

Island of



Guernsey

Ordinance of the States

XVI
2010

Made24th March, 2010

Coming into Operation.....24th March, 2010

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010

The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010

THE STATES, in pursuance of their Resolution of the 24th February 2010^a, and in exercise of the powers conferred on them by section 53A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999^b and all other powers enabling them in that behalf, hereby order:-

Amendment of section 38 of the Law.

1. Section 38 of the Law is amended as follows -

- (a) in subsection (1), omit "; for the purpose of avoiding prosecution for criminal conduct or the making or enforcement in his case of a confiscation order",
- (b) in subsection (2) -
 - (i) for "having reasonable grounds to suspect", substitute "suspecting",
 - (ii) omit "; for the purpose of assisting any person to avoid prosecution for criminal conduct or

^a Article X of Billet d'État No. IV of 2010.

^b Ordres en Conseil Vol. XXXIX, p. 137; amended by Order in Council No. II of 2005 and No. XV of 2007; Recueil d'Ordonnances Tome XXVIII, p. 266; Tome XXIX, pp. 112 and 406; Tome XXXII, p. 666; Ordinance No. XXXVII of 2008; G.S.I. No. 27 of 2002; G.S.I. No. 33 of 2007 and G.S.I. No. 48 of 2008 and certain sections of the Law are modified in their application to external confiscation orders by Recueil d'Ordonnances Tome XXVIII, p. 274.

the making or enforcement of a confiscation order", and

- (c) immediately after subsection (3), insert the following subsections -

"(3A) 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 criminal conduct or discloses to a police officer any matter on which such a suspicion or belief is based -

- (a) if he does any act in relation to that property in contravention of subsection (2), he does not commit an offence under that subsection if -
- (i) the disclosure is made before he does the act concerned and the act is done with the consent of the police officer (and in this case the person doing the act shall incur no liability of any kind to any person by reason of such act), or
 - (ii) the disclosure is made after he does the act, but is made on his initiative and as soon as it is reasonable for him to make it; and
- (b) the disclosure -

- (i) shall not be treated as a breach of any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or contract or otherwise, and
- (ii) shall not involve the person making it in any liability of any kind to any person by reason of such disclosure.

(3B) For the purposes of this section, having possession of any property shall be taken to be doing an act in relation to it.

(3C) In proceedings against a person for an offence under subsection (2), 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 subsection (3A); but
- (b) there is reasonable excuse for his failure to make disclosure in accordance with subsection (3A)(a).

(3D) In the case of a person who was in employment at the relevant time, subsections (3A) and (3C) 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.

(3E) No police officer or other person shall be guilty of an offence under subsection (2) in respect of anything done by him in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Law or of any other enactment relating to criminal conduct or the proceeds of such conduct. "

Amendment of section 40 of the Law.

2. Section 40 of the Law is amended as follows -

(a) in subsection (1), for "another person's", substitute "the",

(b) for subsection (4), substitute -

"(4) The provision for any person of services or goods -

(a) which are of assistance to him in criminal conduct; or

(b) which the person providing the services or goods knows or suspects or has reasonable grounds to suspect may assist him in criminal conduct,

shall not be treated as consideration for the purposes of subsection (2). "

Amendment of section 41 of the Law.

3. Section 41 of the Law is amended as follows -

(a) for subsection (1)(b), substitute -

"(b) he discloses to any other person information or any other matter -

(i) which is likely to prejudice that investigation or proposed investigation; or

(ii) which is not already in the public domain and which, in the circumstances of that investigation or proposed investigation, it is unreasonable to disclose.",

(b) in subsection (2)(a), immediately before "39" insert "38(3A)",

(c) for subsection (2)(b), substitute -

"(b) he discloses to any other person information or any other matter -

(i) which is likely to prejudice any investigation which might be conducted following the disclosure; or

(ii) which is not already in the public domain and which, in the circumstances of any such investigation, it is

unreasonable to disclose.",

(d) in subsection (3)(a), for "sections" substitute "section 38(3D)",

(e) for subsection (3)(b), substitute –

"(b) he discloses to any other person information or any other matter –

(i) which is likely to prejudice any investigation which might be conducted following the disclosure; or

(ii) which is not already in the public domain and which, in the circumstances of any such investigation, it is unreasonable to disclose.", and

(f) in subsection (6), immediately after "suspect", insert "or have reasonable grounds to suspect".

Interpretation.

4. In this Ordinance, "the Law" means Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended.

Extent.

5. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

6. This Ordinance may be cited as the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2010.

Commencement.

7. This Ordinance shall come into force on the 24th March, 2010.

K.H. TOUGH,
Her Majesty's Greffier.

**Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey.**

PRICE £2.00

Printed by Image Group, Caslon Court, Pitronnerie Road, St Peter Port, Guernsey GY1 3NE