conditions are satisfied.

(2) The conditions are that -

- (a) relevant property in the Bailiwick is identified in the request,
- (b) a criminal investigation or proceedings for an offence have been started in the country from which the request was made, and
- (c) it appears to the court that there are reasonable grounds for believing that as a result of that investigation or those proceedings an external forfeiture order may be made against the person named in the request.

(3) If these conditions are satisfied by virtue of a criminal investigation having been started, references in this Ordinance to the defendant are to the alleged offender.

**Restraint orders.**

3. (1) If the conditions set out in section 2 are satisfied, the Royal Court may make an order ("**a restraint order**") prohibiting any specified person from dealing with relevant property which is identified in the request and specified in the order.

(2) A restraint order may be made subject to exceptions, and an exception may in particular -

(a) make provision for reasonable living expenses and reasonable legal expenses in connection with the proceedings seeking the enforcement of the foreign order,

(b) make provision for the purpose of enabling any person to carry on any trade, business, profession or occupation,

(c) be made subject to conditions.

(3) Subsection (4) applies if -

(a) a court makes a restraint order, and

(b) the applicant for the order applies to the court to proceed under subsection (4) (whether as part of the application for the restraint order or at any time afterwards).

(4) The Royal Court may make such order as it believes is appropriate for the purpose of ensuring that the restraint order is effective.

(5) A restraint order does not affect property for the time being subject to a charge under any of the following provisions –

(a) section 9 or 10 of the Drug Trafficking Offences Law,

(b) section 27 or 28 of the Proceeds of Crime Law, or

(c) section 27 or 28 of the Drug Trafficking Law.

(6) Dealing with property includes removing it from the Bailiwick.

**Application, discharge and variation of restraint orders.**

4. (1) 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 Royal Court in chambers,

(c) if made on an ex parte application, shall include a direction that an inter partes hearing shall take place on a specified date at a specified time, and

(d) may make provision that notice of the order shall be given to persons affected by it.

(2) An application to discharge or vary a restraint order or an order under section 3(4) may be made to the Royal Court by -

(a) Her Majesty's Procureur, and

(b) any person affected by the order.

(3) Subsections (5) to (7) apply to an application under subsection (2).

(4) The court -

(a) may discharge the order, and

(b) may vary the order.

(5) If the conditions in section 2 were satisfied by virtue of the fact that proceedings were started, the court must discharge the order if -

(a) at the conclusion of the proceedings, no external forfeiture order has been made, or

(b) within a reasonable time an external forfeiture order has not been registered under this Ordinance.

(6) If the conditions in section 2 were satisfied by virtue of the fact that an investigation was started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

- (7) Any application under subsection (2) -
  - (a) may be made in chambers, and
  - (b) if not made by Her Majesty's Procureur, may not be made until notice of that application has been given to Her Majesty's Procureur.

**Appeal to Court of Appeal about restraint orders.**

5. (1) If on an application for a restraint order the Royal Court decides not to make one, Her Majesty's Procureur may appeal on a point of law to the Court of Appeal against the decision.

(2) If an application is made under section 4(2) in relation to a restraint order or an order under section 3(4), the following persons may appeal on a point of law to the Court of Appeal in respect of the Royal Court's decision on the application -

- (a) Her Majesty's Procureur,
- (b) any person affected by the order.

(3) On an appeal under subsection (1) or (2) the Court of Appeal may -

- (a) confirm the decision, or
- (b) make such order as it believes is appropriate.

(4) For the avoidance of doubt, there is no appeal to the Court of Appeal in respect of a restraint order before the inter partes hearing.

**Seizure in pursuance of restraint order.**

6. (1) If a restraint order is in force a police officer may seize any property which is specified in it to prevent its removal from the Bailiwick.

(2) Property seized under subsection (1) must be dealt with in accordance with the directions of the court which made the order.

**Hearsay evidence in restraint proceedings.**

7. (1) Evidence must not be excluded in restraint proceedings on the ground that it is hearsay (of whatever degree).

(2) Restraint proceedings are proceedings -

(a) for a restraint order,

(b) for the discharge or variation of a restraint order,

(c) on an appeal under section 5.

(3) Hearsay is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(4) Nothing in this section affects the admissibility of evidence which is admissible apart from this section.

**Supplementary (restraint orders).**

8. If a restraint order is made in connection with real property a copy of the order may be registered -

- (a) if the real property in respect of which it is made is in Guernsey, in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe in Guernsey,
- (b) if that real property is in Alderney, by noting it against the entry relating to the land concerned in the Alderney Land Register as if an application had been made under section 18(1) of the Alderney Land and Property, etc. Law, 1949<sup>d</sup> and concurred in by the registered owner of the land as mentioned in section 18(2) of that Law, or
- (c) if that real property is in Sark, at the Greffe in Sark as if it were a judgment debt ordered to be registered against the real property concerned by an Act of the Court of the Seneschal.

**Appointment of management receivers.**

9. (1) Subsection (2) applies if -

- (a) the Royal Court makes a restraint order, and
- (b) Her Majesty's Procureur applies to the court to proceed under subsection (2) (whether as part of the

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<sup>d</sup> Ordres en Conseil Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156; and No. VII of 1994.

application for the restraint order or at any time afterwards).

(2) The Royal Court may appoint a receiver in respect of any property which is specified in the restraint order.

**Powers of management receivers.**

**10.** (1) If the Royal Court appoints a receiver under section 9 it may act under this section on the application of Her Majesty's Procureur.

(2) The Royal Court may by order confer on the receiver the following powers in relation to any property which is specified in the restraint order

-

- (a) power to take possession of the property,
- (b) power to manage or otherwise deal with the property,
- (c) power to start, carry on or defend any legal proceedings in respect of the property, and
- (d) power to realise so much of the property as is necessary to meet the receiver's remuneration and expenses.

(3) The Royal Court may by order confer on the receiver power to enter any premises in the Bailiwick and to do any of the following -

- (a) search for or inspect anything authorised by the court,

- (b) make or obtain a copy, photograph or other record of anything so authorised, and
- (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The Royal Court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions -

- (a) hold property,
- (b) enter into contracts,
- (c) sue and be sued,
- (d) employ agents,
- (e) execute powers of attorney, deeds or other instruments, and
- (f) take any other steps the court thinks appropriate.

(5) The Royal Court may order any person who has possession of property which is specified in the restraint order to give possession of it to the receiver.

(6) The Royal Court -

- (a) may order a person holding an interest in property which is specified in the restraint order to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift,
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) Paragraphs (2), (5) and (6) do not apply to property for the time being subject to a charge under any of these provisions -

- (a) section 9 or 10 of the Drug Trafficking Offences Law,
- (b) section 27 or 28 of the Proceeds of Crime Law, or
- (c) section 27 or 28 of the Drug Trafficking Law.

(8) The Royal Court must not -

- (a) confer the power mentioned in subsection (2)(b) or (d) in respect of property, or
- (b) exercise the power conferred on it by subsection (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(9) The Royal Court may order that a power conferred under this section is subject to such conditions and exceptions as it specifies.

(10) Managing or otherwise dealing with property includes -

- (a) selling the property or any part of it or interest in it,
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property, or
- (c) incurring capital expenditure in respect of the property.

**Restrictions relating to restraint orders.**

11. (1) Where the Royal Court makes a restraint order, no execution (including, without limitation, execution pursuant to the *tacite hypothèque* of a landlord) may be levied against any property which is specified in the order except with the leave of the Royal Court and subject to any terms the Court may impose.

(2) If a court in which proceedings are pending in respect of any property is satisfied that a restraint order has been applied for or made in respect of the property, the court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by subsection (2), the court must give an opportunity to be heard to -

- (a) Her Majesty's Procureur, and

- (b) any receiver appointed in respect of the property under section 9 or 17.

PART II  
EXTERNAL FORFEITURE ORDERS

**Authentication by the overseas court.**

12. (1) Subsection (2) applies where an overseas court has authenticated its involvement in -

- (a) any judgment,
- (b) any order, or
- (c) any other document concerned with such a judgment or order or proceedings relating to it.

(2) Where this subsection applies, any statement in the judgment, order or document is admissible in evidence in proceedings under this Part.

**Applications to give effect to external forfeiture orders.**

13. (1) An application may be made by Her Majesty's Procureur to the Royal Court to give effect to an external forfeiture order.

(2) No application to give effect to such an order may be made otherwise than under subsection (1).

(3) An application under subsection (1) -

- (a) shall include a request to appoint Her Majesty's Procureur as the enforcement authority for the order, and
- (b) may be made on an ex parte application to the Royal Court in chambers.

**Conditions for Royal Court to give effect to external forfeiture orders.**

14. (1) The Royal Court must decide to give effect to an external forfeiture order if it is satisfied that all of the following conditions are met.

(2) The first condition is that the external forfeiture order was made consequent on the conviction of the person named in the order and no appeal is outstanding in respect of that conviction.

(3) The second condition is that the external forfeiture order is in force and no appeal is outstanding in respect of it.

(4) The third condition is that giving effect to the external forfeiture order would not be contrary to the interests of justice.

(5) The fourth condition is that the property whose confiscation is specified in the external forfeiture order must not be subject to a charge under any of the following provisions -

- (a) section 9 or 10 of the Drug Trafficking Offences Law,
- (b) section 27 or 28 of the Proceeds of Crime Law, or
- (b) section 27 or 28 of the Drug Trafficking Law.

- (6) In subsection (3) "**appeal**" includes -
  - (a) any proceedings by way of discharging or setting aside the order, and
  - (b) an application for a new trial or stay of execution.

**Registration of external forfeiture orders.**

**15.** (1) Where the Royal Court decides to give effect to an external forfeiture order, it must -

- (a) order that the order be registered in the records of the Court,
- (b) direct that an inter partes hearing shall take place on a specified date at a specified time,
- (c) provide for notice of the registration to be given to any person affected by it, and
- (d) appoint Her Majesty's Procureur as the enforcement authority for the order.

(2) Only an external forfeiture order registered by the Royal Court may be implemented under this Ordinance.

(3) The Royal Court may cancel the registration of the external forfeiture order, or vary the property to which it applies, on an application by Her

Majesty's Procureur or any person affected by it if, or to the extent that, the court is of the opinion that any of the conditions in section 14 is not satisfied.

(4) The Royal Court must cancel the registration of the external forfeiture order, on an application by Her Majesty's Procureur or any person affected by it, if it appears to the court that the order has been satisfied -

(a) in the case of an order for the recovery of specified property, by the surrender of the property, or

(b) by any other means.

(5) Where the registration of an external forfeiture order is cancelled or varied under subsection (3) or (4), the Royal Court must provide for notice of this to be given to Her Majesty's Procureur and any person affected by it.

**Appeal to Court of Appeal about external forfeiture orders.**

**16.** (1) If on an application for the Royal Court to give effect to an external forfeiture order by registering it, the court decides not to do so, Her Majesty's Procureur may appeal on a point of law to the Court of Appeal against the decision.

(2) If an application is made under section 15(3) or (4) in relation to the registration of an external forfeiture order, the following persons may appeal on a point of law to the Court of Appeal in respect of the Royal Court's decision on the application -

(a) Her Majesty's Procureur, and

(b) any person affected by the registration.

(3) On an appeal under subsection (1) or (2) the Court of Appeal may -

- (a) confirm or set aside the decision to register, or
- (b) direct the Royal Court to register the external forfeiture order (or so much of it as relates to property other than to which section 14(5) applies).

(4) For the avoidance of doubt, there is no appeal to the Court of Appeal in respect of an external forfeiture order before the inter partes hearing.

**Appointment of enforcement receivers.**

17. (1) This section applies if -

- (a) an external forfeiture order is registered, and
- (b) it is not satisfied.

(2) On the application of Her Majesty's Procureur, the Royal Court may appoint a receiver in respect of the property in respect of which the external forfeiture order specifies the recovery.

**Powers of enforcement receivers in respect of external forfeiture orders for the recovery of specified property.**

18. (1) If the Royal Court appoints a receiver under section 17, it may act under this section on the application of Her Majesty's Procureur where the external forfeiture order is for the recovery of property specified in the order ("**the specified property**").

(2) The Royal Court may by order confer on the receiver the following powers in relation to the specified property -

- (a) power to take possession of the property,
- (b) power to manage or otherwise deal with the property,
- (c) power to realise the property, in such manner as the Court may specify, and
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The Royal Court may by order confer on the receiver power to enter any premises in the Bailiwick and to do any of the following -

- (a) search for or inspect anything authorised by the court,
- (b) make or obtain a copy, photograph or other record of anything so authorised, and
- (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the court.

(4) The Royal Court may by order authorise the receiver to do any of the following for the purposes of the exercise of his functions -

- (a) hold property,

- (b) enter into contracts,
- (c) sue and be sued,
- (d) employ agents,
- (e) execute powers of attorney, deeds or other instruments, and
- (f) take any other steps the court thinks appropriate.

(5) The Royal Court may order any person who has possession of the specified property to give possession of it to the receiver.

(6) The Royal Court -

- (a) may order a person holding an interest in the specified property to make to the receiver such payment as the court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift, and
- (b) may (on the payment being made) by order transfer, grant or extinguish any interest in the property.

(7) The Royal Court must not -

- (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or

- (b) exercise the power conferred on it by subsection (6) in respect of property,

unless it gives persons holding interests in the property a reasonable opportunity to make representations to it.

(8) The Royal Court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(9) Managing or otherwise dealing with property includes -

- (a) selling the property or any part of it or interest in it,
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property, and
- (c) incurring capital expenditure in respect of the property.

**Satisfaction of external forfeiture order.**

19. A registered external forfeiture order is satisfied when the property specified in it has been forfeited and disposed of in accordance with that order.

**Restrictions relating to enforcement receivers.**

20. (1) Where the Royal Court makes an order under section 17 appointing a receiver in respect of any specified property, no execution (including, without limitation, execution pursuant to the *tacite hypothèque* of a landlord) may be levied against any property which is specified in the order except with the leave of the Royal Court and subject to any terms the Court may impose.

(2) If the Royal Court in which proceedings are pending in respect of any property is satisfied that an order under section 17 appointing a receiver in respect of the property has been applied for or made, the Court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(3) Before exercising any power conferred by subsection (2), the Royal Court must give an opportunity to be heard to -

- (a) Her Majesty's Procureur, and
- (b) the receiver (if the order under section 17 has been made).

PART III  
RECEIVERS AND PROCEDURE

**Protection of receiver appointed under sections 9 and 17.**

21. (1) If a receiver appointed under section 9 or 17 -
- (a) takes action in relation to property which is not the specified property,
  - (b) would be entitled to take the action if it were the specified property, and
  - (c) believes on reasonable grounds that he is entitled to take the action,

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

(2) Any amount due in respect of the remuneration and expenses of a receiver so appointed shall be paid -

- (a) where a restraint order has been made under section 3, by the overseas authority who made the request, or
- (b) where an external forfeiture order has been registered under section 15, the overseas authority for the country or territory in which the overseas court who made that order has jurisdiction.

**Further applications by receivers.**

22. (1) This section applies to a receiver appointed under section 9 or 17.

(2) The receiver may apply to the Royal Court for an order giving directions as to the exercise of his powers.

(3) The following persons may apply to the Royal Court -

- (a) any person affected by action taken by the receiver, and
- (b) any person who may be affected by action the receiver proposes to take.

(4) On an application under this section the Royal Court may make such order as it believes is appropriate.

**Discharge and variation of receiver orders.**

23. (1) The following persons may apply to the Royal Court to vary or discharge an order made under section 9, 10, 17 or 18 -

- (a) the receiver,
- (b) Her Majesty's Procureur, and
- (c) any person affected by the order.

(2) On an application under this section the Royal Court -

- (a) may discharge the order, or
- (b) may vary the order.

(3) But in the case of an order under section 9 or 10 -

- (a) if the conditions in section 2 were satisfied by virtue of the fact that proceedings had started, the court must discharge the order if at the conclusion of the proceedings no external forfeiture order has been made, or if within a reasonable time an external forfeiture order has not been registered under Part II of this Ordinance, and

- (b) if the conditions were satisfied by virtue of the fact that an investigation had started, the court must discharge the order if within a reasonable time proceedings for the offence are not started.

**Management receivers: discharge.**

24. (1) This section applies if -

- (a) a receiver stands appointed under section 9 in respect of property which is identified in the restraint order (the management receiver), and
- (b) the Royal Court appoints a receiver under section 17.

(2) The Royal Court must order the management receiver to transfer to the other receiver all property held by the management receiver by virtue of the powers conferred on him by section 10.

(3) Subsection (2) does not apply to property which the management receiver holds by virtue of the exercise by him of his power under section 10(2)(d).

(4) If the management receiver complies with an order under subsection (2), he is discharged -

- (a) from his appointment under section 9, and
- (b) from any obligation to act under this Ordinance arising from his appointment.

(5) If this section applies the court may make such a consequential or incidental order as it believes is appropriate.

**Appeal to Court of Appeal about receivers.**

**25.** (1) If on an application for an order under any of sections 9, 10, 17 or 18 the Royal Court decides not to make one, the person who applied for the order may appeal on a point of law to the Court of Appeal against the decision.

(2) If the Royal Court makes an order under any of sections 9, 10, 17 or 18, the following persons may appeal on a point of law to the Court of Appeal in respect of the court's decision -

- (a) the person who applied for the order, and
- (b) any person affected by the order.

(3) If on an application for an order under section 22 the Royal Court decides not to make one, the person who applied for the order may appeal on a point of law to the Court of Appeal against the decision.

(4) If the Royal Court makes an order under section 22 the following persons may appeal on a point of law to the Court of Appeal in respect of the court's decision -

- (a) the person who applied for the order,
- (b) any person affected by the order, and
- (c) the receiver.

(5) The following persons may appeal on a point of law to the Court of Appeal against a decision of the Royal Court on an application under section 23 -

- (a) the person who applied for the order in respect of which the application was made,
- (b) any person affected by the Royal Court's decision, and
- (c) the receiver.

(6) On an appeal under this section the Court of Appeal may -

- (a) confirm the decision, or
- (b) make such order as it believes is appropriate.

**Powers of court and receiver.**

26. (1) This section applies to -

- (a) the powers conferred on a court by this Ordinance, and
- (b) the powers of a receiver appointed under section 9 or 17.

(2) The powers -

- (a) must be exercised with a view to the value for the time being of specified property being made available (by

the property's realisation) for satisfying an external forfeiture order that has been or may be made against the defendant,

- (b) must be exercised, in a case where an external forfeiture order has not been made, with a view to securing that there is no diminution in the value of the property identified in the request,
  - (c) must be exercised without taking account of any obligation of a defendant or a recipient of a tainted gift if the obligation conflicts with the object of satisfying any external forfeiture order against the defendant that has been or may be registered under section 16, and
  - (d) may be exercised in respect of a debt owed by the Crown.
- (3) Subsection (2) has effect subject to the following rules -
- (a) the powers must be exercised with a view to allowing a person other than the defendant or a recipient of a tainted gift to retain or recover the value of any interest held by him,
  - (b) in the case of specified property held by a recipient of a tainted gift, the powers must be exercised with a view to realising no more than the value for the time being of the gift, and

(c) in a case where an external forfeiture order has not been made against the defendant, property must not be sold if the court so orders under subsection (4).

(4) If on an application by the defendant or the recipient of a tainted gift, the court decides that property cannot be replaced it may order that it must not be sold.

(5) An order under subsection (4) may be revoked or varied.

**Procedure on appeal to Court of Appeal under this Ordinance.**

27. (1) An appeal to the Court of Appeal under this Ordinance lies only with the leave of that Court and section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>e</sup> ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this Ordinance as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(2) Any person who desires to appeal under -

(i) section 5 or 16 shall within 28 days, and

(ii) section 25 shall within 7 days,

of the making of the order which is sought to be appealed give to the Registrar a notice of application for leave to appeal.

(3) Subject to any rules of court, the Civil Division of the Court of Appeal is the Division -

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<sup>e</sup> Ordres en Conseil Vol. XVIII, p. 315.

(a) to which an appeal to that Court under this Ordinance is to lie, and

(b) which is to exercise that Court's jurisdiction under this Ordinance.

(4) Subject to any rules of court, the costs of and incidental to all proceedings on an appeal to the Civil Division of the Court of Appeal under section 5, 16 or 25 are in the discretion of the court.

(5) The Court shall have full power to determine by whom and to what extent the costs are to be paid.

(6) In any proceedings mentioned in subsection (4), the Court may -

(a) disallow, or

(b) (as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with rules of court.

(7) In subsection (6) "**wasted costs**" means any costs incurred by a party-

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any

legal or other representative or any employee of such a representative, or

- (b) which, in the light of any such act or omission occurring after they were incurred, the Court considers it unreasonable to expect that party to pay.

(8) "**Legal or other representative**", in relation to a party to proceedings, means any person exercising a right of audience or right to conduct litigation on his behalf.

#### PART IV INTERPRETATION AND GENERAL

##### General interpretation.

28. (1) In this Ordinance, unless the context requires otherwise -

"**Bailiff**" includes the Deputy Bailiff and a Lieutenant-Bailiff,

"**Bailiwick**" means the Bailiwick of Guernsey,

"**Court of Appeal**" means the court established by the Court of Appeal (Guernsey) Law, 1961<sup>f</sup>,

"**designated country**" means a country or territory designated under section 30,

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<sup>f</sup> Ordres en Conseil Vol. XVIII, p. 315.

**"the Drug Trafficking Law"** means the Drug Trafficking (Bailiwick of Guernsey) Law, 2000<sup>g</sup>,

**"the Drug Trafficking Offences Law"** means the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988<sup>h</sup>,

**"enactment"** includes a Law, an Ordinance or any subordinate legislation and any provision or portion of a Law, an Ordinance or any subordinate legislation,

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

**"overseas authority"** means an authority which has responsibility in a country or territory outside the Bailiwick for making a request to an authority in another country or territory (including the Bailiwick) to prohibit dealing with relevant property,

**"overseas court"** means a court of a country or territory outside the Bailiwick,

**"police officer"** means -

(a) in relation to Guernsey, Herm and Jethou -

(i) a member of the salaried police force of the Island of Guernsey, and

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<sup>g</sup> Order in Council VII of 2000.

<sup>h</sup> Order in Council XII of 1988.

- (ii) within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney -
  - (i) a member of any police force which may be established by the States of Alderney, and
  - (ii) within the limits of his jurisdiction, a special constable appointed under section 47 of the Government of Alderney Law, 2004<sup>i</sup>,
- (c) in relation to Sark, the Constable and the Vingtenier of Sark, and
- (d) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>j</sup>,

**"the Proceeds of Crime Law"** means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 2000<sup>k</sup>,

**"the Royal Court"** means the Royal Court of Guernsey sitting as an Ordinary Court and may be constituted by the Bailiff

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<sup>i</sup> Order in Council No. III of 2005.

<sup>j</sup> Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

<sup>k</sup> Order in Council No. VIII of 1999.

sitting alone, and

**"subordinate legislation"** means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect.

(2) The Interpretation (Guernsey) Law, 1948<sup>1</sup> applies to the interpretation of this Ordinance throughout the Bailiwick.

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

**External forfeiture orders.**

**29.** (1) An order made -

- (a) by a court in a designated country,
- (b) for the forfeiture and destruction, or the forfeiture and other disposal, of anything in respect of which a relevant offence 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)

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<sup>1</sup> Ordres en Conseil Vol. XIII, p. 355.

- (a) a "**relevant offence**" means any offence that corresponds to or is similar to an indictable offence under the law of the Bailiwick other than a drug trafficking offence as defined by section 1(3) of the Drug Trafficking Law,
- (b) the reference to an order includes any order, decree, direction or judgment, or any part thereof, however described.

**Designated countries.**

**30.** The countries or territories set out in the Schedule to this Ordinance are hereby designated for the purposes of section 8 of the Criminal Justice (International Co-operation) Law 2001.

**Property.**

- 31.** (1) In this Ordinance, unless the context requires otherwise -
- (a) a reference to "**property**" is a reference to all property wherever situated and includes -
    - (i) money,
    - (ii) all forms of property, real or personal, heritable or moveable, and
    - (iii) things in action and other intangible or incorporeal property,

- (b) property is held by a person if he holds an interest in it,
- (c) property is obtained by a person if he obtains an interest in it,
- (d) property is transferred by one person to another if the first one transfers or grants an interest in it to the second,
- (e) references to property held by a person beneficially in property include references to an interest which would be held by him beneficially if the property were not so vested, and
- (f) references to an interest, in relation to land in the Bailiwick, are to any legal interest or power.

(2) References to an interest, in relation to property other than land, include references to a right (including a right to possession).

(3) Property is "**relevant property**" if there are reasonable grounds to believe that it may be needed to satisfy an external forfeiture order which has been made or which may be made.

**Tainted gifts.**

32. (1) In this Ordinance, a gift is tainted if it was made by the defendant at any time after -

- (a) the date on which the offence to which the external forfeiture order or request relates was committed, or
- (b) if his criminal conduct consists of two or more such offences and they were committed on different dates, the date of the earliest.

(2) For the purposes of subsection (1), an offence which is a continuing offence is committed on the first occasion when it is committed.

(3) A gift may be a tainted gift whether it was made before or after the coming into force of this Ordinance.

**Gifts and their recipients.**

33. (1) In this Ordinance, a defendant is to be treated as making a gift if he transfers property to another person for a consideration whose value is significantly less than the value of the property at the time of the transfer.

(2) If subsection (1) applies, the property given is to be treated as such share in the property transferred as is represented by the fraction -

- (a) whose numerator is the difference between the two values mentioned in subsection (1), and
- (b) whose denominator is the value of the property at the time of the transfer.

(3) In this Ordinance references to a recipient of a tainted gift are to a person to whom the defendant has made the gift.

**Value: the basic rule.**

34. (1) Subject to section 35, this section applies where it is necessary under this Ordinance to decide the value at any time of property then held by a person.

(2) Its value is the market value of the property at that time.

(3) But if at that time another person holds an interest in the property its value, in relation to the person mentioned in subsection (1), is the market value of his interest at that time, ignoring any charging order under a provision listed in subsection (4).

(4) Those provisions are -

- (a) section 9 or 10 of the Drug Trafficking Offences Law,
- (b) section 27 or 28 of the Proceeds of Crime Law, and
- (c) section 27 or 28 of the Drug Trafficking Law.

**Value of tainted gifts.**

35. (1) The value at any time (the material time) of a tainted gift is the greater of the following -

- (a) the value (at time of the gift) of the property given, adjusted to take account of later changes in the value of money, or
- (b) the value (at the material time) of the property found under subsection (2).

- (2) The property found under this subsection is as follows -
- (a) if the recipient holds the property given, the property found under this subsection is that property,
  - (b) if the recipient holds no part of the property given, the property found under this subsection is any property which directly or indirectly represents it in his hands,
  - (c) if the recipient holds part of the property given, the property found under this subsection is that part and any property which directly or indirectly represents the other part in his hands.

(3) The references in subsection (1)(a) and (b) to the value are to the value found in accordance with section 34.

**Meaning of "defendant".**

**36.** In this Ordinance "**defendant**" -

- (a) in relation to a restraint order means -
  - (i) in a case in which the conditions in section 2 are satisfied by virtue of the fact that a criminal investigation has been started, the alleged offender, and
  - (ii) in a case in which the conditions in section 2 are satisfied by virtue of the fact that

proceedings for an offence have been started, the person against whom those proceedings have been started (whether or not he has been convicted), and

- (b) in relation to an external forfeiture order, the person convicted of criminal conduct.

**Citation.**

37. This Ordinance may be cited as the Criminal Justice (International Co-operation) (Enforcement of Overseas Forfeiture Orders) (Bailiwick of Guernsey) Ordinance, 2007.

**Commencement.**

38. This Ordinance shall come into force on the 24<sup>th</sup> May 2007.

SCHEDULE  
DESIGNATED COUNTRIES

Afghanistan  
Albania  
Algeria  
Andorra  
Angola  
Antigua and Barbuda  
Argentina  
Armenia  
Australia  
Austria  
Azerbaijan  
Bahamas  
Bahrain  
Bangladesh  
Barbados  
Belarus  
Belgium  
Belize  
Benin  
Bhutan  
Bolivia  
Bosnia and Herzegovina  
Botswana  
Brazil  
Brunei Darussalem  
Bulgaria  
Burkina Faso  
Burundi  
Cambodia  
Cameroon  
Canada  
Cape Verde  
Central African Republic  
Chad  
Chile  
China

Colombia  
Comoros  
Congo  
Cook Islands  
Costa Rica  
Côte D'Ivoire  
Croatia  
Cuba  
Cyprus  
Czech Republic  
Denmark  
Djibouti  
Dominica  
Dominican Republic  
Ecuador  
Egypt  
El Salvador  
England and Wales  
Eritrea  
Equatorial Guinea  
Estonia  
Ethiopia  
Fiji  
Finland  
France  
Gabon  
Gambia  
Georgia  
Germany  
Ghana  
Greece  
Grenada  
Guatemala  
Guinea  
Guinea-Bissau  
Guyana  
Haiti  
Honduras  
Hungary  
Iceland  
India  
Indonesia  
Iran (Islamic Republic of)  
Iraq

Ireland  
Isle of Man  
Israel  
Italy  
Jamaica  
Japan  
Jersey  
Jordan  
Kazakhstan  
Kenya  
Kuwait  
Kyrgyzstan  
Lao People's Democratic Republic  
Latvia  
Lebanon  
Lesotho  
Liberia  
Libyan Arab Jamahiriya  
Liechtenstein  
Lithuania  
Luxemburg  
Madagascar  
Malawi  
Malaysia  
Maldives  
Mali  
Malta  
Mauritania  
Mauritius  
Mexico  
Micronesia (Federal States of)  
Moldova  
Monaco  
Mongolia  
Morocco  
Mozambique  
Myanmar  
Namibia  
Nauru  
Nepal  
Netherlands  
New Zealand  
Nicaragua  
Niger

Nigeria  
Northern Ireland  
Norway  
Oman  
Pakistan  
Panama  
Paraguay  
Peru  
Philippines  
Poland  
Portugal  
Qatar  
Republic of Korea  
Romania  
Russian Federation  
Rwanda  
Saint Kitts & Nevis  
Saint Lucia  
Saint Vincent and the Grenadines  
San Marino  
San Tome & Principe  
Saudi Arabia  
Scotland  
Senegal  
Serbia and Montenegro  
Seychelles  
Sierra Leone  
Singapore  
Slovakia  
Slovenia  
South Africa  
Spain  
Sri Lanka  
Sudan  
Suriname  
Swaziland  
Sweden  
Switzerland  
Syrian Arab Republic  
Tajikistan  
Thailand  
The former Yugoslav Republic of Macedonia  
Togo  
Tonga

Trinidad and Tobago  
Tunisia  
Turkey  
Turkmenistan  
Uganda  
Ukraine  
United Arab Emirates  
United Republic of Tanzania  
United States of America  
Uruguay  
Uzbekistan  
Venezuela  
Vietnam  
Yemen  
Zambia  
Zimbabwe