

ORDER IN COUNCIL

V
1992

ratifying a Projet de Loi

ENTITLED

The Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992

(Registered on the Records of the Island of Guernsey
on the 16th December, 1992.)



1992

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 16th day of December, 1992 before Graham Martyn Dorey, Esquire, Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Lawrence Oscar Ozanne and John Richard Rowe Henry, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 28th day of October, 1992, approving and ratifying a *Projet de Loi* entitled “The Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ordered:-

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney and to the SÉNÉSCHAL of Sark for registration on the records of those Islands respectively of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 28th day of October 1992

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the affairs of Guernsey and Jersey dated the 22nd day of October 1992 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble petition of the States of the Island of Guernsey setting forth:—

‘1. That, in pursuance of their Resolution of the 26th day of February 1992 the States of Deliberation at a meeting held on the 27th day of May 1992 approved a Bill or “Projet de Loi” entitled “The Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992”, and to order that the same shall have force of law in the Bailiwick of Guernsey.

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney

(No.V - 1992)

PROJET DE LOI

ENTITLED

**The Drug Trafficking (Amendment)
(Bailiwick of Guernsey) Law, 1992**

THE STATES, in pursuance of their Resolution of 26th February 1992(a), have approved the following provisions, which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Manufacture and supply of scheduled substances.

- 1.(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) A person guilty of an offence under subsection (1) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine, or both.

(3) In this section "a controlled drug" and "supply" have the same meaning as in the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974(b) ("the Law of

(a) on Article 4 of Billet d'Etat No. II of 1992.

(b) Ordres en Conseil Vol. XXIV, p.273; Vol. XXVIII, p.307; No. VI of 1988.

1974") and "unlawful production of a controlled drug" means the production of such a drug which is unlawful by virtue of section 3(1)(a) of that Law.

(4) In this Law "a scheduled substance" means a substance for the time being specified in Schedule 1.

(5) The States may by Ordinance amend that Schedule (whether by addition, deletion or transfer from one Table to the other) but no such Ordinance 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.

Regulations about scheduled substances.

2.(1) The Board of Administration may by regulations 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 regulations;
- (d) for the labelling of consignments of scheduled substances.

(2) Regulations made under subsection (1)(b) may, in particular, require -

- (a) the notification of the proposed exportation of substances specified in Table I in Schedule 1 to such countries as may be specified in the regulations; 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 section 30 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972(c) (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.

(c) Ordres en Conseil Vol. XXIII, p.573.

(3) Regulations under this section may make different provision in relation to the substances specified in Table I and Table II in Schedule 1 respectively and in relation to different cases or circumstances.

(4) Any person who fails to comply with any requirement imposed by the regulations 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 and liable on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine, or both.

(5) No information obtained pursuant to the regulations shall be disclosed except for the purposes of criminal proceedings or of proceedings under the provisions of the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988(d) relating to the confiscation of the proceeds of drug trafficking.

Concealing or transferring proceeds of drug trafficking

3.(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

(d) No. XII of 1988.

(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,

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

(3) 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 acquires that property for no, or for inadequate, consideration.

(4) In subsections (1)(a) and (2)(a) the references to concealing or disguising any property include references to concealing or disguising its

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

(5) For the purposes of subsection (3) consideration given for any property is inadequate if its value is significantly less than the value of that property, and there shall not be treated as consideration the provision for any person of services or goods which are of assistance to him in drug trafficking.

(6) A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding 14 years or a fine, or both.

Interest on sums unpaid under confiscation orders.

4.(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 Royal Court may, on the application of Her Majesty's Procureur, increase the term of imprisonment fixed in respect of the confiscation order under section 6(1) of the Drug Trafficking Offences

(Bailiwick of Guernsey) Law, 1988 when subsection (1) applies and interest has accrued.

(3) The rate of interest under subsection (1) shall be that for the time being applying to a judgment debt under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985(e) or such other rate as the Royal Court may from time to time by Rules of Court prescribe.

Increase in realisable property.

5.(1) This section has effect where by virtue of section 4(3) of the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 (insufficient realisable property) 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 under subsection (3), the Royal 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.

(e) No. XVII of 1985.

(3) An application under subsection (2) may be made by Her Majesty's Procureur in relation to the realisable property of the person in question.

(4) Where a certificate has been issued under subsection (2) Her Majesty's Procureur may apply to the Royal 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 subsection (1)) as appears to the court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment fixed in respect of the confiscation order under section 6 of the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988.

Offences on Guernsey vessels.

6. Anything which would constitute a drug trafficking offence if done on land in the Bailiwick shall constitute that offence if done on a vessel, ship or boat registered in the Bailiwick of Guernsey ("a Guernsey vessel").

Ships used for illicit traffic.

7.(1) This section applies to a Guernsey vessel, a British ship, a ship registered in a state other than the United Kingdom which 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 section 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 the ship,

knowing or having reasonable grounds to suspect that the drug is intended to be imported or has been exported contrary to section 2(1) of the Law of 1974 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, in any proceedings in a Bailiwick court, of the matters stated.

(4) A person guilty of an offence under this section is liable -

(a) in a case where the controlled drug is a Class A drug

(i) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the uniform scale, or both;

(ii) on conviction on indictment, to imprisonment for life or a fine, or both;

(b) in a case where the controlled drug is a Class B drug -

(i) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the uniform scale or both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine, or both;

(c) in a case where the controlled drug is a Class C drug -

- (i) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale, or both;
- (ii) on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine, or both;

(5) In this section "a controlled drug" and the references to controlled drugs of a specified Class have the same meaning as in the Law of 1974; and an offence under this section shall be included in the offences to which section 27 of the said law (defences) applies.

Enforcement powers.

8.(1) The powers conferred on an enforcement officer by Schedule 2 ("the powers") shall be exercisable in relation to any ship or vessel to which section 6 or 7 applies for the purpose of detecting and the taking of appropriate action in respect of the offences mentioned in these sections.

(2) Her Majesty's Procureur may, either of his own motion or in response to a request from a Convention state, authorise a Convention state to

exercise, in relation to a Guernsey vessel, powers corresponding to the powers but subject to such conditions or limitations, if any, as he may impose.

(3) The powers shall not be exercised outside the territorial waters of the Bailiwick.

Jurisdiction and prosecutions.

9.(1) Proceedings under this Law or Schedule 2 in respect of an offence on a ship may be taken, and the offence may for all incidental purposes be treated as having been committed, within the Bailiwick.

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

Seizure and detention.

10.(1) An officer of police may with the consent of Her Majesty's Procureur seize and, in accordance with this section, detain any money which is being imported into or exported from the Bailiwick if its amount or value is not less than the prescribed sum and 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 section shall

(f) an Act of Parliament 41 and 42 Vict. c.73.

not be detained for more than forty-eight hours unless its continued detention is authorised by an order made -

- (a) in Guernsey, by the Bailiff;
- (b) in Alderney, by the Chairman of the Court of Alderney or a Jurat authorised by him to act in that behalf;
- (c) in Sark, by the Seneschal or his deputy.

(3) No such order shall be made unless it is established -

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1) above; and
- (b) that 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 Bailiwick or elsewhere) of criminal proceedings against any person for an offence with which the money is connected.

(4) Any order under subsection (3) above shall authorise 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 subsection, may thereafter from time to time by order authorise 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 order under subsection (2) above.

(5) An application for an order under subsection (2) or (4) above may only be made by or with the consent of Her Majesty's Procureur.

(6) At any time while money is detained by virtue of the foregoing provisions of this section -

(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 subsection (3) above; 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) an officer of police may release the money if satisfied that its detention is no longer justified but shall first obtain the consent of Her Majesty's Procureur.

(7) If at a time when any money is being detained by virtue of the foregoing provisions of this section -

(a) an application for its forfeiture is made under section 11 below; or

(b) proceedings are instituted (whether in the Bailiwick 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.

Forfeiture.

11.(1) The Royal Court may order the forfeiture of any money which has been seized under section 10 above if satisfied, on an application made while the money is detained under that section, 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 section shall be made by Her Majesty's Procureur.

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

Interest.

12. 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.

Procedure.

13.(1) An order under section 10(2) above shall provide for notice to be given to persons affected by the order.

(2) Provision may be made by rules of court with respect to applications to any court under this Law, for the giving of notice of such applications to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Law.

(3) Subsection (2) above is without prejudice to the generality of any existing power to make rules.

Amendments to Laws of 1974 and 1988.

14.(1) In the Law of 1974 -

(a) in section 11(1) (prohibition direction on practitioner etc. in consequence of conviction) after paragraph (b) insert -

"(c) of an offence under section 6 or 7 of the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1991;"

(b) in section 20 (offences by corporation) after "an offence under this Law" insert "or section 6 or 7 of the Drug Trafficking (Amendment) (Bailiwick of

Guernsey) Law, 1991";

- (c) in section 22 (powers to search and obtain evidence) after subsection (4) insert -

" (4A) The powers conferred by subsection (1) shall be exercisable also for the purposes of the execution of the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1991 and subsection (4) (excluding (a)), shall apply also to offences under section 1 or 2 of that Law taking references in those provisions to controlled drugs as references to scheduled substances within the meaning of that Law."

(2) In the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 -

- (a) in section 2(4) after "section 19 of this Law" insert "or section 3 of the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1991";
- (b) in the definition of "drug trafficking" in section 26(1) after paragraph (c) insert -

- "(d) manufacturing or supplying a scheduled substance within the meaning of section 1 of the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1991;"
- (c) in the definition of "drug trafficking offence" in section 26(1) after paragraph (d) insert -
- "(dd) an offence under section 1, 3 or 7 of the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1991;",
- and in paragraph (e) for "(d)" substitute "(dd)".

Interpretation.

15.(1) In this Law -

"British ship" means a ship registered in the United Kingdom, Jersey, the Isle of Man or a colony;

"Convention State" has the meaning given in section 7(1);

"exported", in relation to any cash, includes its being brought to any place in the Bailiwick for the purpose of being exported;

"Guernsey vessel" has the meaning given in section 6;

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

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

"the prescribed sum" is £10,000 or such other sum as may be prescribed from time to time under this section by Ordinance of the States;

"scheduled substance" has the meaning given in section 1(4);

"ship" includes any vessel or boat used in navigation;

"the territorial waters of the Bailiwick" includes the territorial waters adjacent to any of the Islands of the Bailiwick;

"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.

(2) Any expression used in this Law which is also used in the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 has the same meaning as in that

Law.

(3) If in any proceedings under this Law any question arises whether any country or territory is a state or is party to the Vienna Convention, a certificate issued by or under the authority of the Secretary of State shall be conclusive evidence on that question.

(4) For the avoidance of doubt it is hereby declared that the amendment in section 14(2)(c) of the definition of "drug trafficking offence" in section 26(1) of the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 applies to that definition as applied by any other enactment, including this Law.

Citation and commencement.

16.(1) This Law may be cited as the Drug Trafficking (Amendment) (Bailiwick of Guernsey) Law, 1992.

(2) This Law shall come into operation on the 28th day after the date of its registration on the records of the Island of Guernsey.

SCHEDULE 1 Sections 1 and 2

SUBSTANCES USEFUL FOR MANUFACTURING CONTROLLED DRUGS

TABLE 1

Ephedrine
Ergometrine
Ergotamine
Lysergic Acid
1-Phenyl-2-Propanone
Pseudoephedrine

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

TABLE 2

Acetic Anhydride
Acetone
Anthranilic Acid
Ethyl Ether
Phenylacetic Acid
Piperidine

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

ENFORCEMENT POWERS IN RESPECT OF SHIPS

Preliminary

1.(1) In this Schedule "an enforcement officer" has the same meaning as "officer of police" in section 26(1) of the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988.

(2) In this Schedule "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 Bailiwick and detain it there.

(2) For these purposes he may require the master or any member of the crew to take such action as the enforcement officer deems necessary.

(3) If an enforcement officer detains a ship he shall serve on the master a written notice stating that it is to be detained, which shall have effect, until the notice is withdrawn by the service on him of a further written notice 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 offence

4. If an enforcement officer has reasonable grounds to suspect that an offence mentioned in section 6 or 7 of this Law has been committed on a ship to which that section applies he may -

- (a) arrest without warrant anyone whom he has reasonable grounds for suspecting to be guilty of the offence; and

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

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 who 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

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 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 on conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the uniform scale or both.