

(No. IX—1991)

(Made on the 25th April, 1991.)

**The Drug Trafficking Offences (Bailiwick of Guernsey)
Law, 1988 (Specified Countries and Territories)
Ordinance, 1991**

THE STATES, in exercise of the powers conferred upon them by section 20 of the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988(a) and on representations of the States Advisory and Finance Committee, hereby order:-

Specification of and application of the Law to countries and territories.

1.(1) Each of the countries and territories specified in the First Schedule to this Ordinance is specified for the purposes of sections 20 and 21 of the Law.

(2) In relation to a specified country, the Law shall apply, subject to the modifications in the Second Schedule to this Ordinance, to external confiscation

(a) No. XII of 1988.

orders and proceedings which have been or are to be instituted in the specified country.

Proof of orders and judgments of courts in a specified country.

2.(1) For the purposes of sections 20 and 21 of the Law, and of the other provisions of the Law as applied under section 1(2) of this Ordinance -

- (a) any order made or judgment given by a court in a specified 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 specified 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 specified country is duly authenticated for the purpose of subsection (1)(b) above 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 specified country.

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

3.(1) For the purposes of sections 20 and 21 of the Law, and of the other provisions of the Law as applied under section 1(2) of this Ordinance, a certificate purporting to be issued by or on behalf of the appropriate authority of a specified country stating -

- (a) that proceedings have been instituted and have not been concluded, or that proceedings are to be instituted, there;
- (b) that an external confiscation order is in force and is not subject to appeal;
- (c) that all or a certain amount of the sum payable under an external confiscation order remains unpaid in the specified country, or that other property recoverable under an external confiscation order remains unrecovered there;
- (d) that any person has been notified of any proceedings in accordance with the law of the specified country; or
- (e) that an order (however described) made by a court of the specified country has the purpose of recovering payments or

other rewards received in connection with drug trafficking or their value, shall, in any proceedings in the Royal Court, be admissible as evidence of the facts so stated.

(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 specified country, shall be admissible as evidence of any fact stated therein.

(3) A document is duly authenticated for the purposes of subsection (2) above if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the specified country, or by or on behalf of the appropriate authority of the specified country to have been received in evidence or to be a copy of a document so received, or, as the case may be, 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.

Representation of government of a specified country.

4. A request for assistance sent to Her Majesty's Procureur by the appropriate authority of a specified country shall, unless the contrary is shown, be deemed to constitute the authority of the government of that country for Her Majesty's Procureur to act on its behalf in any proceedings in the Royal Court under section 21 of the Law or any other provision of the Law as applied by section 1(2) of this Ordinance.

Satisfaction of confiscation order in a specified country.

5.(1) Where -

- (a) a confiscation order has been made under section 1 of the Law; and
- (b) a request has been sent by Her Majesty's Procureur to the appropriate authority of a specified country for assistance in enforcing that order; and
- (c) in execution of that request property is recovered in that country,

the amount payable under the confiscation order shall be treated as reduced by the value of the property so recovered.

(2) For the purposes of this section, and without prejudice to the admissibility of any evidence which may be admissible apart from this subsection, a certificate purporting to be issued by or on behalf of

the appropriate authority of a specified country stating that property has been recovered there in execution of a request by Her Majesty's Procureur stating the value of the property so recovered and the date on which it was recovered shall, in any proceedings in a court in the Bailiwick, be admissible as evidence of the facts so stated.

Currency conversion.

6.(1) Where the value of property recovered as described in section 5(1) of this Ordinance is expressed in a currency other than that of the United Kingdom, the extent to which the amount payable under the confiscation order is to be reduced under that subsection shall be calculated on the basis of the exchange rate prevailing on the date on which the property was recovered in the specified country concerned.

(2) Where an amount of money payable or remaining to be paid under an external confiscation order registered in the Royal Court under section 21 of the Law is expressed in a currency other than that of the United Kingdom, for the purpose of any action taken in relation to that order under the Act as applied under section 1(2) of this Ordinance the amount shall be converted into the currency of the United Kingdom on the basis of the exchange rate prevailing on the date of registration of the order.

(3) For the purposes of this section a written

certificate purporting to be signed by any person acting in his capacity as an officer of any bank in the United Kingdom or the Bailiwick and stating the exchange rate prevailing on a specified date shall be admissible as evidence of the facts so stated.

Interpretation.

7. In this Ordinance -

"appropriate authority of a specified country" means an authority specified opposite that country in the First Schedule to this Ordinance;

"a court of a specified country" includes a court of any state or territory of a specified country;

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

"the Law" means the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988;

"specified country" means a country or territory specified under section 1(1) of this Ordinance.

Citation and commencement.

8.(1) This Ordinance may be cited as the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 (Specified Countries and Territories) Ordinance, 1991.

(2) This Ordinance shall come into force on 1st May, 1991.

FIRST SCHEDULE

Section 1(1)

Specified Country	Appropriate authority
Anguilla	the Attorney General of Anguilla
Australia	the Attorney General's Department
the Bahamas	the Attorney General of the Bahamas
Bermuda	the Attorney General of Bermuda
Canada	the Minister of Justice or officials designated by the Minister
England and Wales	Her Majesty's Attorney General for England and Wales
Gibraltar	the Attorney General of Gibraltar
Isle of Man	Her Majesty's Attorney General for the Isle of Man
Jersey	Her Majesty's Attorney General for the Bailiwick of Jersey
Malaysia	the Inspector General of Police, Malaysia
Nigeria	the Attorney General of the Federation of the Republic of Nigeria
Scotland	Her Majesty's Lord Advocate for Scotland
Spain	the Ministerio de Justicia, Madrid
Sweden	the Ministry for Foreign Affairs
Switzerland	the Eidgenössisches Justiz and Polizeidepartement
United Mexican States	the Office of the Attorney General
United States of America	the Attorney General of the United States of America

SECOND SCHEDULE

Section 1(2)

MODIFICATIONS OF THE DRUG TRAFFICKING OFFENCES

(BAILIWICK OF GUERNSEY) LAW, 1988

1. For section 1 substitute the following:

"External confiscation orders.

1.(1) An order made by a court in a specified country for the purpose of recovering payments or other rewards received in connection with drug trafficking or their value is referred to in this Law as an "external confiscation order".

(2) In subsection (1) above 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 confiscation order has been made, or a person against whom proceedings which may result in an external confiscation order being made have been, or are to be, instituted in a court in a specified country, is referred to in this Law as "the defendant".

2. Sections 2 to 4 shall be omitted.

3. In section 5 -

(a) for subsection (1) substitute the following:

" (1) In this Law "realisable property" means, subject to subsection

(2) below -

(a) in relation to an external confiscation order made in respect of specified property, the property which is specified in the order; and

(b) in any other case -

(i) any property held by the defendant; and

(ii) any property held by a person to whom the defendant has directly or indirectly made a gift caught by this Law;";

(b) subsections (3) and (7) shall be omitted; and

(c) in subsection (8) for the words "section 1 of this Law" substitute the

words "the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 (Specified Countries and Territories) Ordinance, 1991".

4. Section 6 shall be omitted.

5. In section 7 -

(a) for subsection (1)(a) substitute:

"(a) proceedings have been instituted against the defendant in a specified country,";

(b) for subsection (1)(c) substitute:

"(c) either an external confiscation order has been made in the proceedings or it appears to the Royal Court that there are reasonable grounds for believing that such an order may be made in them";

(c) for subsection (2) substitute the following:

" (2) Those powers are also exercisable where it appears to the Royal Court that proceedings are to be instituted against the defendant in a specified country and that there are reasonable grounds for believing that

an external confiscation order may be made in them.";

- (d) subsection (3) shall be omitted;
- (e) in subsection 4(a) after "Her Majesty's Procureur" insert the words "on behalf of the government of a specified country or, where an external confiscation order has been registered under section 21 of this Law, on behalf of Her Majesty's Sheriff,";
- (f) for subsection 4(c) substitute -
"(c) notwithstanding anything in Rules of Court, may provide for service on, or the provision of notice to, persons affected by the order in such manner as the Royal Court may direct, and";
- (g) in subsection (5)(b)(i) the words after "proceedings" are deleted and "in relation to which the order was made are concluded;" substituted;

6. In section 8 -

- (a) for subsection (2) substitute -
" (2) A restraint order may apply -

ORDINANCES

- (a) where an application under section 7(4) relates to an external confiscation order made in respect of specified property, to property which is specified in that order; and
- (b) in any other case -
 - (i) to all realisable property held by a specified person, whether the property is described in the restraint order or not, and
 - (ii) to realisable property held by a specified person, being property transferred to him after the making of the restraint order."

7. In section 9 -

(a) for subsection (1) substitute -

" (1) The Royal Court may make a realty charging order in respect of realisable property consisting of real property situate in the Bailiwick for securing the payment to the Crown -

(a) where a fixed amount is payable under an external confiscation order, of an amount not exceeding the amount so payable, and

(b) in any other case of an amount equal to the value from time to time of the property charged.";

(b) in subsection (3) for the words "a confiscation order" substitute "an external confiscation order".

8. In section 10(1) for the words "confiscation order" substitute "an external confiscation order".

9. After section 10 insert the following section -

"Applications for restraint and charging orders.

10A. Notwithstanding anything in Rules of Court, an application under section 7(4) shall be supported by an affidavit, which shall -

- (a) state, where applicable, the grounds for believing that an external confiscation order may be made in the proceedings instituted or to be instituted in the specified country concerned;
- (b) to the best of the deponent's ability, give particulars of the realisable 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 7(2) applies, indicate when it is intended that proceedings should be

instituted in the specified
country concerned,
and the affidavit may, unless the court
otherwise directs, contain statements of
information or belief with the sources and
grounds thereof."

10. In section 11 for the words from "Where" to
"concluded", substitute "Where an external confiscation
order has been registered under section 21".

11. In section 12 -

- (a) in subsection (1) for the words
"confiscation order", substitute
"external confiscation order";
- (b) in subsection (2) for the words "If,
after the amount payable under the
confiscation order", substitute "Where
a fixed amount is payable under the
external confiscation order and, after
that amount".

12. In section 13 -

- (a) for subsection (2) substitute -
" (2) Subject to subsections (3)
to (6) the powers shall be exercised
with a view to -
 - (a) recovering property
which is liable to be

recovered under an external confiscation order registered in the Royal Court under section 21; or

(b) making available for recovery property which may become liable to be recovered under any external confiscation order which may be made in the defendant's case."; and

(b) in subsection (6) for the words "confiscation order" substitute "external confiscation order".

13. Section 14 shall be omitted.

14. Sections 18 to 20 and 22 to 25 shall be omitted.

15. In section 26 -

(a) in subsection (1) the definition of "drug trafficking offence" shall be omitted;

(b) subsection (3) shall be omitted;

(c) in subsection (4) the full stop shall be omitted and there shall be added the words "and whether received before or after the commencement of the Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988 (Specified Countries and Territories) Ordinance, 1991 and whether received in connection with drug trafficking carried on by the recipient or some other person.";

(d) for subsection (10) substitute -

" (10) Proceedings are instituted in a specified country when -

(a) under the law of the specified country concerned one of the steps specified in relation to that country in column 2 of the Schedule has been taken there in respect of alleged drug trafficking by the defendant; or

(b) an application has been made to a court

in a specified country
for an external
confiscation 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 these times."; and

- (e) in subsection (11)(b) for the words from "payment" to the end of the subsection substitute "the recovery of all property liable to be recovered, or the payment of any amount due, or otherwise)".

16. Sections 27 and 28 are omitted.

17. At the end of the Law insert the following

Schedule -

"

Section 26

SCHEDULE

INSTITUTION OF PROCEEDINGS

Specified Country	Point at which proceedings are instituted
Anguilla	(a) when a summons or warrant is issued in respect of an offence;

Specified Country	Point at which proceedings are instituted
Australia	<p>(b) when a person is charged with an offence after being taken into custody without a warrant;</p> <p>(c) when a bill of indictment is preferred.</p> <p>(a) when an information has been laid before a justice of the peace;</p> <p>(b) when a person is charged with an offence after having been taken into custody without a warrant;</p> <p>(c) when a bill of indictment is preferred.</p>
the Bahamas	<p>(a) when an information has been laid before a justice of the peace;</p> <p>(b) when a person is charged with an offence after having been taken into custody without a warrant;</p> <p>(c) when a bill of indictment is preferred.</p>
Bermuda	when an information is laid charging a person with an offence.
Gibraltar	when a person is charged with an offence, whether by the laying of an information or otherwise.

Specified Country	Point at which proceedings are instituted
Isle of Man	<p>(a) where a justice of the peace issues a summons under section 4 of the Summary Jurisdiction Act 1989, when the complaint in relation to the offence is made to him;</p> <p>(b) where a justice of the peace issues a warrant for the arrest of any person under that section, when the complaint in relation to the offence is made to him;</p> <p>(c) where a person is charged with the offence after being taken into custody without a warrant, when he is taken into custody;</p> <p>(d) where an information is preferred by the Attorney General in a case where there have been no committal proceedings, when the information is lodged in the General Registry in accordance with section 4(1) of the Criminal Code Amendment Act 1917.</p>
Jersey	<p>(a) when the Bailiff issues a warrant in respect of an offence for the arrest of a person who is out of the island;</p>

Specified Country	Point at which proceedings are instituted
Malaysia	(b) when a person is charged with an offence; (c) when a summons in respect of the offence is served on a person in accordance with the provisions of Article 8 of the Police Court (Miscellaneous Provisions) (Jersey) Law, 1949.
Spain	when by virtue of a judicial resolution it is decided to proceed against a person for an offence.
Sweden	when a public prosecutor has established that there are reasonable grounds to suspect that a person has committed an offence and accordingly is obliged under the Code of Judicial Procedure to notify the person of the suspicion.
Switzerland	when proceedings for an offence are brought before an examining magistrate.
United Kingdom	(a) when an information has been laid before a justice of the peace; or (b) when a person is charged with an offence; or

Specified Country	Point at which proceedings are instituted
	(c) when a bill of indictment is preferred; or (d) when a petition warrant is granted
United Mexican States	when criminal proceedings are instituted by a judicial authority.
United States of America	when an indictment, information or complaint has been filed against a person in respect of an offence.

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